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252:605, App. G. . . . . [REVOKED] 00
252:605, App. H. . . . . [REVOKED] 00
252:605, App. I. . . . . [REVOKED] 00
252:605, App. J. . . . . [REVOKED] 00
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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 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #04-1074]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Air Quality Standards and Increments
252:100-3-4 [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-2 [AMENDED]
Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
Part 1. General Provisions
252:100-41-1 [REVOKED]
252:100-41-2 [REVOKED]
252:100-41-3 [NEW]
252:100-41-4 [NEW]
Part 5. Toxic Air Contaminants
252:100-41-35 [REVOKED]
252:100-41-36 [REVOKED]
252:100-41-37 [REVOKED]
252:100-41-38 [REVOKED]
252:100-41-39 [REVOKED]
252:100-41-40 [REVOKED]
252:100-41-41 [REVOKED]
252:100-41-42 [REVOKED]
252:100-41-43 [REVOKED]
252:100-41-44 [REVOKED]
Subchapter 42. Control of Toxic Air Pollutants (TAPs) [NEW]
Appendix O. [NEW]

SUMMARY:

The Department proposes to correct a reference error in subsection (a) of Section 3-4 of Subchapter 3. This citation was overlooked when the PSD requirements that were previously located in Part 5 of Subchapter 7 were moved to Part 7 of Subchapter 8.

The Department proposes to add language to subparagraphs 7-2(b)(1)(B) and (C) of OAC 252:100-7-2 that will make clear that de minimis cotton gins that comply with the requirements of Subchapter 23 Control of Emissions from Cotton Gins and de minimis feed and grain facilities that comply with the requirements of Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations will not be required to comply with the requirements of Subchapter 25 Visible Emissions and Particulates and Subchapter 29 Control of Fugitive Dust. Subchapters 23 and 24 set visible emissions standards and fugitive dust standards for cotton gins and feed and grain facilities respectively. It is not the Department's intention that de minimis facilities be held to more stringent standards than facilities with larger emissions that require permits. The added language corrects this problem.

The Department proposes amendments to Subchapter 41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants to partition the existing Subchapter 41 into two subchapters. The proposed amendments will clarify and modify the state-only requirements for emissions from stationary sources and relocate these requirements into the new Subchapter 42 and Appendix O. Subchapter 41 will contain the federal requirements for HAPs and asbestos. The remaining Sections 15 and 16 of Subchapter 41 that incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Parts 61 and 63 and specific asbestos requirements will be retained in Subchapter 41. Also, two new sections will be added as 252:100-3 and -4.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the Air Quality Council hearing on July 21, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 14, 2004. Oral comments may be made at the July 21, 2004 hearing and the August 24, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 21, 2004 at the Department of Environmental Quality, Room 101, 707 North Robinson, Oklahoma City, Oklahoma

Before the Environmental Quality Board at 9:30 a.m. on August 24, 2004, at the Gordon Cooper Technology Center, One John C. Bruton Blvd., Shawnee, Oklahoma 74804

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities or any other members of the public affected by these rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or

other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Joyce Sheedy (e-mail: joyce.sheedy@deq.state.ok.us) for Subchapters 3 and 7; Lisa Donovan (e-mail: lisa.donovan@deq.state.ok.us) for Subchapter 41; and Brad Cook (e-mail: brad.cook@deq.state.ok.us) for Subchapter 42 and Appendix O, at the Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4100, fax (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4100.

[OAR Docket #04-1074; filed 5-28-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 110. LEAD-BASED PAINT MANAGEMENT

[OAR Docket #04-1073]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Definitions
252-110-3-1 [AMENDED]
Subchapter 5. Incorporation By Reference
252:110-5-1 [AMENDED]
Subchapter 9. Additional Accreditation Requirements
252:110-9-1.1 [NEW]
252:110-9-3 [AMENDED]
252:110-9-4 [AMENDED]
252:110-9-6 [AMENDED]
Subchapter 11. Additional LBP Certification Requirements
252:110-11-1 [AMENDED]
252:110-11-4 [AMENDED]
252:110-11-6[AMENDED]
Subchapter 13. Additional Work Practice Standards
252:110-13-3 [REVOKED]
252:110-13-5 [AMENDED]

SUMMARY:

The Department proposes to amend Subchapter 3, Definitions, and Subchapter 5, Incorporation By Reference, to update the incorporations by reference of 40 CFR 745. The Department also proposes to amend Subchapter 9, Additional Accreditation Requirements, and Subchapter 11, Additional LBP Certification Requirements, to clarify requirements for accredited lead-based paint training programs and certificate requirements, respectively. The Department proposes to revoke OAC 252:110-13-3, Additional Work Practice Standards, since the specifications contained therein will be incorporated by reference, and to amend OAC 252:110-13-5 to update the reference to the Department's Radiation Management Rules.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and the Lead-Based Paint Management Act, §§ 2-12-101 *et seq.*

COMMENT PERIOD:

Written comments will be accepted prior to and at the hearing on July 21, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by July 14, 2004.

Oral comments may be made at the July 21, 2004 Air Quality Council hearing and the August 24, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 21, 2004 at Oklahoma Department of Environmental Quality, Multipurpose Room, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on August 24, 2004, at the Gordon Cooper Technology Center, One John Bruton Blvd., Shawnee, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person.

CONTACT PERSON:

Send written comments to Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 N.

Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677, phone (405) 702-4100, fax (405) 702-4101.

[OAR Docket #04-1073; filed 5-28-04]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 35. GENERAL CONDUCT

[OAR Docket #04-1056A]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:35-1-10.1 Filing and processing of financial responsibility complaints [REVOKED or AMENDED]

SUMMARY:

For consideration at the May 6, 2004 Horse Racing Commission meeting, Commission Counsel suggested that two current rules in OHRC *Rules of Racing* [Rule 325:35-1-10, Financial Responsibility, and Rule 325:35-1-10.1, Filing and Processing of Financial Responsibility Complaints] be considered for revocation or amendment due to the amount of time spent by the Boards of Stewards and Stewards' Clerks on financial responsibility complaints that may be handled through other means. At the May 6, 2004 meeting, the Commission considered the request, hearing from several industry representatives who spoke in favor of maintaining or amending the Rules rather than revoking them due to the industry-wide precedence of leverage by the regulator to promote horsemen's financial accountability. The Commission approved by a 6-0 vote to authorize publication of the Notice of Rulemaking Intent in the *Oklahoma Register* and the scheduling of a Public Hearing with additional notice to be given to the racetracks and horsemen's organizations to post for horsemen to consider submitting written or oral comments at the Public Hearing scheduled for Monday, July 19, 2004. Consideration of possible adoption of the rule revocation or amendment will be placed on the agenda for the August 20, 2004 meeting to be held at Blue Ribbon Downs in Sallisaw, OK.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, July 19, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A Public Hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, July 19, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the Public Hearing must sign a speaker's register. Written comments may also be forwarded to the Commission at the above-captioned address or by fax at 405/943-6474 by the close of business on Monday, July 19, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule amendment or revocation provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule amendment or revocation. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on July 19, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by June 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-1056A; filed 5-26-04]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 35. GENERAL CONDUCT

[OAR Docket #04-1056]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:35-1-10. Financial responsibility [REVOKED or AMENDED]

SUMMARY:

For consideration at the May 6, 2004 Horse Racing Commission meeting, Commission Counsel suggested that two current rules in OHRC *Rules of Racing* [Rule 325:35-1-10, Financial Responsibility, and Rule 325:35-1-10.1, Filing and Processing of Financial Responsibility Complaints] be considered for revocation or amendment due to the amount of time spent by the Boards of Stewards and Stewards' Clerks on financial responsibility complaints that may be handled through other means. At the May 6, 2004 meeting, the

Commission considered the request, hearing from several industry representatives who spoke in favor of maintaining or amending the Rules rather than revoking them due to the industry-wide precedence of leverage by the regulator to promote horsemen's financial accountability. The Commission approved by a 6-0 vote to authorize publication of the Notice of Rulemaking Intent in the *Oklahoma Register* and the scheduling of a Public Hearing with additional notice to be given to the racetracks and horsemen's organizations to post for horsemen to consider submitting written or oral comments at the Public Hearing scheduled for Monday, July 19, 2004. Consideration of possible adoption of the rule revocation or amendment will be placed on the agenda for the August 20, 2004 meeting to be held at Blue Ribbon Downs in Sallisaw, OK.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

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A Public Hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday, July 19, 2004, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the Public Hearing must sign a speaker's register. Written comments may also be forwarded to the Commission at the above-captioned address or by fax at 405/943-6474 by the close of business on Monday, July 19, 2004.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule amendment or revocation provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule amendment or revocation. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on July 19, 2004.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by June 30, 2004 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #04-1056; filed 5-26-04]

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 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 20. SPECIMENS

[OAR Docket #04-976]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:20-1-3 Collection, transfers, and retention of specimens of blood [AMENDED]
SUBMITTED TO GOVERNOR:
April 1, 2004
SUBMITTED TO HOUSE:
April 1, 2004
SUBMITTED TO SENATE:
April 1, 2004

[OAR Docket #04-976; filed 5-19-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIALS

[OAR Docket #04-977]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:25-1-1. Purpose [AMENDED]
40:25-1-2. Approval evidential breath-alcohol analyzers [AMENDED]
40:25-1-3. Alcoholic breath simulators [AMENDED]
SUBMITTED TO GOVERNOR:
April 1, 2004
SUBMITTED TO HOUSE:
April 1, 2004
SUBMITTED TO SENATE:
April 1, 2004

[OAR Docket #04-977; filed 5-19-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD

[OAR Docket #04-978]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:35-1-2. Approve methods of blood alcohol analysis [NEW]
SUBMITTED TO GOVERNOR:
April 1, 2004
SUBMITTED TO HOUSE:
April 1, 2004
SUBMITTED TO SENATE:
April 1, 2004

[OAR Docket #04-978; filed 5-19-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICE

[OAR Docket #04-979]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:50-1-1. Explanation of terms and actions [NEW]
40:50-1-2. Procedure for device approval [NEW]
40:50-1-3. Technical requirements [NEW]
40:50-1-4. Miscellaneous requirements [NEW]
40:50-1-5. Maintenance and calibration requirements [NEW]
40:50-1-6. Approval, denial, and withdrawal of approval [NEW]
40:50-1-7. Certification and inspection of service centers [NEW]
40:50-1-8. Service representative [NEW]
40:50-1-9. Ignition interlock inspector [NEW]
SUBMITTED TO GOVERNOR:
April 1, 2004
SUBMITTED TO HOUSE:
April 1, 2004

SUBMITTED TO SENATE:
April 1, 2004

[OAR Docket #04-979; filed 5-19-04]

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 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 15. OAC GRANT PROGRAM

[OAR Docket #04-898]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
25:15-1-1. through 25:15-1-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-898; filed 5-13-04]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 20. AIRCRAFT EXCISE TAX CREDIT PROGRAM

[OAR Docket #04-899]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
25:20-1-1. through 25:20-1-5. [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-899; filed 5-13-04]

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

[OAR Docket #04-894]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Fee Schedules
35:2-3-29 [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-894; filed 5-12-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 20. SPECIMENS

[OAR Docket #04-980]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
40:20-1-3. Collection, transfers, and retention of specimens of blood [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-980; filed 5-19-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIALS

[OAR Docket #04-981]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
40:25-1-1. Purpose [AMENDED]
40:25-1-2. Approval evidential breath-alcohol analyzers [AMENDED]
40:25-1-3. Alcoholic breath simulators [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-981; filed 5-19-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD

[OAR Docket #04-982]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
40:35-1-2. Approve methods of blood alcohol analysis [NEW]

GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-982; filed 5-19-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICE

[OAR Docket #04-983]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
40:50-1-1. Explanation of terms and actions [NEW]
40:50-1-2. Procedure for device approval [NEW]
40:50-1-3. Technical requirements [NEW]
40:50-1-4. Miscellaneous requirements [NEW]
40:50-1-5. Maintenance and calibration requirements [NEW]
40:50-1-6. Approval, denial, and withdrawal of approval [NEW]
40:50-1-7. Certification and inspection of service centers [NEW]
40:50-1-8. Service representative [NEW]
40:50-1-9. Ignition interlock inspector [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-983; filed 5-19-04]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM

[OAR Docket #04-917]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Quality Jobs Program
150:65-1-2. [AMENDED]
150:65-1-12. [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-917; filed 5-17-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 1. ORGANIZATION

[OAR Docket #04-1035]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
160:1-1-1.2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1035; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 3. PROCEDURE

[OAR Docket #04-1036]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
160:3-1-1.1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1036; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 5. FEES

[OAR Docket #04-1037]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
160:5-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1037; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 10. CONSUMER LEASING

[OAR Docket #04-1038]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Disclosures

160:10-5-1.1 [AMENDED]
160:10-5-1.4 [NEW]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1038; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 15. PAWN TRANSACTIONS

[OAR Docket #04-1039]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Records
160:15-3-1 [AMENDED]
Subchapter 5. Licensing
160:15-5-6 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1039; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 30. CREDIT SERVICES ORGANIZATION

[OAR Docket #04-1040]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Licensing
160:30-3-3.4 [AMENDED]
Subchapter 9. Records
160:30-9-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1040; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 35. OKLAHOMA RENTAL-PURCHASE ACT

[OAR Docket #04-1041]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Licensing
160:35-3-1.4 [AMENDED]
Subchapter 5. Records
160:35-5-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1041; filed 5-24-04]

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

[OAR Docket #04-1042]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
160:45-1-1 [AMENDED]
Subchapter 3. Open-End Credit
160:45-3-1 [AMENDED]
160:45-3-2 [AMENDED]
160:45-3-3 [AMENDED]
160:45-3-13 [AMENDED]
160:45-3-14 [AMENDED]
Subchapter 5. Closed-End Credit
160:45-5-1 [AMENDED]
160:45-5-7 [AMENDED]
160:45-5-8 [AMENDED]
Subchapter 7. Miscellaneous
160:45-7-3 [AMENDED]
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-1 [AMENDED]
160:45-9-2 [AMENDED]
160:45-9-4 [NEW]
Subchapter 11. Electronic Communication [NEW]
160:45-11-1 [NEW]
Appendix F. Annual Percentage Rate Computations for Certain Open-End Credit Plans [REVOKED]
Appendix F. Annual Percentage Rate Computations for Certain Open-End Credit Plans [NEW]
Appendix H. Closed-End Model Forms and Clauses [REVOKED]
Appendix H. Closed-End Model Forms and Clauses [NEW]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1042; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 50. HEALTH SPAS

[OAR Docket #04-1043]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Registration
160:50-3-11 [AMENDED]
Subchapter 11. Records
160:50-11-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1043; filed 5-24-04]

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

[OAR Docket #04-1044]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
160:55-1-1 [AMENDED]
160:55-1-2 [AMENDED]
Subchapter 3. Licensing
160:55-3-1.1 [AMENDED]
160:55-3-1.2 [AMENDED]
160:55-3-1.3 [NEW]
160:55-3-1.4 [NEW]
160:55-3-3 [AMENDED]
160:55-3-3.1 [AMENDED]
160:55-3-4 [AMENDED]
160:55-3-8 [AMENDED]
160:55-3-9 [AMENDED]
160:55-3-9.1 [AMENDED]
160:55-3-10.1 [NEW]
Subchapter 5. Advisory Committee
160:55-5-2 [AMENDED]
Subchapter 7. Records
160:55-7-1 [AMENDED]
Subchapter 9. Enforcement
160:55-9-2 [AMENDED]
160:55-9-3 [AMENDED]
160:55-9-4 [AMENDED]
160:55-9-6 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1044; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 60. PRECIOUS METAL AND GEM DEALERS

[OAR Docket #04-1045]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Licensing
160:60-3-6 [AMENDED]
Subchapter 7. Records
160:60-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1045; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 65. SUPERVISED LENDERS

[OAR Docket #04-1046]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Licensing
160:65-3-6 [AMENDED]
Subchapter 7. Records
160:65-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1046; filed 5-24-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 70. DEFERRED DEPOSIT LENDERS

[OAR Docket #04-1047]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [NEW]
160:70-1-1 through 160:70-1-3 [NEW]
Subchapter 3. Licensing [NEW]
160:70-3-1 through 160:70-3-6 [NEW]
Subchapter 5. Disclosures [NEW]
160:70-5-1 through 160:70-5-2 [NEW]
Subchapter 7. Records [NEW]
160:70-7-1 through 160:70-7-2 [NEW]

Subchapter 9. Enforcement [NEW]
160:70-9-1 through 160:70-9-6 [NEW]

GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1047; filed 5-24-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #04-994]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-4. Office location; office hours; records [AMENDED]
165:5-1-5. Filing of documents [AMENDED]
Subchapter 5. Dockets
165:5-5-1. Dockets; identifying initials [AMENDED]
Subchapter 7. Commencement of a Cause
Part 1. General
165:5-7-1. General application and notice requirements [AMENDED]
Part 7. Oil and Gas
165:5-7-14. ~~Enhanced recovery gross production tax exemption~~ Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]
165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]
Subchapter 9. Subsequent Pleadings
165:5-9-2. Subsequent pleadings [AMENDED]
165:5-9-6. Continuances [AMENDED]
Subchapter 11. Prehearing Procedures
165:5-11-2.1. Initial screening conference ("ISC") [NEW]
Subchapter 13. Initial and Appellate Proceedings
165:5-13-2.1. Appointment of Public Utility Referee [NEW]
165:5-13-4. Report of the Administrative Law Judge [AMENDED]
Subchapter 19. Contempt
165:5-19-2. Waiver or reduction of fines and penalties upon small business [NEW]

GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-994; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL AND GAS CONSERVATION

[OAR Docket #04-995]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 17. Gas well operations and permitted production
165:10-17-9. Special allocated gas pools [AMENDED]
Subchapter 21. Applications for tax exemptions
Part 6. Production enhancement projects
165:10-21-21. General [AMENDED]
165:10-21-22. Definitions [AMENDED]
165:10-21-24. Rebates - Refund procedure [AMENDED]
Part 7. Re-establishment of production from an inactive well
165:10-21-36. Definitions [AMENDED]
165:10-21-38. Rebates - Refund procedure [AMENDED]
Part 8. Deep wells
165:10-21-45. General [AMENDED]
165:10-21-47.1. Rebates - Refund procedure [AMENDED]
Part 9. New discovery wells
165:10-21-55. General [AMENDED]
165:10-21-58. Rebates - Refund procedure [AMENDED]
Part 11. Horizontally drilled producing wells
165:10-21-66. Definitions [AMENDED]
165:10-21-68. Rebates - Refund procedure [AMENDED]
165:10-21-69. Time periods for exemption from gross production tax levied on horizontally producing wells [AMENDED]
Part 13. Incremental production from enhanced recovery projects
165:10-21-76. Definitions [AMENDED]
165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
165:10-21-80. Expiration of exemption for incremental production [AMENDED]
Part 14. Production of oil, gas or oil and gas from any well located within boundaries of a three-dimensional seismic shoot
165:10-21-82. General [AMENDED]
165:10-21-82.2. Qualification procedure [AMENDED]
165:10-21-82.3. Rebates - Refund procedure [AMENDED]

GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-995; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #04-992]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:15-1-6. Fuel Specialists' ~~Behavior~~ Identification [AMENDED]
165:15-1-8. Fuel Specialists' Interpretation of Rules [REVOKED]
Subchapter 3. Fuel Specialists, Testing, Accessibility, And Assistance
Part 1. General Authority
165:15-3-1. Authority To Enter And/Or Stop For Inspection [AMENDED]
165:15-3-2. Authority To Lock Or Seal For Violation [AMENDED]
165:15-3-3. Authority To Remove Lock Or Seal After Correction Of Violation [AMENDED]
Part 3. Motor Fuels And Antifreeze
165:15-3-11. Testing Methods [AMENDED]
Part 5. Liquid Measuring Devices
165:15-3-15. Fuel Specialist's ~~official~~ duty [AMENDED]
165:15-3-16. Inspection for compliance [AMENDED]
Part 7. Storage Tanks And Ancillary Equipment
165:15-3-20. Water in storage tanks [AMENDED]
165:15-3-21. Containment of petroleum products [AMENDED]
165:15-3-22. Equipment installation [AMENDED]
165:15-3-24.2. Fleet and commercial facility inspections [AMENDED]
165:15-3-24.3. Farm inspections [AMENDED]
Part 11. Accessibility And Assistance
165:15-3-34. Authority to block off [AMENDED]
165:15-3-35. Marina docks [AMENDED]
Subchapter 9. Description Of Motor Fuel
165:15-9-2. Display on pump [AMENDED]
165:15-9-3. Ethyl alcohol [AMENDED]
Subchapter 15. Liquid Measuring Devices
Part 3. Calibration And Tolerances
165:15-15-9. Tolerances [AMENDED]
Subchapter 19. Violations And Contempt
165:15-19-3. Notices of Violation [AMENDED]
165:15-19-4. Re-inspection and Fine Citation [AMENDED]
GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-992; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #04-991]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
Part 1. Purpose
165:25-1-1. Purpose [AMENDED]
Part 3. Definitions
165:25-1-11. Definitions [AMENDED]
Part 6. Administrative Provisions
165:25-1-29. Notices [AMENDED]
Part 7. Codes and Standards [REVOKED]
165:25-1-31. Sources of standards [REVOKED]
165:25-1-32. Incorporated codes and standards [REVOKED]
165:25-1-33. Other standards and regulations [REVOKED]
Part 8. General Requirements for Underground Storage Tank Systems [REVOKED]
165:25-1-34. Approved tanks, tank design [REVOKED]
165:25-1-35. Storage tank spacing [REVOKED]
165:25-1-36. Fill pipe requirements [REVOKED]
165:25-1-37. Spill and overfill protection [REVOKED]
165:25-1-38. Corrosion protection [REVOKED]
165:25-1-39. Underground storage tank piping materials [REVOKED]
165:25-1-40. Electrical equipment [REVOKED]
Part 9. Notification and Reporting Requirements
165:25-1-41. General reporting requirements [AMENDED]
165:25-1-42. New tank systems [AMENDED]
165:25-1-46. Tank removal and closure [REVOKED]
165:25-1-48. Tank and line tightness testing ~~results~~ [AMENDED]
165:25-1-51. Transfer of ownership [AMENDED]
Part 11. Recordkeeping
165:25-1-53. Availability of records [AMENDED]
165:25-1-54. Repair records [AMENDED]
165:25-1-55. Tank installation, closure and removal records [AMENDED]
165:25-1-56. Release detection and cathodic protection records [AMENDED]
Part 13. Fees
165:25-1-64. Fees [AMENDED]
Part 15. Shutdown of Operations [AMENDED]
165:25-1-67. Shutdown of operations [AMENDED]
Subchapter 2. General Requirements for Underground Storage Tank Systems [NEW]
Part 1. Codes and Standards [NEW]
165:25-2-1 Sources of standards [NEW]
165:25-2-2. Incorporated codes and standards [NEW]
165:25-2-3. Other standards and regulations [NEW]

165:25-2-4. Financial responsibility [NEW]
Part 3. Design and Installation [NEW]
165:25-2-31. Underground storage tank installation [NEW]
165:25-2-32. Compatibility [NEW]
165:25-2-33. Approved tanks, tank design [NEW]
165:25-2-34. Compliance with nationally recognized code of practice and manufacturer's instructions [NEW]
165:25-2-35. Pre-installation [NEW]
165:25-2-36. Tank system installation [NEW]
165:25-2-37. Storage tank spacing [NEW]
165:25-2-38. Fill pipe requirements [NEW]
165:25-2-39. Spill and overfill protection [NEW]
165:25-2-40. Tank system testing [NEW]
165:25-2-41. Installation drawing [NEW]
165:25-2-42. Certification of installation [NEW]
Part 5. Protection Against Corrosion [NEW]
165:25-2-51. Corrosion protection [NEW]
165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications [NEW]
165:25-2-53. Frequency and criteria of inspections and tests [NEW]
165:25-2-54. Underground storage tank piping materials [NEW]
165:25-2-55. Underground storage tank internal lining requirements [NEW]
Part 7. Dispensers [NEW]
165:25-2-71. Dispensers [NEW]
165:25-2-72. Dispenser hose [NEW]
165:25-2-73. Nozzles [NEW]
165:25-2-75. Required signs [NEW]
165:25-2-76. Sources of ignition [NEW]
165:25-2-77. Electrical equipment [NEW]
Subchapter 3. Release Prevention and Detection Requirements
Part 1. Release Prohibition and Detection Requirements
165:25-3-5.2. Tank system tightness testing with inventory control [AMENDED]
165:25-3-5.3. Testing or monitoring for vapors [AMENDED]
165:25-3-5.4. Testing or monitoring for liquids on the groundwater [AMENDED]
165:25-3-5.6. Automatic tank gauging systems [AMENDED]
165:25-3-5.7. Manual tank gauging [NEW]
165:25-3-6. Monitoring requirements for piping [AMENDED]
Part 3. Release Investigation Requirements
165:25-3-8. Release investigation and confirmation [AMENDED]
Part 5. Spill and Overfill Prevention Requirements [REVOKED]
165:25-3-25. General spill and overfill prevention requirements [REVOKED]
165:25-3-26. Spill and overfill prevention equipment [REVOKED]
Part 7. Compatibility [REVOKED]
165:25-3-31. Compatibility [REVOKED]
Part 9. ~~Installation Of Underground Storage Tank Systems~~ Licensing Of Underground Storage Tank Installers
165:25-3-41. Compliance with nationally recognized code of practice and manufacturer's instructions [REVOKED]
165:25-3-42. Pre-installation [REVOKED]
165:25-3-43. Tank system installation [REVOKED]
165:25-3-44. Tank system testing [REVOKED]
165:25-3-46. Installation drawing [REVOKED]
165:25-3-47. Certification of installation [REVOKED]
165:25-3-48. Licensing of Underground Storage Tank Installers [REVOKED]
165:25-3-49. Underground storage tank installation [REVOKED]
165:25-3-50. Licensing procedure for UST Installers [AMENDED]
165:25-3-52. Licensing procedure for UST Removers [NEW]
165:25-3-53. Licensing procedure for monitoring well technician [NEW]
Part 11. Repairs to Underground Storage Tank Systems
165:25-3-55. Repairs to underground storage tank systems [AMENDED]
Part 13. Removal and Closure of Underground Storage Tank Systems
165:25-3-60. Tank removal and closure [NEW]
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TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #04-993]

RULEMAKING ACTION:
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165:26-16-1. Application [AMENDED]
165:26-16-2. Timeframes for registration and compliance with rules [AMENDED]

165:26-16-3. Codes and Standards [REVOKED]
165:26-16-4. Local jurisdiction [REVOKED]
165:26-16-5. Consultation of petroleum storage tank division [REVOKED]
Part 3. Tank Design, Construction, Capacity and Location Requirements [REVOKED]
165:26-16-9. Approved tanks, tank design [REVOKED]
165:26-16-11. Emergency pressure release [REVOKED]
165:26-16-12. Aboveground storage tank spacing [REVOKED]
165:26-16-14. Distance to be kept around tanks [REVOKED]
165:26-16-15. Requirements on fill pipes [REVOKED]
165:26-16-16. Collision barriers [REVOKED]
165:26-16-17. Spill and overfill prevention [REVOKED]
165:26-16-18. Corrosion protection [REVOKED]
Part 5. Secondary Containment Requirements [REVOKED]
165:26-16-25. Double-Walled~~walled~~ tanks [REVOKED]
165:26-16-26. Secondary containment [REVOKED]
Part 7. Equipment and Materials [REVOKED]
165:26-16-30. Aboveground storage tank piping materials [REVOKED]
165:26-16-31. Electrical equipment [REVOKED]
Part 9. Piping Requirements [REVOKED]
165:26-16-35. Piping protection [REVOKED]
165:26-16-36. Piping and gravity flow [REVOKED]
165:26-16-37. Valves on piping [REVOKED]
165:26-16-38. External piping protection [REVOKED]
165:26-16-39. Underground piping materials [REVOKED]
Part 11. Vault Requirements [REVOKED]
165:26-16-45. Vaults [REVOKED]
Part 13. Venting and Venting Specifications [REVOKED]
165:26-16-51. Vent piping size [REVOKED]
165:26-16-52. Vent piping height [REVOKED]
Part 17. Tank Filling Procedures [REVOKED]
165:26-16-70. Tank filling operation [REVOKED]
165:26-16-72. Tightfill connection requirements [REVOKED]
Part 21. Miscellaneous Safety Provisions [REVOKED]
165:26-16-85. Fencing [REVOKED]
165:26-16-89. Sources of ignition [REVOKED]
165:26-16-90. Monitoring requirements [REVOKED]
Part 23. Recordkeeping [REVOKED]
165:26-16-96. Spill prevention control and countermeasure plan [REVOKED]
Subchapter 18. Financial Responsibility [NEW]
165:26-18-1. Applicability [NEW]
165:26-18-3. Evidence of financial responsibility [NEW]
Appendix G. Warning and Fine Citations Table [NEW]
Appendix J. Table Establishing Permeability Rates for Secondary Containment [REVOKED]

GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-993; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #04-1001]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:35-1-2. Definitions [AMENDED]
Subchapter 31. Affiliate Transactions and Financial Transactions of Utilities and Affiliates [New]
165:35-31-1. Purpose, scope and application of Subchapter [NEW]
165:35-31-2. Determination of confidential information [NEW]
165:35-31-3. Exemption for corporate and shared services [NEW]
165:35-31-4. Request for Information [NEW]
165:35-31-5. [RESERVED]
165:35-31-6. [RESERVED]
165:35-31-7. [RESERVED]
165:35-31-8. [RESERVED]
165:35-31-9. [RESERVED]
165:35-31-10. [RESERVED]
165:35-31-11. [RESERVED]
165:35-31-12. [RESERVED]
165:35-31-13. [RESERVED]
165:35-31-14. [RESERVED]
165:35-31-15. [RESERVED]
165:35-31-16. [RESERVED]
165:35-31-17. [RESERVED]
165:35-31-18. [RESERVED]
165:35-31-19. Standards for transactions between utilities and affiliate(s) [NEW]
165:35-31-20. Sales of services, products, or assets between regulated and unregulated affiliates [NEW]
165:35-31-21. [RESERVED]
165:35-31-22. Financial transactions by utilities or their affiliate(s) [NEW]
165:35-31-23. [RESERVED]
165:35-31-24. [RESERVED]
165:35-31-25. Remedies and enforcement for violation of the standards of conduct [NEW]
165:35-31-26. [RESERVED]
165:35-31-27. [RESERVED]
GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-1001; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #04-1002]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:35-1-5. Sale or disposal of jurisdictional facilities by utility [AMENDED]
Subchapter 23. Service Requirements
165:35-23-8. Request for service [NEW]
Subchapter 25. ~~Operation Maintenance and Records~~ Operations Requirements For Utilities
Part 1. Operation Maintenance and Records [NEW]
165:35-25-4. Daily record of generating plants [AMENDED]
Part 3. Reliability of Service and Reliability Program [NEW]
165:35-25-12. Adoption of Standards [NEW]
165:35-25-13. Definitions [NEW]
165:35-25-14. Reliability program [NEW]
165:35-25-15. Vegetation management plan [NEW]
165:35-25-16. Notification for vegetation management activities [NEW]
165:35-25-17. [RESERVED]
165:35-25-18. Performance levels [NEW]
165:35-25-19. Individual circuit reliability [NEW]
165:35-25-20. Annual reliability report [NEW]
Part 5. Utility Scorecard [NEW]
165:35-25-24. Utility performance scorecard [NEW]
GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-1002; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #04-1000]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:45-1-2. Definitions [AMENDED]
Subchapter 11. Customer Service
Part 1. Initiation of Service
165:45-11-4. Consumer information [AMENDED]
Subchapter 17. Competitive Bidding ~~of~~ and Affiliate Transaction Rules for the provision of Natural Gas Services of Gas Supply, Gathering, Transmission and Storage of Natural Gas Utilities Upstream of the Citygate
165:45-17-2. Scope of Subchapter [NEW]
165:45-17-3. Application of Subchapter [AMENDED]
165:45-17-6. Exemption for corporate and shared services [NEW]
165:45-17-23. Standards of conduct between utilities and affiliate(s) [AMENDED]
165:45-17-24. Sales of services, products, assets between regulated and unregulated affiliates [NEW]
165:45-17-24.1. Financial transactions by utilities or their affiliate(s) [NEW]
165:45-17-27. Remedies and enforcement for ~~Violation~~ violation of the standards of conduct [AMENDED]
GUBERNATORIAL APPROVAL:
May 17, 2004

[OAR Docket #04-1000; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #04-999]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:55-1-4. Definitions [AMENDED]
Subchapter 3. Certificates, Reports, and Records
Part 1. Certificates of Convenience and Necessity
165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
Subchapter 5. Rates and Tariffs
Part 3. Approval and Notice Requirements
165:55-5-10. Tariff approval and revisions to tariffs [AMENDED]
165:55-5-10.1. Competitive services [AMENDED]
165:55-5-11. Type of notices [AMENDED]
Part 7. Miscellaneous Tariff Requirements
165:55-5-34. Cost support required [AMENDED]
Subchapter 9. Customer Billing and Deposits
Part 1. Billing and Payment Requirements
165:55-9-3. Due date and penalty [AMENDED]
Subchapter 13. Operating and Maintenance Requirements
Part 3. Service Standards
165:55-13-12. Extension of facilities [AMENDED]
Subchapter 19. Unlawful PracticesPart 1. Slamming
165:55-19-1.7. Preferred carrier freezes [AMENDED]
Subchapter 23. Wireless Eligible Telecommunications Carrier [NEW]
Part 1. General Provisions [NEW]
165:55-23-1. Requirements [NEW]
165:55-23-2. [RESERVED]
165:55-23-3. Records to be provided to the Commission [NEW]
165:55-23-4. [RESERVED]

165:55-23-5. Emergency service reporting requirements [NEW]
165:55-23-6. [RESERVED]
165:55-23-7. Content of bills [NEW]
165:55-23-8. [RESERVED]
165:55-23-9. Billing disputes [NEW]
165:55-23-10. [RESERVED]
165:55-23-11. Minimum service standards [NEW]
165:55-23-12. [RESERVED]
165:55-23-13. Extension of facilities [NEW]
165:55-23-14. [RESERVED]
165:55-23-15. Lifeline program [NEW]
165:55-23-16. [RESERVED]
165:55-23-17. Link-up program [NEW]
165:55-23-18. [RESERVED]
165:55-23-19. Responsibility for adequate and safe service [NEW]
165:55-23-20. [RESERVED]
165:55-23-21. Emergencies [NEW]
165:55-23-22. [RESERVED]
165:55-23-23. Response to customer complaint inquiries [NEW]
Part 2. Transmission Objections [NEW]
165:55-23-50. Service standards; sufficient operating and maintenance force [NEW]
165:55-23-51. [RESERVED]
165:55-23-52. Records of trouble reports [NEW]
165:55-23-53. [RESERVED]
165:55-23-54. Notice of service interruptions [NEW]
165:55-23-55. [RESERVED]
165:55-23-56. Restoration of service plan [NEW]
165:55-23-57. [RESERVED]
165:55-23-58. Customer choice [NEW]
Appendix A. Telecommunications Complaint Report Form [REVOKED]
Appendix A. Telecommunications Complaint Report Form [NEW]
Appendix C. Wireless ETC Customer Complaint Codes [NEW]

GUBERNATORIAL APPROVAL:
May 17, 2004

[OAR Docket #04-999; filed 5-21-04]

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

[OAR Docket #04-998]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Certificates, Reports, and Records
165:56-3-1. Certificate of Convenience and Necessity [AMENDED]
Subchapter 5. Tariffs
165:56-5-5. Revisions to tariffs [AMENDED]
165:56-5-5.2. Competitive services [REVOKED]

GUBERNATORIAL APPROVAL:
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[OAR Docket #04-998; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 57. OPERATOR SERVICE PROVIDERS TELECOMMUNICATIONS SERVICES

[OAR Docket #04-997]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Certificates, Reports, and Records
Part 1. Certificates of Convenience and Necessity
165:57-5-1. Certificate of Convenience and Necessity [AMENDED]
165:57-5-2. Notice of hearing for Certificate of Convenience and Necessity [AMENDED]
Subchapter 7. Tariffs
165:57-7-5. Revisions to tariffs [AMENDED]

GUBERNATORIAL APPROVAL:
May 17, 2004

[OAR Docket #04-997; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 58. FACILITATION AND PROVISIONING OF PAYPHONE SERVICE

[OAR Docket #04-996]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Certificates, Reports, and Records
Part 1. Certificate of Convenience and Necessity
165:58-3-1. Certificate of Convenience and Necessity [AMENDED]
165:58-3-2. Expansion of service territory [NEW]

GUBERNATORIAL APPROVAL:
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[OAR Docket #04-996; filed 5-21-04]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 10. PUBLIC PURPOSE SUPPORT AND ASSISTANCE

[OAR Docket #04-1011]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Public Purpose Support and Assistance [NEW]
300:10-1-1. through 300:10-1-2. [NEW]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-1011; filed 5-24-04]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 20. PURCHASING POLICY

[OAR Docket #04-1012]

RULEMAKING ACTION:
Gubernatorial approval.
RULES:
Subchapter 1. Purchasing Policy [NEW]
300:20-1-1. through 300:20-1-13. [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1012; filed 5-24-04]

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

[OAR Docket #04-930]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
310:205-1-2 [AMENDED]
310:205-1-3.1 [NEW]
Subchapter 3. License Requirements
310:205-3-2 [AMENDED]
310:205-3-3 [AMENDED]
310:205-3-4 [AMENDED]
310:205-3-7 [AMENDED]
Subchapter 5. Special Provisions [NEW]
310:205-5-1 [NEW]
310:205-5-2 [NEW]
Subchapter 7. Enforcement [NEW]
310:205-7-1 [NEW]
310:205-7-2 [NEW]
GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-930; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 256. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #04-931]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [AMENDED]
310:256-1-2 [AMENDED]
310:256-1-3 [AMENDED]
310:256-1-4 [AMENDED]
Subchapter 5. Food
310:256-5-45 [AMENDED]
Subchapter 15. Compliance and Enforcement
310:256-15-35 [AMENDED]
310:256-15-37 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-931; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 265. HEARING AID DEALERS AND FITTERS ~~REGULATIONS~~

[OAR Docket #04-932]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
310:265-1-2 [AMENDED]
310:265-1-3 [AMENDED]
Subchapter 3. Examinations
310:265-3-1 [AMENDED]
Subchapter 5. License Requirements
310:265-5-3 [AMENDED]
310:265-5-4 [AMENDED]
310:265-5-6 [AMENDED]
Subchapter 7. Regulatory Enforcement
310:265-7-1 [AMENDED]
310:265-7-2 [AMENDED]
310:265-7-3 [NEW]

GUBERNATORIAL APPROVAL:
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[OAR Docket #04-932; filed 5-18-04]

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

[OAR Docket #04-933]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
310:276-1-2 [AMENDED]
Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, and Continuing Education Reciprocity
310:276-9-2 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-933; filed 5-18-04]

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

[OAR Docket #04-934]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Rules of Professional Conduct
310:400-5-3 [AMENDED]
Subchapter 7. Application for Licensure
310:400-7-2.1 [NEW]
Subchapter 17. Enforcement
310:400-17-4.1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-934; filed 5-18-04]

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

[OAR Docket #04-935]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 7. Rules of Professional Conduct
310:403-7-6 [AMENDED]
Subchapter 11. Application Procedures
310:403-11-7 [NEW]
310:403-11-8 [NEW]
310:403-11-9 [NEW]
310:403-11-10 [NEW]
310:403-11-11 [NEW]
Subchapter 13. Academic Requirements
310:403-13-2 [AMENDED]
Subchapter 31. Enforcement
310:403-31-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-935; filed 5-18-04]

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

[OAR Docket #04-936]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Rules of Professional Conduct
310:405-3-4 [AMENDED]
Subchapter 7. Application Procedures
310:405-7-8 [NEW]
Subchapter 31. Enforcement
310:405-31-4 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-936; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 530. FAMILY PLANNING CENTERS

[OAR Docket #04-937]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
310:530-1-1. [AMENDED]
310:530-1-2. [AMENDED]
310:530-1-4. [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-937; filed 5-18-04]

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

[OAR Docket #04-938]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Adult Immunizations
310:535-3-1 [AMENDED]
310:535-3-2 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-938; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 605. ADULT DAY CARE CENTERS

[OAR Docket #04-939]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 15. Physical facility
310:605-15-2. Buildings and grounds ~~(refer to ADA standards)~~ [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-939; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 641. EMERGENCY MEDICAL SERVICES

[OAR Docket #04-940]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 641. Emergency Medical Services [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-940; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 659. HEALTH MAINTENANCE ORGANIZATIONS

[OAR Docket #04-941]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [NEW]
659:1-1 [NEW]
659:1-2 [NEW]
659:1-3 [NEW]
659:1-4 [NEW]
659:1-5 [NEW]
659:1-6 [NEW]
659:1-7 [NEW]
Subchapter 3. Examinations [NEW]
659:3-1 [NEW]
659:3-2 [NEW]
659:3-3 [NEW]
659:3-4 [NEW]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-941; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

[OAR Docket #04-942]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 7. Physical plant design

310:663-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-942; filed 5-18-04]

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

[OAR Docket #04-943]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
310:667-1-3 [AMENDED]
Subchapter 19. Medical Records Department
310:667-19-10 [AMENDED]
Subchapter 23. Diagnostic and Treatment Services
310:667-23-2 [AMENDED]
Subchapter 39. Critical Access Hospital
310:667-39-11 [AMENDED]
Subchapter 40. Emergency Hospital
310:667-40-11 [AMENDED]
Subchapter 51. Rehabilitation Hospital and Rehabilitation Unit Construction Requirements
310:667-51-15 [AMENDED]
Subchapter 59. Classification of Hospital Emergency Services
310:667-59-3 [AMENDED]
310:667-59-9 [AMENDED]
Appendix D. Filter Efficiencies For Central Ventilation And Air Conditioning Systems In General Hospitals [REVOKED AND REENACTED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-943; filed 5-18-04]

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

[OAR Docket #04-944]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Licenses
310:675-3-1.1 [AMENDED]
310:675-3-4 [NEW]
310:675-3-4.1 [AMENDED]
310:675-3-5 [AMENDED]
310:675-3-5.1 [AMENDED]
310:675-3-8 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-944; filed 5-18-04]

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

[OAR Docket #04-945]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
310:677-1-3 [AMENDED]
Subchapter 3. Nurse aide training and competency examination program
310:677-3-2 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-945; filed 5-18-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 680. RESIDENTIAL CARE HOMES

[OAR Docket #04-946]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Construction Requirements and Physical Plant
310:680-5-1 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-946; filed 5-18-04]

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

[OAR Docket #04-875]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
317:2-1-2. [AMENDED]
317:2-1-2.2. [AMENDED]
(Reference APA WF # 03-54A and 03-55A)
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-875; filed 5-11-04]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE

[OAR Docket #04-876]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Health Plan Competitive Bid Requirements
317:25-1-1. through 317:25-13. [REVOKED]
Subchapter 3. Health Maintenance Organizations
317:25-3-1. through 317:25-3-2. [REVOKED]
317:25-3-2.2. through 317:25-3-3. [REVOKED]
Subchapter 5. SoonerCare Plus
317:25-5-1. through 25-5-5. [REVOKED]
Part 3. Enrollment Criteria
317:25-5-10. through 317:25-5-14. [REVOKED]
Part 5. Enrollment Process
317:25-5-25. through 317:25-5-32. [REVOKED]
Part 7. Plan Requirements
317:25-5-40. through 317:25-5-41.1.[REVOKED]
Subchapter 7. SoonerCare Choice
Part 1. General Provisions
317:25-7-1. through 317:25-7-3. [AMENDED]
317:25-7-5. through 317:25-7-6. [AMENDED]
Part 3. Enrollment Criteria
317:25-7-10. through 317:25-7-11. [AMENDED]
317:25-7-13. [AMENDED]
Part 5. Enrollment Process
317:25-7-25. through 317:25-7-30. [AMENDED]
(Reference APA WF 03-13C, 03-54B and 03-55B)
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-876; filed 5-11-04]

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

[OAR Docket #04-877]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-47. [AMENDED]
(Reference APA WF # 03-54C and 03-55C)
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May 3, 2004

[OAR Docket #04-877; filed 5-11-04]

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

[OAR Docket #04-878]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-25. [AMENDED]
317:30-3-26. [REVOKED]
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-77.1. [AMENDED]
(Reference APA WF # 03-47 and 03-51)
GUBERNATORIAL APPROVAL:
May 3, 2004

[OAR Docket #04-878; filed 5-11-04]

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

[OAR Docket #04-879]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-46. [AMENDED]
317:30-3-57. [AMENDED]
317:30-3-58. [REVOKED]
317:30-3-59. [AMENDED]
Part 5. Eligibility
317:30-3-70. [AMENDED]
317:30-3-71. [AMENDED]

317:30-3-72. [REVOKED]
317:30-3-84. [REVOKED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-9. [AMENDED]
317:30-5-11. [AMENDED]
317:30-5-15. [AMENDED]
317:30-5-22. [AMENDED]
317:30-5-24. [AMENDED]
Part 3. Hospitals
317:30-5-41. [AMENDED]
Part 5. Pharmacists
317:30-5-72. [AMENDED]
317:30-5-72.1. [AMENDED]
317:30-5-77. [AMENDED]
317:30-5-77.2. [AMENDED]
317:30-5-77.3. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
Part 63. Ambulatory Surgical Centers
317:30-5-566. [AMENDED]
(Reference APA WF # 03-01, 03-09, 03-12, 03-13A, 03-20A, 03-25, 03-34, 03-36, 03-39, 03-42, 03-43, 03-44 and 03-53)

GUBERNATORIAL APPROVAL:
May 3, 2004

[OAR Docket #04-879; filed 5-11-04]

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

[OAR Docket #04-880]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-53. [AMENDED]
Part 5. Eligibility
317:30-3-73. [AMENDED]
317:30-3-76. through 317:30-3-77. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-8. [AMENDED]
317:30-5-18. [AMENDED]
Part 15. Child Health Centers
317:30-5-198. [AMENDED]
(Reference APA WF # 03-24, 03-37 and 03-41)

GUBERNATORIAL APPROVAL:
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[OAR Docket #04-880; filed 5-11-04]

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

[OAR Docket #04-881]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241. [AMENDED]
Part 67. Case Management Services for Under 21
317:30-5-595. through OAC 317:30-5-596.1. [AMENDED]
317:30-5-596.2. [NEW]
317:30-5-597. [AMENDED]
317:30-5-599. [AMENDED]
Part 79. Dentists
317:30-5-697. [AMENDED]
Part 85. ADvantage Program Waiver Services
317:30-5-763. [AMENDED]
Part 95. Agency Personal Care Services
317:30-5-952. [AMENDED}
(Reference APA WF # 03-11, 03-14, 03-16, 03-21, 03-22A and 03-33)

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[OAR Docket #04-881; filed 5-11-04]

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

[OAR Docket #04-882]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
317:30-5-1046. [AMENDED]
(Reference APA WF # 03-27)

GUBERNATORIAL APPROVAL:
May 3, 2004

[OAR Docket #04-882; filed 5-11-04]

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

[OAR Docket #04-883]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
317:35-1-2. [AMENDED]
Subchapter 3. Coverage and Exclusions
317:35-3-1. [AMENDED]
317:35-3-2. [AMENDED]
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-1. [AMENDED]
317:35-5-7. [AMENDED]
Part 3. Non-Medical Eligibility Requirements
317:35-5-26. [AMENDED]
Part 5. Countable Income and Resources
317:35-5-42. [AMENDED]
317:35-5-45. [AMENDED]
317:35-5-46. [AMENDED]
Subchapter 6. SoonerCare Health Benefits for Categorically Needy Pregnant Women and Families with Children
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-36. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-6-60. [AMENDED]
317:35-6-61. [AMENDED]
317:35-6-63. [AMENDED]
Subchapter 7. Medical Services
Part 1. General
317:35-7-1. [AMENDED]
Part 5. Determination of Eligibility for Medical Services
317:35-7-37. [AMENDED]
317:35-7-39. [REVOKED]
317:35-7-41. [AMENDED]
317:35-7-45. [REVOKED]
317:35-7-46. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
317:35-7-64. [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 1. Services
317:35-9-1. [AMENDED]
Part 9. Certification, Redetermination and Notification
317:35-9-76. [AMENDED]
Subchapter 10. Medical Aid to Families with Dependent Children
Part 3. Resources
317:35-10-10. [AMENDED]
Part 5. Income
317:35-10-26. [AMENDED]
317:35-10-28. through 317:35-10-33. [REVOKED]
317:35-10-35. through 317:35-10-37. [REVOKED]
317:35-10-38. [NEW]
Part 7. Budgeting and Assistance Payments
317:35-10-55. through 35-10-58. [REVOKED]
Part 9. Conditions of Eligibility-Age and Residence
317:35-10-65. through 317:35-10-68. [REVOKED]
Part 11. Conditions of Eligibility-Relationship of Payee to Child
317:35-10-75. through 317:35-10-77. [REVOKED]
Part 13. Conditions of Eligibility-Deprivation of Parental Support or Care by a Natural or Adoptive Parent
317:35-10-85. through 317:35-10-92. [REVOKED]
317:35-10-94. through 317:35-10-95. [REVOKED]
Subchapter 15. Personal Care Services
317:35-15-1. [AMENDED]
317:35-15-6. [AMENDED]
(Reference APA WF # 03-13B, 03-20B, 03-26 and 03-28)
GUBERNATORIAL APPROVAL:
May 3, 2004

[OAR Docket #04-883; filed 5-11-04]

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

[OAR Docket #04-884]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41. [AMENDED]
(Reference APA WF # 03-45)
GUBERNATORIAL APPROVAL:
May 3, 2004

[OAR Docket #04-884; filed 5-11-04]

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

[OAR Docket #04-885]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 15. Personal Care Services
317:35-15-4. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-2. through 317:35-17-5. [AMENDED]
317:35-17-6. [REVOKED]
317:35-17-7. [REVOKED]
317:35-17-8.1. [REVOKED]
317:35-17-11. through 317:35-17-12. [AMENDED]
317:35-17-14. [AMENDED]
317:25-17-16. [AMENDED]
317:35-17-19. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-2. [AMENDED]
317:35-19-7.1. [AMENDED]
317:35-19-9. [AMENDED]
317:35-19-18. [AMENDED]
317:35-19-20. [AMENDED]
317:35-19-22. [AMENDED]
(Reference APA WF # 03-05 and 03-22B)
GUBERNATORIAL APPROVAL:
May 3, 2004

[OAR Docket #04-885; filed 5-11-04]

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

[OAR Docket #04-886]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
Subchapter 7. Medical Services
Part 7. Certification, Redetermination and Notification
317:35-7-62. [AMENDED]
(Reference APA WF # 03-07 and 03-08)
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-886; filed 5-11-04]

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

[OAR Docket #04-887]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Client Services
317:40-5-112. [NEW]
(Reference APA WF # 03-29)
GUBERNATORIAL APPROVAL:
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[OAR Docket #04-887; filed 5-11-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #04-948]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Office Of Client Advocacy
Part 1. Administration
340:2-3-1 through 340:2-3-2 [AMENDED]
340:2-3-12 [AMENDED]
Part 3. Investigations
340:2-3-32 through 340:2-3-34 [AMENDED]
340:2-3-36 through 340:2-3-38 [AMENDED]
Part 5. Grievances
340:2-3-45 through 340:2-3-47 [AMENDED]
340:2-3-49 through 340:2-3-55 [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-61 through 340:2-3-65 [AMENDED]
Part 9. Ombudsman Programs
340:2-3-73 [AMENDED]
(Reference APA-WF# 04-05)
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-948; filed 5-18-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #04-949]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 11. Finance
Part 8. General Provisions
340:2-11-98 through 340:2-11-99 [AMENDED]
(Reference APA-WF# 04-04)
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-949; filed 5-18-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 15. ~~PUBLIC ASSISTANCE~~ STATE SUPPLEMENTAL PAYMENT

[OAR Docket #04-950]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
340:15-1-1 through 340:15-1-7 [AMENDED]
(Reference APA WF # 04-03)
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-950; filed 5-18-04]

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

[OAR Docket #04-1009]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
Part 1. Scope and Applicability
340:75-1-6. [AMENDED]
340:75-1-8. [REVOKED]
340:75-1-21. [AMENDED]
Part 15. Training for Child Welfare Workers
340:75-1-233. [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-2. [AMENDED]
340:75-3-6.1. [AMENDED]
340:75-3-8.1. [AMENDED]
340:75-3-12. [AMENDED]
340:75-3-13.1. through 340:75-3-13.2. [REVOKED]
Subchapter 12. ~~Child Welfare~~ OKDHS Operated Group Homes
340:75-12-1. [AMENDED]
Subchapter 18. Continuous Quality Improvement
340:75-18-2. through 340:75-18-3. [AMENDED]
(Reference APA WF 04-01)
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1009; filed 5-24-04]

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

[OAR Docket #04-1010]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-1. [REVOKED]
340:75-7-2. [AMENDED]
340:75-7-8. [REVOKED]
Part 2. Development of Resources
340:75-7-10. [AMENDED]
340:75-7-12. [AMENDED]
340:75-7-12.1. [REVOKED]
340:75-7-14. through 340:75-7-15. [AMENDED]
340:75-7-15.1. through 340:75-7-17. [REVOKED]
340:75-7-18. through 340:75-7-19. [AMENDED]
340:75-7-20. [REVOKED]
340:75-7-22. through 340:75-7-23. [REVOKED]
340:75-7-24. [NEW]
Part 4. Foster Parents' Roles and Responsibilities
340:75-7-36. [REVOKED]
340:75-7-37. through 340:75-7-38. [AMENDED]
340:75-7-41. [AMENDED]
340:75-7-41.1. through 340:75-7-42. [REVOKED]
340:75-7-48. [REVOKED]
Part 5. Eligibility and Payments
340:75-7-51. through 340:75-7-53. [AMENDED]
340:75-7-54. through 340:75-7-56. [REVOKED]
340:75-7-58. through 340:75-7-60. [REVOKED]
Part 6. Foster Home Care Support Services
340:75-7-62. [REVOKED]
340:75-7-64. [REVOKED]
340:75-7-65. [AMENDED]
340:75-7-66. [REVOKED]
340:75-7-69. through 340:75-7-70. [REVOKED]

Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-86. through 340:75-7-93. [REVOKED]
340:75-7-94. [NEW]
Part 25. Emergency Foster Care Program
340:75-7-260. through 340:75-7-261. [REVOKED]
340:75-7-262. [AMENDED]
340:75-7-263. through 340:75-7-269. [REVOKED]
(Reference APA WF 04-02)
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1010; filed 5-24-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

[OAR Docket #04-955]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Function and Structure of the Office of Juvenile Affairs
377:1-1-3. [AMENDED]
377:1-1-11. [AMENDED]
377:1-1-12. [AMENDED]
GUBERNATORIAL APPROVAL:
April 7, 2004

[OAR Docket #04-955; filed 5-19-04]

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

[OAR Docket #04-956]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-21. [AMENDED]
377:3-1-23. [AMENDED]
377:3-1-25. [AMENDED]
377:3-1-26. [AMENDED]
377:3-1-28. [AMENDED]
Subchapter 7. Finance Division
377:3-7-4. [AMENDED]
Subchapter 19. Contract, Procurement, and Support Services
377:3-19-2. [AMENDED]
377:3-19-3. [AMENDED]
GUBERNATORIAL APPROVAL:
April 7, 2004

[OAR Docket #04-956; filed 5-19-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. DEPARTMENT OF JUVENILE JUSTICE

[OAR Docket #04-957]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Child in need of Mental Health Treatment
377:10-11-1. [AMENDED]
377:10-11-2. [REVOKED]
377:10-11-3. [REVOKED]
377:10-11-4. [REVOKED]
GUBERNATORIAL APPROVAL:
April 7, 2004

[OAR Docket #04-957; filed 5-19-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #04-958]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Pre-Court
Part 3. Intake/Preliminary Inquiry
377:25-3-15. [AMENDED]
377:25-3-16. [REVOKED]
377:25-3-18. [REVOKED]
377:25-3-19. [REVOKED]
377:25-3-20. [REVOKED]
377:25-3-21. [REVOKED]
377:25-3-23. [REVOKED]
377:25-3-24. [REVOKED]
377:25-3-25. [REVOKED]
377:25-3-26. [REVOKED]
Subchapter 9. Casework Services
Part 1. Services Provided by the JSU Worker
377:25-9-2. [AMENDED]
377:25-9-2.1. [REVOKED]
Subchapter 11. Case Records and Reports
377:25-11-2. [REVOKED]
GUBERNATORIAL APPROVAL:
April 7, 2004

[OAR Docket #04-958; filed 5-19-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS
CHAPTER 35. INSTITUTIONAL SERVICES

[OAR Docket #04-959]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Security and Control
377:35-3-8. [AMENDED]
GUBERNATORIAL APPROVAL:
April 7, 2004

[OAR Docket #04-959; filed 5-19-04]

TITLE 380. DEPARTMENT OF LABOR
CHAPTER 30. PROTECTION OF LABOR

[OAR Docket #04-913]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
380:30-1-2. [AMENDED]
Subchapter 3. Wage Claim Procedures
380:30-3-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-913; filed 5-14-04]

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

[OAR Docket #04-888]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
390:1-1-3. [AMENDED]
390:1-1-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-888; filed 5-11-04]

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

[OAR Docket #04-889]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
390:10-1-6. [AMENDED]
390:10-1-7. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-889; filed 5-11-04]

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

[OAR Docket #04-890]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Basic Academy Programs
390:15-1-6. [AMENDED]
390:15-1-11. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-890; filed 5-11-04]

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

[OAR Docket #04-891]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
390:30-1-5. [AMENDED]
390:30-1-7. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-891; filed 5-11-04]

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

[OAR Docket #04-892]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. License Requirements
390:35-5-2. [AMENDED]
Subchapter 13. Use of Firearms
390:35-13-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-892; filed 5-11-04]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 45. RETIRED PEACE OFFICER FIREARMS PERMIT

[OAR Docket #04-893]

RULEMAKING ACTION:
Gubernatorial appproval
RULES:
390:45-1-3. [AMENDED]
GUBERNATORIAL APPPROVAL:
May 5, 2004

[OAR Docket #04-893; filed 5-11-04]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #04-902]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules.
RULES:
420:10-1-5. [AMENDED]
420:10-1-6. [AMENDED]
420:10-1-14. [AMENDED]
420:10-1-15. [AMENDED]
420:10-1-20. [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-902; filed 5-13-04]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #04-874]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Education and Examination Requirements
605:10-3-7. [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-4. [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1. [AMENDED]
Subchapter 15. Disclosures
605:10-15-4. [AMENDED]
Appendix A. Residential Property Condition Disclosure Statement [REVOKED]
Appendix A. Residential Property Condition Disclosure Statement [NEW]
GUBERNATORIAL APROVAL:
May 5, 2004

[OAR Docket #04-874; filed 5-10-04]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 15. EDUCATIONAL OUTREACH

[OAR Docket #04-1008]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Use of Towers, Facilities, and Communications Services
610:15-1-1. Purpose [AMENDED]
610:15-1-2. Towers and facilities use [AMENDED]
610:15-1-3. Communications services use [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-1008; filed 5-21-04]

TITLE 650. OKLAHOMA CENTER FOR THE ADVANCEMENT OF SCIENCE AND TECHNOLOGY
CHAPTER 45. OKLAHOMA INSTITUTE OF TECHNOLOGY

[OAR Docket #04-922]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [NEW]
650:45-1-1. Purpose [NEW]
650:45-1-2. Definitions [NEW]
Subchapter 3. Administration [NEW]
650:45-3-1. Operation [NEW]
650:45-3-2. OIT Trust Fund Administration [NEW]
650:45-3-3. OIT Trust Fund Board of Trustees [NEW]
650:45-3-4. OIT Advisory Committee [NEW]
Subchapter 5. Program Description [NEW]
650:45-5-1. Eligibility [NEW]
650:45-5-2. Funding Terms [NEW]
650:45-5-3. Application Process [NEW]
650:45-5-4. Review Process [NEW]
650:45-5-5. Award Provisions [NEW]
650:45-5-6. Contract Provisions [NEW
650:45-5-7. Confidentially [NEW]
650:45-5-8. Notification Process [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-922; filed 5-17-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #04-923]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 8. Exemption for Certain Oil and Gas Property upon which Oklahoma Gross Production Tax is Paid [NEW]
710:10-8-1. General provisions [NEW]
710:10-8-2. Exempt properties [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-923; filed 5-18-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #04-924]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 50. Income [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-924; filed 5-18-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #04-925]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 65. Sales and Use Tax [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-925; filed 5-18-04]

TITLE 735. STATE TREASURER
CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #04-916]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
735:80-1-2. [AMENDED]
Subchapter 3. Reporting Requirements
Part 1. General Application
735:80-3-1 [AMENDED]
735:80-3-4. [AMENDED]
735:80-3-7. [AMENDED]
Part 3. Financial Institutions
735:80-3-10. [AMENDED]
Part 7. City/County Treasures
735:80-3-20. [AMENDED]
Part 13. Mineral Interests
735:80-3-35 [AMENDED]
Subchapter 7. Claims Process
735:80-7-2 [AMENDED]
735:80-7-4 [AMENDED]
Subchapter 9. Office Audit

735:80-9-2 [AMENDED]
Subchapter 15. Amnesty
735:80-15-5. [AMENDED]

GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-916; filed 5-17-04]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS

[OAR Docket #04-1029]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
785:25-1-4. Variances and waivers [NEW]
Subchapter 3. Responsibility, Classification and Design Standards
785:25-3-7. Minimum outlet conduit capacities [AMENDED]

GUBERNATORIAL APPROVAL:
May 6, 2004

[OAR Docket #04-1029; filed 5-25-04]

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

[OAR Docket #04-1030]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
785:30-1-2. Definitions [AMENDED]
Subchapter 3. Permit Application Requirements and Processing
785:30-3-5. Approval of application [AMENDED]
785:30-3-6. Well spacing [AMENDED]
Subchapter 5. Groundwater permits
785:30-5-2. Temporary permits [AMENDED]
Subchapter 9. Maximum Annual Yield Determinations
785:30-9-2. Determination of maximum annual yield [AMENDED]

GUBERNATORIAL APPROVAL:
May 6, 2004

[OAR Docket #04-1030; filed 5-25-04]

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

[OAR Docket #04-1031]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-1. Licensing procedures [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observations wells, and water well test holes [AMENDED]
Subchapter 9. Minimum Standards for Pump Installation
785:35-9-1. Minimum standards for pump installation [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

GUBERNATORIAL APPROVAL:
May 6, 2004

[OAR Docket #04-1031; filed 5-25-04]

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 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICE RULES

[OAR Docket #04-900]

RULEMAKING ACTION:
Withdrawal of Permanent rulemaking
WITHDRAWAL RULES:
Chapter 50. Ignition Interlock Device Rules [NEW]
DATES:
Adoption:
April 1, 2004
Submitted to the Governor
April 1, 2004
Submitted to the House:
April 1, 2004
Submitted to the Senate:
April 1, 2004
Gubernatorial approval:
May 11, 2004
Withdrawal:
May 13, 2004

[OAR Docket #04-900; filed 5-13-04]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] . . . . [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

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

[OAR Docket #04-974]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 11. Importation of Livestock, Poultry and Pets
Part 1. General
35:15-11-1 [AMENDED]
Part 7. Livestock
35:15-11-16 [REVOKED]
Subchapter 40. Bovine Tuberculosis
Part 3. Rules Adopted from USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication
35:15-40-49.1 [NEW]
Part 7. ~~International~~ Import Requirements [AMENDED]
35:15-40-90 [NEW]
35:15-40-91 [AMENDED]
AUTHORITY:
State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), 2-4(7), 2-4(29), 6-145, 6-150, and 6-153
DATES:
Adoption:
April 20, 2004
Approved by Governor:
May 11, 2004
Effective:
Immediately upon Governor's approval
Expiration
Effective through July 14, 2005 unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
These emergency rules will aid in the prevention, control, and possible eradication of tuberculosis in our state's cattle herds. These rule changes will bring the agency into compliance with newly proposed federal regulations and are important to protect the public health, safety, welfare, and peace. Current outbreaks of tuberculosis in Texas, Michigan, New Mexico, and California illustrate the need to increase the level of surveillance testing throughout the United States. Increased levels of surveillance will ensure that unknown and new incidences of tuberculosis can be eliminated before they spread. These rules shall immediately:
(1) Increase our surveillance capabilities in the state;
(2) Protect the cattle industry and the public against the entry of the disease from affected states (especially from cattle entering the state from New Mexico and Texas); and
(3) Protect the state's coveted tuberculosis free status.
As a consequence, the agency finds a compelling public interest and immediate need for these emergency rules.

ANALYSIS:
At the request of the State Veterinarian and pursuant to the authority detailed in the Oklahoma Agricultural Code 2 O.S. 2001 § 6-141 et seq. regarding tuberculosis in all livestock and animals, the Department has made important changes to meet newly proposed federal regulations regarding the importation of livestock from states dealing with chronic tuberculosis problems. The newly proposed emergency rules do the following:
1. In rule OAC 35:15-11-1, the agency is cleaning up and clarifying the state's general import requirements.
2. The agency is revoking rule OAC 35:15-11-16 and replacing it with the new rule 35:15-40-90 found with all other tuberculosis rules; Rule 35:15-40-90 details the new importation requirements for cattle coming into Oklahoma and meets the new federal requirements;
3. The agency also added a new rule at 35:15-40-49.1 that requires a negative test for tuberculosis for older dairy cattle prior to any change in ownership; and
4. Lastly, the agency provides some clean up of rule 35:15-40-91 that reflect the correct agency name and that the rule applies to international importation.
CONTACT PERSON:
Dr. Burke Healey, (405) 522-6134

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

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY AND PETS

PART 1. GENERAL

35:15-11-1. General import requirements

(a) All livestock, as defined in 2 O.S. Section 6-150, ~~must~~ shall have a certificate of veterinary inspection or an approved commuter herd agreement on file with the Department prior to entry into Oklahoma.

(b) The ~~President of the Board of Agriculture~~ Commissioner or the ~~Director of Animal Industry Services~~ State Veterinarian shall be authorized to impose pre-entry test requirements on any species if it becomes known that the threat of disease exists which could place the livestock industries of Oklahoma at risk or could become a public health hazard.

(c) Import requirements of this section may be in addition to import requirements for a species or disease found in this subchapter.

PART 7. LIVESTOCK

35:15-11-16. Cattle importation [REVOKED]

~~(a) Cattle from herds quarantined for Tuberculosis will not be allowed to enter Oklahoma. No TB Test will be required on cattle entering Oklahoma from non-quarantined areas.~~

~~(b) Cattle scabies requirements for cattle coming into Oklahoma from areas in Texas, Kansas, New Mexico, and Colorado is hereby rescinded 5/23/79.~~

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 3. RULES ADOPTED FROM USDA UNIFORM METHODS AND RULES FOR BOVINE TUBERCULOSIS ERADICATION

35:15-40-49.1. Dairy cattle change of ownership

Dairy cattle six (6) months of age or older shall test negative for tuberculosis no more than sixty (60) days prior to a change in ownership.

PART 7. ~~INTERNATIONAL~~IMPORT REQUIREMENTS

35:15-40-90. Requirements for cattle entering Oklahoma

(a) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

(b) Dairy cattle under six (6) months of age and all spayed heifers or steers shall be individually identified in the certificate of veterinary inspection.

(c) All other dairy cattle shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:

(1) Originate from a tuberculosis free herd; or

(2 Test negative no more than sixty (60) days prior to entry and results are recorded on the certificate of veterinary inspection.

(d) Beef cattle under the age of eighteen (18) months and all spayed heifers or steers shall be accompanied by a certificate of veterinary inspection.

(e) All other beef cattle eighteen (18) months or older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:

(1) Originate from a tuberculosis free state;

(2 Originate from a tuberculosis free herd; or

(3) Test negative no more than sixty (60) days prior to entry and results are recorded on the certificate of veterinary inspection.

35:15-40-91. ~~Importation~~ International importation of sexually intact cattle or bison

(a) All sexually intact cattle and bison~~,~~ from any foreign country or part thereof with no recognized tuberculosis status comparable to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program~~,~~ and imported for reasons other than immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and

(2) Be quarantined to the ~~Oklahoma~~ premise approved in the entry permit pending two (2) consecutive negative tuberculosis tests~~. The~~, with the first test ~~to be~~ conducted not less than ninety (90) days nor more than 120 days after arrival and the second test ~~to be~~ conducted not less than 210 days nor more than 240 days after arrival in ~~Oklahoma~~ the state.

(b) ~~Those~~ All sexually intact cattle and bison~~,~~ from any foreign country or part thereof with no recognized tuberculosis status comparable to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program of Modified Accredited Advanced or above~~,~~ and imported for immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and

(2) Be consigned direct to an approved slaughter establishment or quarantined feedlot with no diversion from the permitted destination. ~~Those animals consigned to a quarantined feedlot must be S-branded upon arrival at the feedlot.~~

(3) Animals consigned to a quarantined feedlot shall be S-branded upon arrival at the feedlot.

[OAR Docket #04-974; filed 5-19-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL AND GAS CONSERVATION

[OAR Docket #04-911]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 17. Gas Well Operations and Permitted Production
165:10-17-9. Special allocated gas pools [AMENDED]
Subchapter 21. Applications for Tax Exemptions
Part 6. Production Enhancement Projects
165:10-21-21. General [AMENDED]
165:10-21-22. Definitions [AMENDED]
165:10-21-24. Rebates - Refund procedure [AMENDED]
Part 7. Re-Establishment of Production from an Inactive Well
165:10-21-36. Definitions [AMENDED]
165:10-21-38. Rebates - Refund procedure [AMENDED]
Part 8. Deep Wells
165:10-21-45. General [AMENDED]
165:10-21-47.1. Rebates - Refund procedure [AMENDED]
Part 9. New Discovery Wells
165:10-21-55. General [AMENDED]
165:10-21-58. Rebates - Refund procedure [AMENDED]
Part 11. Horizontally Drilled Producing Wells
165:10-21-66. Definitions [AMENDED]

165:10-21-68. Rebates - Refund procedure [AMENDED]
165:10-21-69. Time periods for exemption from gross production tax levied on horizontally drilled producing wells [AMENDED]
Part 13. Incremental Production from Enhanced Recovery Projects
165:10-21-76. Definitions [AMENDED]
165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
165:10-21-80. Expiration of exemption for incremental production [AMENDED]
Part 14. Production of Oil, Gas or Oil and Gas from any Well Located Within Boundaries of a Three-Dimensional Seismic Shoot
165:10-21-82. General [AMENDED]
165:10-21-82.2. Qualification procedure [AMENDED]
165:10-21-82.3. Rebates - Refund procedure [AMENDED]

AUTHORITY:

Oklahoma Corporation Commission, 17 O.S. 2001 Section 52; 27A O.S. 2001 Section 1-3-101, 52 O.S. 2001, 52 O.S. 2001 Section 139; and 52 O.S. 2001 Sections 239 and 240, and 68 O.S., 2003 Supp., Section 1001.

DATES:

Adoption:

March 24, 2004

Submitted to Governor:

March 29, 2004

Approved by Governor:

May 11, 2004

Effective:

Immediately upon approval of the Governor

Expiration:

Effective through July 1, 2004, unless suspended by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

FINDING OF EMERGENCY:

The adoption of S.B. 535, codified as 68 O.S., 2003 Supp., Section 1001, instituted several changes to existing rules, which the Oklahoma Corporation Commission (Commission) interpreted as necessitating the commencement of the instant rulemaking proceeding on an emergency basis to match the emergency clause of S.B. 535. S.B. 535 took effect on July 1, 2003. One aspect of the emergency is created by the enactment of the legislation, which contained an emergency clause effective as stated above. Pursuant to 75 O.S. 2001 Section 254, this factor constitutes a compelling public interest, which requires the emergency adoption of the rule amendments implementing S.B. 535 (2003). Further, the Commission's special allocated gas (SAG) pool rule, OAC 165:10-17-9, is amended at paragraph (h)(2) to increase the overage limitation applicable to proration units within the Red Oak SAG pools covered by the paragraph (Red Oak Fanshawe, Red Oak Red Oak, and Red OaK Spiro Pools) from 48 to 168 times the basic allowable for a drilling and spacing unit, if the overage is carried on a unit basis; or the well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable. The increase in this overage limitation comes at the request of the principal operator in the Red Oak Norris Field, BP America, Inc., based on the indication by the operator that the increase in allowable for the units in the SAG pool will encourage the continued drilling and production of infill wells. The comments filed by the operator BP America Inc., indicated the use of extensive three-dimensional seismic testing in the Red Oak Norris Field had identified numerous fault-separated reservoirs in the common sources of supply impacted. The drilling of at least twenty (20) additional wells in the Red Oak SAG pool would be linked directly to the approval of the increased overage limit under the SAG pool rules. The continued drilling activity in the field is contingent upon approval of the increase in the overage limitation. Failure to increase the overage limit would result in there not being enough allowable share per-well to justify the infill drilling. Insofar as the immediate need to supply the nation's demand for natural gas from Oklahoma common sources of supply has been the proration policy of the Commission with respect to unallocated natural gas proration factors (most recently restated in *Application of Fiddler, State-Wide Proration Factors for Unallocated Gas Wells During the Second and Third Quarters of 2004*, Cause CD No. 200400092, Order No. 486839 March 2, 2004)), the Commission adopted the instant rule amendments on March 24, 2004 on an emergency basis because the increase in overage limit for the Red Oak SAG pool rules will ensure the continued development and production of natural gas from this SAG pool. Pursuant to 75 O.S. 2001 Section 254, these factors constitute a compelling public interest, which requires the emergency adoption of the rule amendment to OAC 165:10-17-9. Further, any curtailment of natural gas production from the Red Oak SAG pool would create an imminent peril to the public welfare since demand for natural gas remains high in the nation.

ANALYSIS:

In the instant emergency amendment of OAC 165: Chapter 10, the Oklahoma Corporation Commission ("Corporation Commission" or "Commission") amends language in OAC 165:Chapter 10 through this proceeding to bring the Oil and Gas Conservation Rules into conformity with Senate Bill 535 (2003), codified as amendments to 68 O.S., 2003 Supp., Section 1001 through the addition or amendment of the following provisions: Oil and Gas Conservation Rules, Chapter 10, Subchapter 21, Tax Exemptions, paragraphs OAC 165:10-21-21, 165:10-21-22, 165:10-21-24, 165:10-21-36, 165:10-21-38, 165:10-21-45, 165:10-21-47.1, 165:10-21-55, 165:10-21-58, 165:10-21-66, 165:10-21-68, 165:10-21-69, 165:10-21-76, 165:10-21-78, 165:10-21-80, 165:10-21-82, 165:10-21-82.2, and 165:10-21-82.3 are amended to reflect the extension of the effective date for the exemptions to July 1, 2006 and the implementation of a prospective time-bar to the filing of refund claims with the Oklahoma Tax Commission as provided by S.B. 535. The Oil and Gas Conservation Rule OAC 165:10-17-9(h)(2) is amended to increase the overage limit for the Red Oak special allocated gas (SAG) pool from 48 to 168 times the well allowable as provided in the regulation. This amendment is needed to achieve the most efficient production rate for the Red Oak SAG pool as requested by the operator of the field.

CONTACT PERSON:

Michael Decker, (405) 521-2255.

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

SUBCHAPTER 17. GAS WELL OPERATIONS AND PERMITTED PRODUCTION

165:10-17-9. Special allocated gas pools

(a) **Scope.** This Section applies to special allocated gas pools except any special allocated gas pool with allowables based upon volumetric withdrawals.

(b) **Minimum unit allowable of 150 mcf/d.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the minimum allowable for a drilling and spacing unit in the pool shall be 150 MCF/D regardless of the amount of any location exception penalty charged against a unit well. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(c) **Minimum unit allowable of 450 mcf/d for the Guymon-Hugoton pool.**

(1) For the Guymon-Hugoton Special Allocated Gas Pool, minimum allowables shall be determined as follows: The minimum allowable shall be the lesser of 450 mcf/d or the drilling and spacing unit's capability. Capability shall be defined as the average of the highest three (3) of the last twelve (12) months of production. A drilling and spacing unit receiving a minimum allowable shall not accrue underage. The minimum allowables under this Section shall not affect the calculation of capable well allowables. The

field monthly allowable shall be equal to total nominations and not adjusted for underage or overage.

(2) The deliverability standard pressure (DSP) to be used in the application of special allocated rules (field rules) shall be defined as 25 pounds less than the average shut-in wellhead pressure of the pool.

(3) The Corporation Commission shall calculate and publish reports of allowable and production quarterly.

(d) Minimum unit allowable of 2,000 mcf/d for the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools. For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the minimum allowable for a drilling and spacing unit in each pool shall be 2,000 mcf/d. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(e) **Double minimum allowable of 300 mcf/d.**

(1) **Compressor and application required.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, if a drilling and spacing unit has a minimum allowable under (b) of this Section, the operator of a well in the drilling and spacing unit may obtain for the unit a double minimum allowable regardless of any location penalty against a well by installing a compressor on a unit well and applying for a double minimum allowable under (2) of this subsection.

(2) **Request for administrative approval.** To apply for a double minimum allowable, the operator shall submit to the Manager of Production Allowables for the Conservation Division a letter requesting a double minimum allowable and stating the factual basis for the request and the legal description of the well with the compressor.

(f) **Basic allowable.**

(1) **Use of basic allowable for determining overage and underage.** For purposes of determining the amount of overage or underage accrued by a well or drilling and spacing unit, the Conservation Division shall establish on a yearly basis a status factor known as the basic allowable.

(2) **Apportionment of basic allowable.**

(A) **Increased density unit without apportionment of the allowable.** If neither OAC 165:10-13-9 nor an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a unit basis.

(B) **Increased density unit with ratable allowables.** If either OAC 165:10-13-9 or an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a per well basis. For purposes of computing overage and underage, the basic allowable shall be apportioned to each unit well using the formula for determining each well's ratable allowables for the applicable month under (3) of this subsection. The term "ratable allowables" refers to a well's share of the unit allowable under the formula apportioning the allowable amongst the unit wells.

(3) **Computation of the basic allowable.** Except as provided in (C) of this paragraph for basic allowable changes, the basic allowable for the calendar year shall be computed as follows:

(A) **For all pools except the Red Oak Pools.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's January allowable for the calendar year.

(B) **For the Red Oak Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's March allowable for the calendar year.

(C) **Changes in the basic allowable.**

(i) **Test exempt minimum allowable.** If a drilling and spacing unit receives test exempt minimum allowable status as provided in this Section, then the basic allowable shall be a minimum allowable.

(ii) **Test exempt double minimum allowable.** If a drilling and spacing unit receives a test exempt double minimum allowable as provided in this Section, then the basic allowable for the unit shall be a double minimum allowable.

(iii) **Retests.** If the well operator submits to the Conservation Division a retest which is approved by the Conservation Division, then the Conservation Division shall recompute the basic allowable using the retest. Retests are permitted at any time and become effective the first day of the month after acceptance by the Conservation Division.

(g) **Determination of overage and underage.**

(1) **Overage.**

(A) **Drilling and spacing unit without ratable allowables.** If no well in a drilling and spacing unit is subject to a ratable allowable, the current monthly allowable shall be compared with the second prior month's unit production. Production in excess of the current monthly allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, overage shall not reduce any subsequent monthly allowable until accumulated overage exceeds the applicable overage limit under (h) of this Section.

(B) **Drilling and spacing unit subject to ratable allowables.** If any well in a drilling and spacing unit is subject to a ratable allowable, the current monthly ratable allowable for the well shall be compared with the second prior month's production from the well. Production in excess of the ratable allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, the well's overage shall not reduce any subsequent monthly ratable allowable until accumulated overage exceeds the well's overage limit under (h) of this Section.

(2) **Underage.**

(A) **Drilling and spacing unit without ratable allowable.** If no well in a drilling and spacing unit is subject to a ratable allowable under OAC 165:10-13-9, the current monthly allowable for the unit shall be compared with the second prior month's unit production. If production is less than the allowable, the difference between the production and the unit allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly allowable.

(B) **Drilling and spacing unit with ratable allowables.** In a drilling and spacing unit with ratable allowables, the current monthly ratable allowable for a well shall be compared with the second prior month's production from the well. If production was less than the current monthly ratable allowable, the difference between the production and the ratable allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly ratable allowable for the well.

(h) **Overage limits.**

(1) **For all pools Except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and the Red Oak Spiro, the overage limit is six times:

(A) The basic allowable for the drilling and spacing unit, if the overage carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(2) **For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools, the overage limit is ~~48~~ 168 times:

(A) The basic allowable for the drilling and spacing unit, if the overage is carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(3) **Mandatory curtailment for excessive overage.**

(A) **Single well drilling and spacing unit.** If accumulated overage from a single well drilling and spacing unit exceeds the applicable overage limit, production from the unit shall be curtailed to 25 percent of the monthly allowable until accumulated overage is reduced below the overage limit.

(B) **Multiple well unit without ratable allowables.** In a multiple well drilling and spacing unit without ratable allowables, if accumulated overage for the unit exceeds the applicable overage limit, the unit production shall be curtailed to 25 percent of its monthly allowable until the accumulated overage is reduced below the overage limit.

(C) **Multiple well unit with a ratable allowable.** In a multiple well drilling and spacing unit with one or more wells subject to a ratable allowable, if the accumulated overage for a well exceeds its overage limit, production from the well shall be curtailed to 25 percent of its monthly ratable allowable until the well's accumulated overage is reduced below its overage limit.

(i) **Underage limits.**

(1) **For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the underage limit is three times the status factor for:

(A) The drilling and spacing unit,

(i) If the unit has only one well, or

(ii) If the unit has multiple wells but no unit well has a ratable allowable; or

(B) The well, if a well has a ratable allowable.

(2) **For all other special allocated gas pools subject to this Section.** For all other special allocated gas pools subject to the Section, the underage limit is six times the status factor for:

(A) The drilling and spacing unit, if the status factor is determined on a unit basis; or

(B) The well, if the well is subject to a ratable allowable.

(j) **Cancellation of underage.**

(1) **Underage in excess of the underage limit.** If accumulated underage exceeds the applicable underage limit, the accumulated underage shall be cancelled.

(2) **Subsequent underage.** After cancellation, underage shall not accrue until after:

(A) The drilling and spacing unit produces a current monthly allowable, if the unit wells share a unit allowable; or

(B) A well with a ratable allowable produces a current monthly ratable allowable.

(k) **Reinstatement of cancelled underage.**

(1) The operator may apply for reinstatement of cancelled underage by:

(A) An application for administrative approval on Form 1010, if filed within six months after cancellation of underage; or

(B) Application, notice, and hearing under OAC 165:5-7-1.

(2) Reinstated cancelled underage shall be available to increase the monthly allowable or ratable allowable for up to one year without cancellation. If reinstated underage is cancelled, the operator may reapply under (1) of this subsection.

(3) For the Guymon-Hugoton special allocated gas pool, the operator of any drilling and spacing unit in such pool which unit has accumulated cancelled underage credited thereto on the records of the Commission prior to July 1, 1998 shall have until January 1, 2000 to file an application with the Commission pursuant to OAC 165:5-7-1

for the reinstatement of such accumulated cancelled underage as credited to such unit prior to July 1, 1998. Upon the filing of such an application, the cause seeking reinstatement of such accumulated cancelled underage shall be diligently prosecuted. In such proceeding for the reinstatement of such accumulated cancelled underage credited to such drilling and spacing unit prior to July 1, 1998, the Commission shall determine the portion of such accumulated cancelled underage which is proper and valid under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool and shall reinstate only such portion that is determined to be proper and valid under such special pool allocation rules (field rules). If an application for reinstatement of any such accumulated cancelled underage credited to a drilling and spacing unit on the records of the Commission prior to July 1, 1998 is not filed with the Commission on or before January 1, 2000, such accumulated cancelled underage shall be permanently deleted from the records of the Commission and shall not thereafter be able to be reinstated or used for any other purpose under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool.

(l) **Effect of reinstatement of underage on pool allowables.** If cancelled underage has been distributed among the capable wells in the pool, reinstated underage shall not be deducted for the allowables of the capable wells which received distributed cancelled underage.

(m) **Test exempt status.**

(1) **No allowable without test.** For all pools except West Cheyenne Upper Morrow and Purvis Chert, no allowable shall be assigned unless:

(A) **Single well drilling and spacing unit.** The operator submits the required test or the unit has test exempt status under this Section.

(B) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, the operator of at least one well in the unit submits the required test in accordance with applicable pool rules or the unit is granted test exempt status under this Section.

(2) **Automatic test exempt status.**

(A) **For the West Cheyenne Upper Morrow and Purvis Chert Pool.** For the West Cheyenne Upper Morrow and Purvis Chert, a drilling and spacing unit shall have test exempt status as follows:

(i) **Single well drilling and spacing unit.** In a single well drilling and spacing, the well operator does not submit either an initial or an annual test.

(ii) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, none of the well operators in the unit submit either an initial or annual test. A test exempt drilling and spacing unit on the West Cheyenne Upper Morrow and Purvis Chert Pools shall have a minimum allowable under the applicable orders establishing and modifying pool rules as opposed to (b) of this Section.

(3) **Test exempt status upon requests for all other pools.** For all other pools except Guymon-Hugoton a drilling and spacing unit shall be test exempt upon written request to the Conservation Division if the potential for the unit does not exceed:

(A) The applicable minimum allowable under this Section.

(B) A double minimum allowable, if the Conservation Division has granted a double minimum to the unit.

(4) **Termination of requested test exempt status.**

(A) **Automatic termination.** Requested test exempt status shall terminate upon:

(i) **Submission of a retest.** Submission of a retest showing that the well has a potential in excess of a test exempt allowable, or;

(ii) **Overproduction.**

(I) **Single well drilling and spacing unit.** If gas production from a single well drilling and spacing unit exceeds a test exempt allowable during any month while the well has test exempt status, the unit shall lose test exempt status beginning with next month following the month with overproduction.

(II) **Multiple well drilling and spacing unit.** If total gas production from a multiple well drilling and spacing unit exceeds the minimum allowable during any month while the unit has test exempt status, the unit shall lose test exempt status beginning with the next month following the month with overproduction.

(B) **Reinstatement of test exempt status after automatic termination.** After termination of test exempt status for overproduction, the Conservation Division shall not reinstate test exempt status until:

(i) The operator requests test exempt status; and

(ii) The allowable year during which overproduction occurred expires.

SUBCHAPTER 21. APPLICATIONS FOR TAX EXEMPTIONS

PART 6. PRODUCTION ENHANCEMENT PROJECTS

165:10-21-21. General

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to ~~July 1, 2003~~ July 1, 2006 shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. Section 1001(M)(1).

165:10-21-22. Definitions

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

"Base production" means the average monthly amount of production for the twelve-month (12) period immediately prior to the commencement of the project or the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

"Effective date" means the project beginning date for the production enhancement project.

"Exemption period" means a period of twenty-eight (28) months from the date of first sale after completion of the production enhancement project.

"Incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

"Production enhancement project" means: for production enhancement projects having a project beginning date prior to July 1, 1997, any workover as defined in this Section, recompletion as defined in this Section, or fracturing of a producing well; for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, "production enhancement project" means any workover as defined in this Section, recompletion as defined in this Section, reentry of plugged and abandoned wellbores, or addition of well or field compression.

"Recompletion" means: for production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well; for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, "recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

"Workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, "workover" includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, "workover" includes, but is not limited to, the following: acidizing; reperforating; fracture treating; sand/paraffin/scale removal or other wellbore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil and/or gas wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. "Workover" shall not mean the routine maintenance, routine repair, or like-for-like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

165:10-21-24. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as production enhanced.

(2) A Copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(4) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Production Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 7. RE-ESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

165:10-21-36. Definitions

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

"Effective date" means the date on which the reestablishment of production has occurred.

"**Exemption period"** means a period of twenty-eight (28) months from the date upon which production from an inactive well is reestablished.

"Inactive well" means a well which may be defined under one (1) of the following three (3) categories:

(A) A well which after July 1, 1997 experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which causes cessation of production, shall be considered an inactive ~~wells~~ well. For use within this sub-paragraph "mechanical failure" means a well which experiences mechanical failure or loss of mechanical integrity because of, but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which results in a workover of the well and cessation of production as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before ~~June 30, 2003~~ June 30, 2006, that has not produced oil, gas or oil and gas for a period of not less than one (1) year as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well.

(C) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas or oil and gas for a period of not less than two (2) years as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well's status.

165:10-21-38. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as an inactive well for which production has been reestablished.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320C that shows the date of the re-establishment of production of oil and/or gas.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Reestablished Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 8. DEEP WELLS

165:10-21-45. General

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "**depth**" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 2000, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 2000, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and ~~June 30, 2003~~, June 30, 2006, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and ~~June 30, 2003,~~ June 30, 2006, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) **Exemption for wells spudded between July 1, 2002, and ~~June 30, 2003~~ June 30, 2006.** Deep wells spudded between July 1, 2002, and ~~June 30, 2003,~~ June 30, 2006, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) **12,500 to 14,999 feet.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

165:10-21-47.1. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in OAC 165:10-21-45.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320A that shows date of first sale of production.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Deep Well Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 9. NEW DISCOVERY WELLS

165:10-21-55. General

(a) Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and ~~June 30, 2003,~~ July 1, 2006, which qualify as a new discovery well pursuant to Title 68, Section 1001(I), shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to Title 68, Section 1001(M)(1).

(b) **"New discovery"** means production of oil, gas or oil and gas from:

(1) A well spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities and is located more than one mile from the nearest oil well producing from the same interval.

(2) A well, spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers crude oil in paying quantities and is located more than one mile from the nearest oil well producing from the same interval of the same formation.

(3) A well, spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities beneath current production in a deeper producing formation located more than one mile from the nearest oil well producing from the same deeper interval.

(4) A well, spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers crude oil in paying quantities beneath current production in a deeper producing interval located more than one mile from the nearest oil well producing from the same deeper interval.

(5) A well, spudded or reentered, prior to July 1, 1997, which discovers natural gas in paying quantities and is located more than two miles from the nearest gas well producing from the same producing interval.

(6) A well, spudded or reentered, on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers natural gas in paying quantities and is located more than two miles from the nearest gas well producing from the same producing interval.

(7) A well, spudded or reentered, prior to July 1, 1997, which discovers natural gas in paying quantities beneath current production in a deeper producing interval that is more than two miles from the nearest gas well producing from the same deeper interval.

(8) A well, spudded or reentered, on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers natural gas in paying quantities beneath current production in a deeper producing interval that is more than two miles from the nearest gas well producing from the same deeper producing interval.

165:10-21-58. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and ~~June 30, 2003~~ June 30, 2006.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320A that shows date of first sale of production.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "New Discovery Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 11. HORIZONTALLY DRILLED PRODUCING WELLS

165:10-21-66. Definitions

In addition to terms defined in 165:10-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Angle of deviation" means that angle in which a wellbore may deviate from the vertical.

"Date of completion of a gas well" means the date that gas is capable of being delivered to a pipeline purchaser.

"Date of completion of an oil well" means the date that the well first produces into the lease tanks through permanent well head equipment.

"Effective date" means that the first production must have commenced after July 1, 1995 and before ~~July 1, 2003~~ July 1, 2006.

"Horizontal displacement" means that distance drilled into the pay zone of a formation at an angle exceeding seventy (70) degrees.

"Horizontally drilled payout" means the point at which gross working interest revenue from the horizontally drilled well equals the cost of drilling and completing such well.

"Horizontally drilled well" means an oil, gas, or oil and gas well drilled or completed in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from the vertical and which laterally penetrates a minimum of one hundred and fifty (150) feet into the pay zone of the formation.

"True vertical depth" means that depth measured from the surface perpendicular to the surface.

165:10-21-68. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as a horizontally drilled well.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320A that shows the date of initial production.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Horizontal Drilling Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

165:10-21-69. Time periods for exemption from gross production tax levied on horizontally drilled producing wells

(a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.

(b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.

(1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.

(2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well producing prior to July 1, 2002, which production commenced after July 1, 1995.

(c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to ~~July 1, 2003~~ July 1, 2006, which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [See: 68 O.S. Supp. 2002, Section 1001(E)(1)]

PART 13. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS

165:10-21-76. Definitions

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

"Base production amount" means the average monthly amount of productions for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

"Completion date" means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

"Enhanced recovery project costs" means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

"Existing tertiary recovery project" means, for purposes of the exemption described in 68 O.S. Section 1001(D)(1), a tertiary recovery project whose beginning date is prior to October 16, 1987.

"Incremental production" means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

"Incremental working interest revenue" means the gross value of the incremental production, less the royalty interest therein.

"Monthly rate of production decline" means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

"New enhanced recovery project" means, for purposes of the exemption described in 68 O.S. Section 1001(D)(1), a secondary or tertiary recovery project whose beginning date is on or after October 16, 1987.

"Project beginning date" means the date on which the injection of liquids, gas or other matter begins on an enhanced recovery project.

"Project payback or payout" means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

"Secondary recovery properties" means secondary recovery properties approved or having an initial project beginning date on or after July 1, 2000 and before ~~July 1, 2002~~ July 1, 2006, such that any incremental production attributable to the working interest which results from such secondary recovery property shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, whichever occurs first. [Applicant may omit payback report for such secondary recovery properties.]

165:10-21-78. Recovery of costs allowed as payback factors

(a) **Enhanced recovery project, project beginning date between October 17, 1987 and June 30, 1990.** For any enhanced recovery project with a project beginning date between October 17, 1987, and June 30 1990, allowed enhanced recovery costs shall include only incremental capital costs and incremental operating expenses associated with enhanced recovery operations.

(b) **Enhanced recovery project, project beginning date between July 1, 1990 and June 30, 1993.** For any enhanced recovery project with a project beginning date between July 1, 1990, and June 30, 1993, allowable enhanced recovery project costs shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. With respect to completing or converting a well, no expenditure after completion or conversion for enhanced recovery purposes shall be included.

(c) **Secondary recovery project, project beginning date on or after July 1, 1993 and before July 1, 2000.** For any secondary recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, allowed enhanced recovery project costs shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project, project beginning date on or after July 1, 1993 and before ~~July 1, 2003~~ July 1, 2006.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before ~~July 1, 2003~~ July 1, 2006, allowable enhanced recovery project costs shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses. The capital expenses of pipelines constructed to transport carbon dioxide to a tertiary recovery project shall not be included in determining project payback. The period for project payback shall not exceed ten (10) years from the project beginning date.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the "Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations" and "COPAS Bulletin No. 16", or subsequent revisions thereto.

165:10-21-80. Expiration of exemption for incremental production

For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to ~~July 1,~~

~~2003~~ July 1, 2006, once the gross working revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the Gross Production Tax thereon.

PART 14. PRODUCTION OF OIL, GAS OR OIL AND GAS FROM ANY WELL LOCATED WITHIN BOUNDARIES OF A THREE-DIMENSIONAL SEISMIC SHOOT

165:10-21-82. General

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of which is commenced on or after July 1, 2000, and prior to ~~July 1, 2003,~~ July 1, 2006, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, shall be determined according to the provisions of this Part.

165:10-21-82.2. Qualification procedure

(a) **Applicable wells.** The provisions of this Section establish criteria for determining if an operator producing oil, gas or oil and gas from a well, drilling of which is commenced on or after July 1, 2000, and prior to ~~July 1, 2003,~~ July 1, 2006, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, has met the required conditions to qualify the production from such a well for the exemption from the Gross Production Tax. [See: 68 O.S. §1001(J)]

(b) **Application to Oklahoma Corporation Commission; determination; order.** An operator seeking an exemption of the gross production tax on production from a well located within the boundaries of a three-dimensional seismic shoot and drilled based on such technology, shall make application to the Oklahoma Corporation Commission on a Form 1534 for a determination that the well qualifies for such exemption, as provided in 68 O.S. 2000 Supp. §1001(J).

(1) If the application is administratively approved, an order of the Oklahoma Corporation Commission shall be issued.

(2) To obtain the tax exemption, the operator shall forward a copy of the Oklahoma Corporation Commission order to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-82.3.

(3) Any data, maps and other information submitted with the Form 1534 for determination that a well qualifies for the exemption provided in this paragraph shall be held as confidential information by the Conservation Division and/or Commission, and upon approval through issuance of a Commission order, shall be returned to the applicant or destroyed.

165:10-21-82.3. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced on or after July 1, 2000, and prior to ~~July 1, 2003,~~ July 1, 2006, that it is located within the boundaries of a three-dimensional seismic shoot and was drilled based on such technology, and indicating whether the seismic shoot was shot either prior to or on or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) OTC Form 320A, 320C, and 320U, as are necessary, to set up the OTC Production Units, to request merge numbers, and to show the entity who will remit taxes.

(4) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Three-Dimensional Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

[OAR Docket #04-911; filed 5-14-04]

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

[OAR Docket #04-895]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter13. Special Education
210:15-13-4. [NEW]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Adoption:
March 25, 2004
Approved by Governor:
May 5, 2004

Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The rule fulfills a requirement of 70 O. S. § 13-115.4. The rule will affect persons employed as educational interpreters within the school setting and will improve the quality of service provided to deaf and hearing impaired students utilizing an interpreter.
ANALYSIS:
The State Department of Education (SDE) is responsible for a continuing education system. Currently we, the SDE, are contracting with the Oklahoma School for the Deaf to provide this system at a contract of approximately $110,000. Additionally, we are responsible for maintaining a registry and are currently contracting with the Department of Rehabilitative Services for the maintenance for a contract amount of $7,500.
CONTACT PERSON:
Valerie Payne, 405-521-3308

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

SUBCHAPTER 13. SPECIAL EDUCATION

210:15-13-4. Oklahoma Educational Interpreter for the Deaf Act.

In order to be considered an Educational Interpreter, an individual must meet the requirements set out in law or a comparable level of proficiency must be demonstrated.

(1) **Comparable level of proficiency.** A comparable level of proficiency may be obtained by passage of the following assessments defined as:

(A) Educational Interpreter Performance Assessment (EIPA) equals a 3.5 at the level in which the person interprets (i.e., elementary or secondary).

(B) Educational Sign Skills Evaluation for Signed Exact English (SEE) equals a 3.5 at the level in which the person interprets (i.e., elementary or secondary).

(C) National Council for Interpreter's (NCI) Certificate.

(2) **Experience.** Three year's experience in the field of deaf education is clarified as including interpreting in non-educational settings.

(3) **System of Continuing Education.**

(A) Educational interpreters must complete 10 continuing education units annually, 50% ofmust include training in educational interpreting.

(B) In order to receive credit for continuing education units the course workshop or seminar must have been preapproved by the Oklahoma State Department of Education (OSDE).

(4) The **Registry of Interpreters.** The OSDE will develop a list of educational interpreters and in conjunction with the Department of Rehabilitation Services (DRS) maintain the list.

[OAR Docket #04-895; filed 5-12-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 256. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #04-947]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. General Provisions
310:256-1-2 [AMENDED]
310:256-1-4 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 2001, Section 1-1101 et seq.
DATES:
Public Hearing:
March 18, 2004
Adoption:
March 18, 2004
Approved by Governor:
April 28, 2004
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATIONS BY REFERENCE:
"n/a"
FINDING OF EMERGENCY:
The State Board of Health finds that public interest requires seeking of emergency adoption of the rules in Chapter 256. Current rules do not have provisions for regulating Farmers' Markets. The proposed rules define a Farmers' Market and require guidelines for a minimum of six vendors with a market manager. Farmers' Markets are to be registered with the Oklahoma Department of Agriculture, Food and Forestry and comply with Chapter 256. Unless an emergency is declared and certified this rule cannot go into effect until approximately July 14, 2004, which would mean no rules would be in effect to implement these provisions by the beginning of the Farmers' Market season beginning approximately on April, 2004.
ANALYSIS:
The intent is to provide public protection from foodborne infection by establishing prescriptive rules for operators of food service establishments. The proposal contains a Farmers' Market definition with language clarifying the responsibilities of the vendors, the Oklahoma State Department of Agriculture, Food and Forestry, and the Oklahoma State Department of Health.
CONTACT PERSON:
Ted Evans, Director, Consumer Protection Division, Consumer Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-9444, ext. 57944; facsimile: (405) 271-3458 electronic mail: tede@health.state.ok.us

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

SUBCHAPTER 1. GENERAL PROVISIONS

310:256-1-2. Definitions

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

"Accredited Program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

"Adulterated" means the definition in 63 O.S. 1991, Section 1-1109.

"Approved" means acceptable to the Department based on a determination of conformity with these rules.

"Beverage" means a liquid for drinking, including water.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, and includes bottled mineral water.

"Bulk food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include fresh fruits, fresh vegetables, nuts in the shell, and buffet areas in food-service establishments.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the National Shellfish Sanitation Program.

"Certified applicator" means any individual who is certified under 7 USC 136(i) or by the Oklahoma State Department of Agriculture as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. It does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"Code of Federal Regulations" or **"CFR"** means the compilation of the general and permanent rules adopted by federal executive departments and agencies.

"Color additive" means any material, not exempted under section 201(t) of the Federal Food, Drug, and Cosmetic Act, that is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source and that, when added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting a color thereto. Substances capable of imparting a color to a container for foods, drugs, or cosmetics are not color additives unless the customary or reasonably foreseeable handling or use of the container may reasonably be expected to result in the transmittal of the color to the contents of the package or any part thereof. Food ingredients such as cherries, green or red peppers, chocolate, and orange juice which contribute their own natural color when mixed with other foods are not regarded as color additives; but where a food substance such as beet juice is deliberately used as a color, as in pink lemonade, it is a color additive. Food ingredients as authorized by a definitions and standard of identity prescribed by regulations pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act are color additives, where the ingredients are specifically designated in the definitions and standards of identity as permitted for use for coloring purposes. An ingredient of an animal feed whose intended function is to impart, through the biological processes of the animal, a color to the meat, milk, or eggs of the animals is a color additive and is not exempt from the requirements of the statute. This definition shall apply whether or not such ingredient has nutritive or other functions in addition to the property of imparting color. An ingested drug the intended function of which is to impart color to the human body is a color additive. For the purposes of this part, the term color include black, white, and intermediate grays, but substances including migrants from packaging materials which do not contribute any color apparent to the naked eye are not color additives.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two (2) or more types of meat that have been reduced in size and combined.

"Commissary" means a facility used for the servicing of pushcarts and mobile retail units and storage of packaged food and single service articles for use in those units.

"Common dining area" means a central location in a group residence where people gather to eat at mealtime but does not apply to a kitchenette or dining area located within private living quarters.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who takes possession of food, is not functioning in the capacity of an operator of a food service establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant material" means a substance that maintains acceptable surface clean ability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the environment.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical item" means a provision of these rules that, if in noncompliance, is more likely than other violations to

contribute to food contamination, illness, or environmental health hazard.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter is controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Customer self-service" means customer selection and packaging of a bulk food product from a product module.

"Department" means the Oklahoma State Department of Health.

"Display area" means a location or locations, including physical facilities and equipment, where bulk food is offered or customer self-service.

"Drinking water" means water that is traditionally known as "potable water." The term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

"Easily cleanable" means a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; or varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily movable" means an object mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning, and has no utility connection, a utility connection that disconnects quickly or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and the adjacent area.

"Employee" means a person working in a food service establishment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. It does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids. Food equipment that shall be certified by the National Sanitation Foundation (NSF) or an equivalent organization includes but is not limited to, floor mounted refrigerators, grills, warewashing machines, griddles, fryers, ice machines, and steam tables; and counter mounted equipment such as slicers, grinders, food processors, crock-pot/hot holding units, and other similar food processing equipment.

"Farmers Market" means a designated area in which farmers, growers or producers from a defined region gather on a regularly scheduled basis to sell at retail non-potentially hazardous farm food products and whole shell eggs to the public. A portion of the raw food ingredients used by the individual vendor to produce a product must have been grown or raised by the vendor. The individual vendors wishing to process food as defined by Chapter 260 of the regulations must obtain a state food processor's license. A Farmers' Market must have written operational guidelines and a minimum of six vendors along with a designated market manager or advisory board who will be responsible for distribution of a copy of the guidelines to the vendors. Farmers' Markets must be registered with the Oklahoma Department of Agriculture, Food and Forestry and comply with the *Food Service Establishment Regulations*, Chapter 256, and/or *Good Manufacturing Practice, Chapter 260*. This definition does not include individual farmers who grow and sell unprocessed fruit and/or vegetables from the farm, roadside or truck. Any vendors who prepare or sell any potentially hazardous foods at the Farmers' Markets must abide by all applicable sections of Chapter 256 of the requlations including acquiring a license from the department.

"FDA" means the Food and Drug Administration.

"Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food additive" means all substances not exempted by section 201(s) of the Federal Food, Drug, and Cosmetic Act, the intended use of which results or may reasonably be expected to result, directly or indirectly, either in their becoming a component of food or otherwise affecting the characteristics of food. A material used in the production of containers and packages is subject to the definition if it may reasonably be expected to become a component, or to affect the characteristics, directly or indirectly, of food packed in the container. "Affecting the characteristics of food" does not include such physical effects, as protecting contents of packages, preserving shape, and preventing moisture loss. If there is no migration of a packaging component from the package to the food, it does not become a component of the food and thus is not a food additive. A substance that does not become a component of food, but that is used, for example, in preparing an ingredient of the food to give a different flavor, texture, or other characteristic in the food, may be a food additive.

"Foodborne disease outbreak" means an incident in which two (2) or more persons experience a similar illness after ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact.

"Food employee" means a person working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

"Food service establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption or any establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service. It includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite location unless the vending location is licensed by the Department; and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises.

"Food service establishment - fee exempt" means:

(A) A food establishment operated by a hospital, public school or government institution, which only prepares and serves food to its patients, students, employees, members or inmates and occasional visitors or guests; or

(B) Except as otherwise provided in paragraph (i) and (ii) below, a food establishment or operation conducted by a nonprofit civic, charitable or religious organization primarily for benevolent purposes.

(i) Fee exempt licensees shall comply with the applicable sections of these rules depending upon the type of operation involved; e.g., food service, retail food, combination, temporary, or mobile.

(ii) Fee exempt licenses, except temporary licenses, shall not expire but shall remain in full force and effect until revoked, suspended, annulled or withdrawn by the Commissioner in accordance with applicable law. A license is not required for a non-profit civic, charitable or religious organization, using non-paid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization, nor shall a license be required if such an organization, using non-paid persons, prepares and serves non-hazardous food at events sponsored or conducted by other organizations. Guidelines shall be provided for safeguarding the health of customers.

"Game animal" means an animal, the products of which are food, that is not included in the definitions of 2 O.S. 1991, §§ 6-183 et seq. (cattle, bison sheep, swine and goats). Equines are not included due to the provisions of 63 O.S. 1991, § 1-1135 (prohibits the use of equine for food), 2 O.S. 1991, § 6-251 et seq. (poultry, including any domestic bird whether live or dead), 2 O.S. 1991, §§ 6-280.1 et seq. (domesticated rabbits whether live or dead), 2 O.S. 1991, § 6-290.3 et seq. (exotic livestock including commercially raised livestock including but not limited to animals of the families bovidae, cervidae, antilocapridae, or birds of the order casuariiformes or in the definitions of fish in this subchapter).

"General use pesticide" means a pesticide that is not classified by the EPA for restricted use as specified in 40 CFR 152.175.

"Grade A milk and milk products" means the milk and milk products at any stage from production through pasteurization and packaging, that are of the minimum quality and are produced, hauled, processed and distributed under conditions which substantially meet the requirements of the Oklahoma Milk and Milk Products Act (OS 2, Supp 1998, Sec 7-401 et seq).

"Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals or includes a domicile for unrelated persons.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Hazard" means a biological, chemical, or physical property that shall cause an unacceptable consumer health risk.

"Hermetically sealed container" means a receptacle that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means a group that is more likely than other populations to experience foodborne disease; i.e., immunocompromised persons, older adults, or preschool age children in a facility that provides custodial care.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

"Impermeable" means incapable of allowing liquids to pass through the covering.

"Injected" means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat with juices which may be referred to as "injecting," "pinning," or "stitch pumping".

"Juice" means the aqueous liquid expressed or extracted from one or more fruits and vegetables, purees of the edible portions of one or more fruits and vegetables, or any concentrate of such liquid or puree.

"Kitchenware" means food preparation and storage utensils.

"Law" means local, state, and federal statutes, rules, and ordinances.

"License" means the document issued by the Department that authorizes a person to operate a food service establishment.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including gloves.

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, bison, swine, sheep, goats, and other edible animals, except fish and poultry, that is offered for human consumption.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Misbranding" means the definition contained in 63 O.S. 1991, § 1-1110.

"Mobile food service establishment" means a facility that is vehicle mounted (has wheels and axles), is readily moveable and remains at one physical address for no more than 17 days at one time.

"Mobile pushcart" means a non-self propelled mobile food unit that can be manually moved, is limited to serving non-potentially hazardous foods, pre-packaged food or preparation and serving of frankfurters, and returns daily to a commissary.

"Mobile retail food establishment" means a facility that is vehicle mounted, remains at one physical address for no more than 17 days at a time and serves only prepackaged foods and dispensed drinks prepared in a facility that is regulated by the Good Manufacturing Practices in Title 21 of the CFR or regulated as a license holder pursuant to Chapter 310:260, Good Manufacturing ~~Pretice~~Practice Regulations, or this chapter.

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment or a food processing plant. It does not include a wrapper, carryout box, or other non-durable container used to facilitate food protection during service and receipt of the food by the consumer.

"Person" means an association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food service establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

"Physical facilities" means the structure and interior surfaces of a food service establishment including accessories.

"Physician" means a doctor of medicine (M.D.) or osteopathic medicine (D.0.) currently licensed to practice medicine and surgery in Oklahoma.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous" or **"toxic materials"** means substances that are not intended for ingestion and are included in the following:

(A) Cleaners and sanitizers including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides including substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment including non-food grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, including petroleum products and paints.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of ***Clostridium botulinum,*** or in raw shell eggs, the growth of ***Salmonella enteritidis*****.** Potentially hazardous foods include, but are not limited to, animal foods (a food of animal origin) that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures that are not modified in a way that results in mixtures that do not support growth. Potentially hazardous food does not include air-cooled hard-boiled eggs with the shell intact, a food with a water activity of 0.85 or less, a food with a pH level of 4.6 or below when measured at seventy-five (75) degrees F, a food in an unopened, hermetically sealed container, a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of **S. enteritidis** or **C. botulinum** can not occur, a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the rapid and progressive growth of infectious or toxigenic microorganisms.

"Poultry" *includes chickens, turkeys, ducks, geese and other domesticated bird used for human food and/or animal feed [OS 2, Supp 1998, Section 10-9.1].*

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the license holder that may affect food service establishment personnel, facilities, or operations.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated.

"Product module" means a food contact container (multi-use or single-service) designed for customer self-service of bulk food by either mechanical or manual means.

"Public water system" means the definition in Chapter 630, "Public Water Supply Operation," of the Oklahoma Department of Environmental Quality.

"Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food service establishment or the consumer and that is reasonably expected to be consumed in that form. It also includes unpackaged potentially hazardous food that is cooked

to the temperature and time required for the specific food under OAC 310:256-5-45 through OAC 310:256-5-47; raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet, or other food presented for consumption where further washing or cooking is not required and the rinds, peels, husks or shells have been removed.

"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere, and a process as specified in this definition that involves a food for which **Clostridium botulinum** is identified as a microbiological hazard in the final packaged form. Reduced oxygen packaging includes vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide, modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes a reduction in the proportion of oxygen, a total replacement of oxygen, or an increase in the proportion of other gasses such as carbon dioxide or nitrogen. Reduced oxygen packaging also includes controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

"Refuse" means solid waste not carried by water through the sewage system.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 and that is limited to use by or under the direct supervision of a certified applicator.

"Safe material" means an article manufactured that shall not reasonably be expected to result, directly or indirectly, in becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for effectiveness, yield a reduction of five (5) logs, which is equal to a 99.999 percent reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allows the entry or passage of moisture.

"Seasonal food service establishment" means a facility that is open no more than 150 consecutive days per physical address per year. The seasonal food service establishment is limited to serving coffee, snow cones, raw fruits, raw vegetables, nuts in the shell, and commercially bottled syrup, sorghum, honey, sweet cider, and other non-potentially hazardous foods.

"Seasonal fruit stand" means an establishment that is open no more than 150 consecutive days per physical address per year and is limited to whole, raw fruits and vegetables and unprocessed nuts in the shell.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food service establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and includes liquids containing chemicals in solution.

"Shellfish control authority" means a local, state, federal or foreign government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shucked shellfish" means molluscan shellfish that have one (1) or both shells removed.

"Single-service articles" means tableware, carryout utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time, one (1) person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single use articles include items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and items which do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of minus twenty-three (23) degrees Celsius (minus 10 degrees Fahrenheit) to minus four (4) degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen foods.

"Smooth" means a food contact surface having a surface free of pits and inclusions with a clean ability equal to or exceeding that of one hundred (100) grit number three (3) stainless steel; a non-food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Table-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Tableware" means eating, drinking, and serving utensils for table use, hollowware and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food service establishment" means a food service establishment where food is offered for sale or sold at retail from a fixed, temporary facility in conjunction with a single event or celebration not to exceed the duration of the event or celebration.

"USDA" means the United States Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use gloves used in contact with food and food temperature-measuring devices.

"Variance" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of these rules if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

"Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

"Water activity" means a measure of the free moisture in a food that is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

"Whole-muscle intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

310:256-1-4. Exemptions

The food service establishment definition does not include a food processing plant; a facility that sells only pre-packaged, non-potentially hazardous foods, which are incidental to the business, and does not have food in storage; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale; a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the number of available guest bedrooms does not exceed three (3) and breakfast is the only meal offered; a lodging facility that is serving food in compliance with 310:285-3-14; ~~or~~ a private home that receives catered or home-delivered food~~.~~; or individual farmers' market vendors that are in compliance with the definition of a farmers' market and/or hold a food processors license from the Oklahoma Department of Health and/or egg dealers licensed by the Oklahoma Department of Agriculture, Food and Forestry.

[OAR Docket #04-947; filed 5-18-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #04-951]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Non-Financial Eligibility Criteria
Part 7. Related Provisions
OAC 340:50-5-64 [AMENDED]
(Reference APA WF # 04-07)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Section 6(o) of the Food Stamp Act, as amended by Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act (PROWOA) of 1996, Public Law 104-193; and Section 273.24(f)(3)(iii) of Title 7 of the Code of Federal Regulations.
DATES:
Adoption:
March 23, 2004
Approved by Governor:
May 5, 2004
Effective:
June 1, 2004.
Expiration:
Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Emergency approval is requested as the Oklahoma Department of Human Services (OKDHS) finds compelling public interest exists in complying with the waiver approved by United States Department of Agriculture (USDA) regarding the Food Stamp Program. Approval of the proposed rule will allow unemployed persons to qualify for food stamp benefits. Without approval, persons living in areas of high unemployment are not eligible to receive food stamp benefits because they are not employed as required under current policy.
ANALYSIS:
The purpose of the proposed rule is to comply with the provisions of a Food Stamp Program waiver that is effective June 1, 2004. The USDA has approved a waiver allowing certain Oklahoma counties with an unemployment rate at least 20% above the national average to not require certain clients to meet the work requirements.
340:50-5-64 is revised to exempt clients in 19 counties from having to meet the work requirement.
CONTACT PERSON:
Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF JUNE 1, 2004:

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 7. RELATED PROVISIONS

340:50-5-64. Work requirements

(a) **Able-bodied adults without dependents (~~ABAWD's~~ ABAWDs).** ~~Able-bodied adults without dependents (ABAWD's)~~ ABAWDs who are members of eligible food stamp households must be exempt from or comply with work requirements to be eligible to participate as a member of any food stamp household for longer than three months, consecutive or otherwise, during any 36-month period. It is the ~~social~~ worker's responsibility to explain to the applicant the household member's work requirements and responsibility. At each application the ~~social~~ worker must establish that each household member: ~~is in compliance with the work requirements or meets a work requirement exemption.~~

(1) is working continuously 20 hours or more per week averaged monthly;

(2) participates in and complies with:

(A) Workforce Investment Act (WIA) Program assignment;

(B) Trade Adjustment Assistance Act Program assignment; or

(C) Employment and Training, not including Job Search; or

(3) is exempt from the work requirements listed in (b) of this Section.

(b) **Exemptions from the work requirements.** An individual is exempt from the work requirement provision of the Food Stamp Program if the individual is:

(1) ~~under the age of~~ younger than 18 ~~years~~ or ~~over~~ older than 50 years of age~~.~~;

(2) medically certified as physically or mentally unfit for employment.

(A) Persons who are physically or mentally incapable of gainful employment either on a permanent or temporary basis or participating in federal or state programs based on disability are considered exempt.

(B) Persons claiming exemption as unfit for employment must, in the absence of physical evidence, obtain documented evidence from medically qualified sources to substantiate the medical exemption.

(C) Persons claiming temporary exemption are required to comply when they are released by their medically qualified source to return to work~~.~~;

(3) a parent or other member of a household with responsibility for care of a dependent child ~~under the age of~~ younger than 18 years or an incapacitated person of any age~~.~~;

(4) pregnant~~.~~;

(5) receiving or has applied for unemployment insurance benefits~~.~~;

(6) a regular participant receiving treatment for drug or alcohol addiction in a rehabilitative program on a resident or non-resident basis~~.~~;

(7) an eligible student enrolled at least half-time in any recognized school, training program, or institution of higher education~~.~~;

(8) a household member registered for or participating in the ~~ET&E Program under~~ Temporary Assistance for Needy Families (TANF) Work~~.~~;

(9) employed a minimum of 30 hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended, multiplied by 30 hours~~.~~; or

(10) a resident living in a county approved for exemption of the work requirements by the United States Department of Agriculture (USDA).

(c) **Participation without time limits.** Food Stamp participation without time limits applies to an individual who:

(1) is exempt~~.~~;

(2) works continuously 20 hours or more per week, averaged monthly~~.~~; or

(3) participates in and complies with:

(A) ~~Job Training Partnership Act (JTPA)~~ WIA Program assignment~~.~~;

(B) Trade Adjustment Assistance Act Program assignment~~.~~; or

(C) Employment and Training, not including Job Search.

(d) **Participation with time limits.** Individuals who are not exempt or fail to comply with work participation requirements are eligible for only three months, consecutive or otherwise, during any 36-month period. Once the three-month eligibility limit has been reached, eligibility can be regained for at least an additional three consecutive months if the individual:

(1) works 80 hours or more in any 30-day period~~.~~; or

(2) participates for 80 hours or more in and complies with:

(A) ~~Job Training Partnership Act (JTPA)~~ WIA Program assignment~~.~~;

(B) Trade Adjustment Assistance Act Program assignment~~.~~; or

(C) Employment and Training, not including Job Search.

(e) **Individuals who regain eligibility.** An individual can regain eligibility only one time for an additional three consecutive months during the 36-month period by meeting the requirements of (1) or (2) of subsection (d). An individual who regains eligibility ~~will maintain~~ maintains eligibility by complying with the requirements of subsection (c). If eligibility is subsequently lost, the individual may receive food stamp benefits only if one of the exemptions listed in subsection (b) is met or the 36-month period has expired.

[OAR Docket #04-951; filed 5-18-04]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #04-921]

RULEMAKING ACTION:

EMERGENCY adoption.

RULES:
Subchapter 3. Investigations and Hearings
435:3-3-12. Board advisor~~Rulings upon evidence and objections~~ [AMENDED]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
DATES:
Adoption:
March 25, 2004
Approved by Governor:
May 11, 2004
Effective:
Immediately upon Governor's approval.
Expiration:
Effective through July 14, 2005 unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
The Board found that a compelling public interest requires an emergency rule amendment that sets forth the functions allowed by the Board advisor during disciplinary hearings and individual proceedings.
ANALYSIS:
Amendments to this rule allow the Board to utilize a Board Advisor during disciplinary hearings/individual proceedings.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, ext. 104

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

SUBCHAPTER 3. INVESTIGATIONS AND HEARINGS

435:3-3-12. Board advisor ~~Rulings upon evidence and objections~~

~~The President of the Board shall rule upon the admissibility of evidence or objections thereto and upon other motions or objections arising in the course of the hearing, unless that duty is delegated to the Trial Examiner by the Board. The rulings of the President, or the Trial Examiner, in all questions shall be the rulings of the Board unless reversed by a majority vote of the Board.~~ The Board may utilize a Board Advisor in the course of a hearing/individual proceeding to perform any of the following duties:

(1) To advise the Board on issues of law and rules of proceedings;

(2) To participate with the Board in the questioning of witnesses/applicants;

(3) To advise the President on the admissibility of evidence;

(4) To advise the President on motions or objections arising in the course of the hearing/individual proceeding; and

(5) To accompany the Board into Executive Session, provide assistance as legal advisor and take minutes.

[OAR Docket #04-921; filed 5-17-04]

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

[OAR Docket #04-990]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 6. Fees, Discounts and Waivers
725:30-6-1 Fee authority, requirements, discounts and waivers [AMENDED]
AUTHORITY:
Oklahoma Tourism and Recreation Commission; 74 O.S. Supp. 2003 § 1847.1A(12)(c)
DATES:
Adoption:
April 15, 2004
Approved by Governor:
May 11, 2004
Effective:
Immediately upon Governor's approval.
Expiration:
Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
AVAILABILITY:
8:00 a.m. TO 5:00 p.m., Monday through Friday at the State Park, Resort and Golf Division, Oklahoma Tourism and Recreation Department, 15 North Robinson, Suite 100, Oklahoma City, OK 73102, 405-521-6891.
FINDING OF EMERGENCY:
The Commission feels there is a compelling public interest to initiate the entrance or day-use charge program this season in order to help financially secure the continuation of state park day use facilities and programs in designated parks for the benefit of the users.
ANALYSIS:
The proposed emergency rule in Subchapter 6 establishes the methods by which the entrance or day-use passes would be sold and the charges collected.
CONTACT PERSON:
Kris Marek, Director of Conservation and Planning, Oklahoma Tourism and Recreation Department, 15 North Robinson, Suite 100, Oklahoma City, OK 73102, 405 521-6891.

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

SUBCHAPTER 6. FEES, DISCOUNTS AND WAIVERS

725:30-6-1. Fee authority, requirements, discounts and waivers

(a) Recreation fees are hereby established as approved by the Oklahoma Tourism and Recreation Department Commission. The Commission shall prescribe rates, fees, tolls, or charges for the services, facilities and commodities rendered by all property of the Commission [74:1847.1(A)(11)]. Such fees, rates and charges shall be based upon staff recommendation pursuant to prevailing market conditions for similar facilities, services or merchandise. Fees, rates and charges shall be structured in a manner which is competitive with the private sector and avoids undercutting.

(b) All fees and charges shall be posted in a convenient location in each park. Every person using any facility shall be charged the same fee except:

(1) Individuals 62 years of age and over and his or her spouse, provided that their home state provides similar discounts to Oklahoma residents, are entitled to discounts for camping, cabin rental, golf, cave tours, swimming and bicycle rentals. A driver's license shall be used for verification of age and residency state. A current list of reciprocal states and discounts offered shall be available at park offices [74:1847.1(B)(1)].

(2) Individuals who have been certified as totally (100%) disabled or blind as defined by state or federal law and immediate family members (living in household) shall be entitled to a discount which shall apply to camping, cabins, golf, cave tours, swimming and bicycle rentals regardless of residency. Accepted means of verifying total disability are by the presentation of a medicare card; hunting and fishing license issued by the Veteran's Administration; award letter of disability from a retirement insurance board, commission or administrator which defines total disability, or a letter from their physician defining total disability [74.1847.1(B)(2)].

(3) Children's groups that provide beneficial services are entitled to discounts for camping, shelters and swimming [74.1847.1(B)(3)]. Such services shall be restricted to projects which provide environmental education awareness such as tree planting, refuse clean up, or wildlife habitat improvement. Children's groups performing a minimum of 2 hours service toward such projects shall be entitled to prescribed fee discounts. For the purpose of this section a group is 5 or more persons and a child is a person under the age of 18.

(c) The director may, when in the public interest, prescribe times or periods during which the collection of fees may be waived or suspended.

(d) The director may offer special group or promotional rates in accordance with 74 O.S., Section 1834. Current discounts are offered for camping to the Good Sam Club and Family Campers and RVers Association.

(e) Using campground sites, facilities, equipment or services, or participating in group activities, recreation events, or other specialized recreation uses for which fees have been established without paying such fees is prohibited. Violation of the terms and conditions of this section may result in the suspension or revocation of the use of the facility, equipment or service or any other penalties prescribed by state law.

(f) Entrance or day-use charges established in accordance with paragraph (a) of this section shall be evidenced by a receipt or pass sold upon demand from the public or at the entrance of any designated entrance or day-use charge facility. The method of collection will be by deposit in a self pay receptacle or payment to Department personnel who will provide a cash receipt.

[OAR Docket #04-990; filed 5-21-04]

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 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #04-1057]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
10:15-1-2. [AMENDED]
Subchapter 5. Examination Procedures
10:15-5-1. [AMENDED]
10:15-5-3. [REVOKED]
10:15-5-4. [AMENDED]
Subchapter 7. Application to Take an Examination
10:15-7-1. [AMENDED]
10:15-7-2. [AMENDED]
Subchapter 13. Conditional Credit on Examination
10:15-13-1. [AMENDED]
Subchapter 18. Transitioning from the Paper-and-Pencil Examination to the Computer-Based Examination [NEW]
10:15-18-1. through 10:15-18-3. [NEW]
Subchapter 19. Proctoring of Candidates Taking Examinations
10:15-19-4. [AMENDED]
Subchapter 20. Internet Practice Requirements
10:15-20-1. [AMENDED]
Subchapter 25. Permits
10:15-25-3. [AMENDED]
Subchapter 27. Fees
10:15-27-1. through 10:15-27-3. [AMENDED]
10:15-27-3.1. [NEW]
10:15-27-4. [AMENDED]
10:15-27-6. [AMENDED]
10:15-27-13. [NEW]
Subchapter 29. Continuing Professional Education
10:15-29-1.1. [AMENDED]
10:15-29-3. through 10:15-29-5. [AMENDED]
10:15-29-8. [AMENDED]
Subchapter 31. Standards for Continuing Professional Education [REVOKED]
10:15-31-1. through 10:15-31-6. [REVOKED]
Subchapter 32. Standards for Continuing Professional Education (CPE) Programs
10:15-32-1. through 10:15-32-6. [AMENDED]
Subchapter 33. Quality/Peer Review [NEW]
10:15-33-1. through 10:15-33-7. [NEW]
Subchapter 37. Enforcement Procedures
10:15-37-1. [AMENDED]
10:15-37-2. [AMENDED]
10:15-27-4. [AMENDED]
10:15-37-5. [AMENDED]
10:15-37-11. [AMENDED]
Subchapter 39. Rules of Professional Conduct
10:15-39-1. [AMENDED]
10:15-39-3. through 10:15-39-7. [REVOKED]
10:15-39-8. [AMENDED]

AUTHORITY:
Oklahoma Accountancy Board, 59 O.S. Section 15.5.B.6
DATES:
Comment Period:
February 2, 2004 through March 5, 2004
Public Hearing:
March 5, 2004
Adoption:
March 19, 2004
Submitted to Governor:
March 22, 2004
Submitted to House:
March 22, 2004
Submitted to Senate:
March 22, 2004
Gubernatorial Approval:
May 5, 2004
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 13, 2004
Final Adoption:
May 13, 2004
Effective:
July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 18. Transitioning from the Paper-and-Pencil Examination to the Computer-Based Examination [NEW]
10:15-18-1. through 10:15-18-3. [NEW]
Subchapter 27. Fees
10:15-27-1. through 10:15-27-3. [AMENDED]
10:15-27-3.1. [NEW]
10:15-27-4. [AMENDED]
10:15-27-6. [AMENDED]
10:15-27-13. [NEW]
Gubernatorial approval:
September 5, 2003
Register publication:
20 Ok Reg 2979
Docket number:
03-3097
INCORPORATIONS BY REFERENCE:
Incorporated standards:
American Institute of Certified Public Accountants' Code of Professional Conduct American Institute of Certified Public Accountants' Standards for Performing and Reporting on Peer Reviews
Incorporating rules:
10:15-33-3
10:15-39-1
Availability:
8:30 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Accountancy Board; 4545 N. Lincoln, Suite 165, Oklahoma City, OK 73105-3413, (405) 521-2397; Oklahoma Accountancy Board website at www.youroklahoma.com/oab; American Institute of Certified Public Accountants website at www.aicpa.org
ANALYSIS:
Substantive amendments to the definitions add the Standards of the Public Company Accounting Oversight Board to the Generally Accepted Auditing Standards and the Statements of Quality Control Standards to "Other professional standards." Because of the transition from a paper-and-pencil examination to a computer-based examination (CBT),

substantive amendments to examination procedures eliminate the provision that final approval of an application for examination cannot be granted more than ninety days prior to the commencement of the examination applied for and eliminate the requirement for notice of examination to be given by publication ninety days prior to the examination. Substantive amendments to the requirements for filing examination applications eliminate the requirement that applications must be received in the Board office by 5:00 p.m. on the last filing date and provide that postmarks shall be considered when determining the filing date. The requirement for an auditing course is clarified by changing the language to read "auditing or assurance course," and the restriction that the required auditing or assurance course be taken in class is eliminated. A subchapter added in emergency rules to provide rules for transitioning from the paper-and-pencil examination to the CBT is made permanent. Amendments to Oklahoma candidates taking examinations in other states correct language from applicant to candidate and eliminate the restriction against Oklahoma candidates requesting to take the initial paper and pencil CPA examination in another state should the computer-based test fail to launch as planned. Amendments to requirements regarding practice or solicitation of an engagement via electronic means add language that clarifies who must disclose his or her principal jurisdiction of licensure, license number, and address when electronically offering or rendering professional accounting services to Oklahoma clients. Amendments to individual permits eliminate the requirement that any registrant who prepares tax returns for the public, whether or not for compensation, will be considered to be holding out if the return is signed with the CPA or PA designation. This provision is clarified in section 15.1A.27 of the Act and therefore does not need to be a rule. The definition of renewal permit is deleted and moved to the definitions section under General Provisions. The requirement that a registrant who engages in the practice of public accounting only during certain times of the year must maintain a permit for the entire permit period is eliminated. The amendments to fees make permanent emergency rules adopted in September 2003. They increase the examination application fee for the paper-and-pencil examination should this type of examination still be necessary. The examination fee paid to the Board is decreased to $50 but amendments further provide that the candidate will be responsible for the fees required by the American Institute of CPAs (AICPA), the National Association of State Boards of Accountancy (NASBA) and the delivery service provider (Prometric). The examination processing fee is eliminated with the advent of the CBT as is the out of state processing fee. A portal convenience fee for use of on-line services is established. This provision reduces the six and one quarter percent ($6\frac{1}{4}$%) fee in the emergency rules to three and one half percent ($3\frac{1}{2}$%). Substantive amendments to continuing professional education require new CPAs and PAs, individuals applying for an initial interim permit, and individuals applying for a certificate by reciprocity to complete the AICPA ethics examination or its equivalent as a part of their continuing professional education requirement, thus ensuring that individuals entering the profession or the public accounting arena of the profession will be informed of their ethical obligations. Eliminated as redundant is the requirement that registrants reporting publication credit that does not conform to the requirements of the Board be automatically placed in the annual CPE verification. The standards for continuing professional education in subchapter 31 are revoked since the new standards in subchapter 32 are now effective. Amendments to the standards for continuing professional education (CPE) programs are non-substantive as they are concerned only with renumbering existing rules. Amendments to quality/peer review provide rules for the establishment of a peer review program as provided for in section 15.30 of the Act. Amendments to the enforcement procedures provide for an enforcement committee and specify that the chair of the enforcement committee shall be the Board's Vice Chair. Amendments to the Rules of Professional Conduct provide that registrants shall conform to the AICPA Code of Professional Conduct. Sections 3 - 7 and paragraphs (a), (b) and (c) of section 8 are revoked because their contents are addressed in the AICPA Code of Professional Conduct. Additional amendments to the section provide clarifying language regarding d/b/a/ designations.

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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 308.8(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 1. GENERAL PROVISIONS

10:15-1-2. Definitions

In addition to the terms defined in the Oklahoma Accountancy Act, the following words or terms shall be applied when implementing that Act and, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Accountancy Act, Oklahoma Statutes, Title 59, §§ 15.1 through 15.37, dealing with the practice of public accountancy in Oklahoma.

"Accounting information system (AIS)" means a subsystem of the management information system within an organization. The accounting information system collects and records financial and related information used to support management decision making and to meet both internal and external financial reporting requirements. An AIS system includes, but is not limited to, the accounting for transactions cycles such as revenues and receivables, purchases and payables, payroll, inventory, cash receipts and cash disbursements, and related data based systems.

"Advanced" means the learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

"Audit sensitive" means activities of an individual which are normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all inclusive, would normally be considered audit sensitive, even though not positions of significant influence: cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

"Basic" means the learning activity level most beneficial to registrants new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

~~**"CBT"** means computer based testing or computer based CPA/PA examination.~~

"Close relative" means a non-dependent child, stepchild, brother, sister, grandparent, parent, parent-in-law, and their respective spouses of a registrant. Close relatives of the registrant do not include the brothers and sisters of the spouse of the registrant.

"Code" means Title 10 of the Oklahoma Administrative Code.

"Compensation" means the receipt of any remuneration of any kind for public accounting services, including but not limited to salary, wages, bonuses or receipt of any tangible or intangible thing of value.

"Continuing Professional Education" means an integral part of the lifelong learning required to provide competent service to the public. The set of activities that enables registrants to maintain and improve their professional competence.

"CPE" means continuing professional education.

"CPE credit" means fifty minutes of participation in a group, independent study or self-study program. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

"CPE program sponsor" means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term CPE program sponsor may include associations of CPAs or PAs, whether formal or informal, as well as employers who offer in-house programs.

"Domicile" means an individual's place of residence.

"Engagement team" means auditors who are required to exercise significant judgment in the audit process and would include positions where the auditor was the person in charge of the fieldwork up through partner on the engagement.

"Evaluative feedback" means specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

"Examining Authority" means the agency, board or other entity, of the District of Columbia, or any state or territory of the United States, entrusted with the responsibility for the governance, discipline, registration, examination and award of certificates, licenses or conditional credits for certified public accountants or public accountants and the practice of public accountancy in said jurisdictions.

"Firm" means a professional entity which is legally constituted in accordance with Oklahoma statutes to engage in accountancy.

"Generally accepted accounting principles" means the same as "Statement on Auditing Standards No. 69, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles in the Independent Auditor's Report" adopted in 1992, and issued by the American Institute of Certified Public Accountants and subsequent amendments ~~thereto~~.

"Generally accepted auditing standards" means those standards which are used to measure the quality of the performance of auditing procedures and the objectives to be obtained by their use. Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States, Standards of the Public Company Accounting Oversight Board (PCAOB) and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

"Immediate family members" means the registrant's, or his/her spouse's, lineal and collateral heirs.

"Independent study" means an educational process designed to permit a participant to learn a given subject under a learning contract with a CPE program sponsor.

"Instructional methods" means delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

"Intermediate" means learning activity level that builds on a basic program, most appropriate for registrants with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

"Internet-based programs" means a learning activity, through a group program or a self-study program, that is designed to permit a participant to learn the given subject matter via the Internet. To qualify as either a group or self-study program, the Internet learning activity must meet the respective standards.

"Learning activity" means an educational endeavor that maintains or improves professional competence.

"Learning contract" means a written contract signed by an independent study participant and a qualified CPE program sponsor prior to the commencement of the independent study that:

(A) Specifies the nature of the independent study program and the time frame over which it is to be completed, not to exceed 15 weeks.

(B) Specifies that the output must be in the form of a written report that will be reviewed by the CPE program sponsor or a qualified person selected by the CPE program sponsor.

(C) Outlines the maximum CPE credit that will be awarded for the independent study program, but limits credit to actual time spent.

"Learning objectives" means specifications on what participants should accomplish in a learning activity. Learning objectives are useful to program developers in deciding appropriate instructional methods and allocating time to various subjects.

"Learning plans" means structured processes that help registrants guide their professional development. They are dynamic instruments used to evaluate and document learning and professional competence development. This may be reviewed regularly and modified, as registrants' professional competence needs change. Plans include:

(A) A self-assessment of the gap between current and needed knowledge, skills, and abilities;

(B) A set of learning objectives arising from this assessment; and

(C) Learning activities to be undertaken to fulfill the learning plan.

"Licensee" means an individual designated as a CPA, PA, or equivalent designation in another state.

"Management information system (MIS)" means a computer or manual system, or a group of systems, within an organization that is responsible for collecting and processing

data to ensure that all levels of management have the information needed to plan, organize, and control the operations of the organization and to meet both internal and external reporting requirements.

"NASBA" means National Association of State Boards of Accountancy.

"New CPAs and PAs" refers to individuals who are initially certified or licensed in Oklahoma as the result of successfully completing the examination, including those individuals certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction.

"Office" means a building, room, or series of rooms which are owned, leased, or rented by an individual or firm for the purpose of holding out or carrying out the practice of public accounting.

"Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, sole proprietorship, an association, two or more persons having a joint or common interest, an employer of CPAs or PAs, or any other legal or commercial entity.

"Other compensation" means compensation, including remuneration based on a percentage of the amounts involved received by a registrant who is engaged in the practice of public accounting for other than the performance of professional services or for the sale or referral of products or services of third parties.

"Other professional standards" means those standards as defined by Statements on Management Advisory Services, Statements on Responsibilities in Tax Practice, Statements on Standards for Accounting and Review Services and Statements of Quality Control Standards, where applicable, issued by the American Institute of Certified Public Accountants.

"Overview" means learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

"Period of professional engagement" means the period during which professional services are provided, with such period starting when the registrant begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the registrant or by the client.

"Personal development" means a field of study that covers such skills as communications, managing the group process, dealing effectively with others, interviewing, counseling, and career planning.

"Pilot test" means sampling of at least three independent individuals representative of the intended participants to measure the average completion time to determine the recommended CPE credit for self-study programs.

"Principal place of business" means that physical location identified by a licensee to a state's accountancy regulatory agency where substantial administrative or management activities are conducted. For purposes of "Substantial Equivalency" the physical location cannot be in the State of Oklahoma.

"Professional competence" means having requisite knowledge, skills, and abilities to provide quality services as defined by the technical and ethical standards of the profession. The expertise needed to undertake professional responsibilities and to serve the public interest.

"Program of learning" means a collection of learning activities that are designed and intended as continuing education and that comply with these standards.

"Reinforcement feedback" means specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

"Related individual" includes spouses, and dependent persons, whether or not related for all purposes of complying with the Rules of Professional Conduct, provided that the independence of the registrant and the firm of the registrant will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" over the operating, financial, or accounting policies of the client. In the event such employment is in a position in which the activities of the related individual are audit-sensitive, even though not a position of significant influence, the registrant should not participate in the engagement.

"Renewal permit" refers to a permit applied for prior to the expiration of the current permit.

"Self-study program" means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs use a pilot test to measure the average completion time from which the recommended CPE credit is determined.

"Sole Proprietorship" means an unincorporated business enterprise which is owned entirely by one (1) certificate or license holder.

"State" means the District of Columbia, any state, or territory of the United States.

"Update" means learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

SUBCHAPTER 5. EXAMINATION PROCEDURES

10:15-5-1. Eligibility to take examination

(a) An applicant shall comply with the requirements of Sections 15.8 and 15.9 of the Oklahoma Accountancy Act in order to be eligible to take the examination and to receive a certificate or license.

(b) Written notice of eligibility to take an examination shall be given to a~~n applicant~~ candidate at least thirty (30) calendar days prior to the commencement of the examination.

~~(c) Final approval of an application for the examination shall not be granted more than ninety (90) days prior to the commencement of the examination applied for. Tentative approval may be communicated earlier to the applicant, but final approval shall be based only on updated application information and confirmation of eligibility which the Board shall require from the applicant.~~

10:15-5-3. Notice of examinations [REVOKED]

~~Notice of each examination shall be given by publication at least ninety (90) calendar days prior to the examination date. Such notices shall be sent to all daily and weekly newspapers listed in the Oklahoma Media Guide, published by the Oklahoma Press Association, on the date the notice is to be sent.~~

10:15-5-4. Restrictions

Failure of a candidate to furnish all information requested by the Board within the time frame set by the Board ~~prior to commencement of the examination~~ shall be grounds for denying such candidate admission to the examination.

SUBCHAPTER 7. APPLICATION TO TAKE AN EXAMINATION

10:15-7-1. Requirements for filing applications

(a) Any individual seeking to take an examination to receive a certificate or license shall file an application to take the appropriate examination on such form as prescribed and furnished by the Board.

~~(b) Applications must be received in the Board office no later than 5:00 P.M. on the last day for filing.~~

(~~c~~ b) The last day for filing an application shall be no later than sixty (60) calendar days, as evidenced by a postmark, prior to the first day on which the examination applied for is to commence. When the 60th day falls on a Saturday, Sunday, or state holiday the date announced by the Board will be extended to include the next state working day.

10:15-7-2. Educational requirements

(a) An applicant shall show to the satisfaction of the Board that the applicant has graduated from an accredited four-year college or university listed in the "Education Directory Colleges and Universities" as published by the Superintendent of Documents, Washington, D.C.

(1) As to an applicant whose college credits are reflected in quarter hours, each quarter hour of credit shall be considered as two-thirds (2/3) of one (1) semester hour when determining semester hour credits necessary to qualify for examination or transfer of credits.

(2) When determining eligibility based on educational qualifications the Board shall consider only educational credit reflected on official transcripts.

(3) The specific requirement that each applicant shall have completed at least one (1) course in auditing may only be satisfied with an auditing or assurance course taken ~~in class~~ for credit from an accredited two-year or four-year college or university listed in the "Education Directory Colleges and Universities" as published by the Superintendent of Documents, Washington, D.C.

(b) When determining eligibility of an applicant for examination the Board shall not consider any combination of education and experience.

(c) The Board will also consider an applicant who has graduated from a college or university located outside the United States if an educational evaluation performed by the Foreign Academics Credentialing Service (FACS) or another credentialing agency which is a member of the National Association of Credential Evaluation Services, Inc. certifies in writing that the applicant's course of study and degree are equivalent to the requirements set forth in Section 15.8 of the Act.

(d) On and after July 1, 2003, one hundred fifty (150) semester hours or its equivalent of collegiate education is required to qualify for any examination as set forth in Section 15.8.D. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in Code 10:15-1-2, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession. However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.~~d.~~ D.

(e) Any candidate who has qualified to take the examination on the basis of education prior to July 1, 2003, as provided in Sections 15.8.B and C, is not subject to subparagraph (d) of this subsection.

SUBCHAPTER 13. CONDITIONAL CREDIT ON EXAMINATION

10:15-13-1. Conditional credit for candidates for certificates

(a) A candidate for a certificate shall be entitled to conditional credit upon receiving a passing grade of seventy-five (75) in two (2) or more of the required subjects on a single examination, provided the candidate complies with the provisions of Code 10:15-9-2(a).

(b) After the first conditional credit is earned, conditional credit will be given for the successful completion of the examination in a single additional subject, provided the candidate took all subjects for which the candidate does not hold valid conditional credit.

(c) All conditional credit shall lapse if the candidate:

(1) does not take at least one (1) out of three (3) consecutive examinations given by the Board; or

(2) does not pass all remaining subjects within the next six (6) examinations given by the Board following the examination at which the conditional credit was first earned.

(d) Effective with the November 1999 examination, a candidate shall be entitled to conditional credit upon receiving a passing grade of seventy-five (75) in two (2) or more of the required subjects on a single examination, provided:

(1) the candidate takes all subjects for which the candidate does not hold conditional credit; and

(2) the candidate attained a minimum grade of 50 in each subject examined at the same examination.

(e) Effective with the November 1999 examination, after the first conditional credit is earned, conditional credit will be given for the successful completion of the examination in a single additional subject.

(f) Effective with the November 1999 examination, all conditional credit shall lapse if the candidate:

(1) does not take at least one (1) out of three (3) consecutive examinations given by the Board; or

(2) does not pass all remaining subjects within the next six (6) examinations given by the Board following the examination at which the conditional credit was first earned.

(g) Upon submission of an application to take an examination for a license, and upon successful completion of the examination for the license, a~~n applicant~~ candidate may not request that those conditional credits be applied toward the subjects necessary to obtain a certificate.

SUBCHAPTER 18. TRANSITIONING FROM THE PAPER-AND-PENCIL EXAMINATION TO THE COMPUTER-BASED EXAMINATION

10:15-18-1. Applications for examination

Notwithstanding any contrary provisions in this Code, upon the implementation of a computer-based examination:

(1) An initial application will not be considered filed until the application and all required examination fees and supporting documents, including photographs and official transcripts as proof that the applicant has satisfied the education requirement, are received by the Board.

(2) A re-examination application will not be considered filed until the application fee, examination fee and photograph are received by the Board.

10:15-18-2. Time and place of examination

Upon the implementation of a computer-based examination, eligible candidates shall be notified of the Notice to Schedule (NTS) as issued by National Association of State Boards of Accountancy (NASBA). The candidate shall independently contact the test center operator to schedule the time and place for the examination at an approved test site within a six month period from the date the NTS is issued.

10:15-18-3. Retake and granting of credit requirements

Notwithstanding any contrary provisions in this Code, upon the implementation of a computer-based examination:

(1) A grade of seventy-five (75) in each required subject area shall be the minimum passing grade for purposes of granting credit.

(2) A candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for eighteen months from the actual date the candidate took that test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections.

(A) A CPA candidate must pass all four test sections of the Uniform CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken.

(B) A PA candidate must pass the three applicable sections of the examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken.

(C) A candidate cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month period in which a candidate has an opportunity to take the CPA/PA examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, a candidate will be able to test two out of the three months within an examination window.

(D) In the event all four test sections of the Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.

(E) In the event all three test sections of the PA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.

(3) A candidate having earned conditional credits on the paper-and-pencil examination, as of the launch date of the computer-based Uniform CPA Examination, will retain conditional credits for the corresponding test sections of the computer-based CPA examination as follows:

(A) A candidate having earned conditional credits on the paper-and-pencil examination in Auditing will retain conditional credits in Auditing and Attestation on the computer-based examination.

(B) A candidate having earned conditional credits on the paper-and-pencil examination in Financial Accounting and Reporting (FARE) will retain conditional credits in Financial Accounting and Reporting on the computer-based examination.

(C) A candidate having earned conditional credits on the paper-and-pencil examination in Accounting and Reporting (ARE) will retain conditional credits in Regulation on the computer-based examination.

(D) A candidate having earned conditional credits on the paper-and-pencil examination in Business Law and Professional Responsibilities (LPR) will retain conditional credits in Business Environment and Concepts on the computer-based examination.

(4) A candidate who has attained conditional status as of the launch date of the computer-based Uniform CPA Examination will be allowed a transition period to complete any remaining test sections of the CPA/PA examination. The transition is the maximum number of opportunities that a candidate who has conditioned under the paper-and-pencil examination has remaining, at the launch of the computer-based examination, to complete all remaining test sections or the number of remaining opportunities under the paper-and-pencil examination, multiplied by six months, whichever is first exhausted.

(5) If a previously conditioned candidate does not pass all remaining test sections during the transition period,

conditional credits earned under the paper-and-pencil examination will expire and the candidate will lose credit for the test sections earned under the paper-and-pencil examination. However, any test section(s) passed during the transition period is subject to the conditioning provisions of the computer-based examination as indicated in the aforementioned conditioning recommendation, except that a previously conditioned candidate will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen months may have elapsed from the date the test section is passed, until the end of the transition period.

(6) A candidate shall retain credit for any and all test sections of an examination passed in another state if such credit would have been given, under applicable requirements, as if the candidate had taken the examination in Oklahoma.

(7) A candidate shall be deemed to have passed the CPA examination once the candidate holds at the same time valid credit for passing each of the four test sections of the examination within the rolling eighteen month period. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

(8) A candidate shall be deemed to have passed the PA examination once the candidate holds at the same time valid credit for passing each of the three test sections of the examination within the rolling eighteen month period. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

SUBCHAPTER 19. PROCTORING OF CANDIDATES TAKING EXAMINATIONS

10:15-19-4. Oklahoma candidates taking examination in other states

~~(a) Applicants, for a certificate or license, from Oklahoma may not request to take the initial examination in another state.~~

(~~b~~a) An ~~applicant~~ candidate for ~~re~~examination may request ~~the Board to authorize the candidate~~ to take an examination in another state only if such candidate provides evidence acceptable to the Board of:

(1) the candidate or the spouse of the candidate is attending school in another state, district or territory of the United States;

(2) the candidate is on a temporary job assignment incident to the regular, full time employment of the candidate within this state; or

(3) the candidate, or the spouse of the candidate, is on active military duty stationed outside this state and such candidate or spouse maintains Oklahoma as his or her domicile or military home of record.

(~~c~~b) If eligible, the Board shall issue its request in writing to the other examining authority for a~~n applicant~~ candidate.

(~~d~~c) A candidate applying to take the examination in another state shall file the application with the Oklahoma Accountancy Board to take the examination and the request to take the examination in another state on or before the final application filing date. In addition to complying with the Oklahoma Accountancy Act and the rules implementing that Act, the candidate shall comply with all state laws and rules of the jurisdiction where the candidate will be taking the examination. If for any reason satisfactory arrangements for taking the examination in another state cannot be made the candidate shall be permitted to take the examination at one of the Oklahoma sites.

(~~e~~d) ~~Applicants~~ Candidates shall be solely responsible for any fees required to be paid to the other examining authority to provide proctoring.

SUBCHAPTER 20. INTERNET PRACTICE REQUIREMENTS

10:15-20-1. Requirements regarding practice or solicitation of an engagement via electronic means

(a) An individual offering or rendering professional accounting services to Oklahoma clients from a Website or any electronic means shall disclose, via any such Website or any electronic means, the individual's principal jurisdiction of licensure, license number and an address as a means for regulators and the public to contact the individual regarding complaints, questions or regulatory compliance.

(b) A firm offering or rendering professional accounting services to Oklahoma clients from a Website or any electronic means shall provide on the Website's homepage or electronic medium, a name, an address, and the principal jurisdiction of licensure as a means for regulators and the public to contact a responsible licensee in charge at the firm regarding complaints, questions, or regulatory compliance.

SUBCHAPTER 25. PERMITS

10:15-25-3. Individual permit

(a) An individual permit shall have a maximum term of one (1) year and shall expire on June 30 following the date of issuance.

(b) Any registrant who performs any of the services described in Section 15.1A(27) of the Oklahoma Accountancy Act, regardless of whether such services are rendered for compensation, must have a permit if the registrant is holding out as a CPA or PA in any manner as described in the Act. However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. In order to obtain a

permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirement unless the registrant is exempt from CPE compliance as provided in Code 10:15-29-3 or 10:15-29-10.

~~(c) Any registrant who prepares tax returns for the public, whether or not such returns are prepared for compensation, will be considered to be holding out if the return is signed with the CPA or PA designation or if such designation is used in any manner associated with the tax practice.~~

(~~d~~c) Any certified or licensed person employed by a firm located outside this state shall be required to hold a valid permit or to notify the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision in order to serve clients in this State unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.

~~(e) Renewal permit, for purposes of this Subchapter, refers to a permit applied for prior to the expiration of the current permit.~~

(~~f~~d) The application for renewal of a permit shall be filed with the Board on a form prescribed by the Board prior to the expiration of the permit currently held and no later than June 30.

(~~g~~e) At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.

(~~h~~f) An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.

~~(i) A registrant who engages in the practice of public accounting only during certain times of the year shall maintain a valid permit for an entire permit period.~~

(~~j~~g) The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27.

SUBCHAPTER 27. FEES

10:15-27-1. Initial application to take CPA examination

Each application submitted for the first time to take the paper and pencil examination to obtain a certificate shall be accompanied by a fee of ~~One Hundred Twenty Dollars ($120.00).~~ Three Hundred Dollars ($300.00). Upon implementation of a computer-based examination, this section shall no longer be applicable.

10:15-27-2. Initial application to take PA examination

Each application submitted for the first time to take the paper and pencil examination to obtain a license shall be accompanied by a fee of ~~Ninety Dollars ($90.00).~~ Two Hundred Twenty Five Dollars ($225.00). Upon implementation of a computer-based examination, this section shall no longer be applicable.

10:15-27-3. Reexamination

(a) Each application for reexamination for a certificate by paper and pencil examination shall be accompanied by a fee of ~~Thirty Dollars ($30.00)~~ Seventy Five Dollars ($75.00) for each subject in which the ~~applicant~~ candidate is to be reexamined. Upon implementation of a computer-based examination, this section shall no longer be applicable.

(b) Each application for reexamination for a license by paper and pencil examination shall be accompanied by a fee of ~~Thirty Dollars ($30.00)~~ Seventy Five Dollars ($75.00) for each subject in which the ~~applicant~~ candidate is to be reexamined. Upon implementation of a computer-based examination, this section shall no longer be applicable.

10:15-27-3.1. Computer based test fee

Upon implementation of a computer-based examination, fees as provided in 10:15-27-1 through 10:15-27-3 shall no longer be applicable and the candidate shall, for each application filed with the Board, pay a Fifty-Dollar ($50.00) Board examination fee and shall be responsible for all fees charged by the American Institute of Certified Public Accountants, National Association of State Boards of Accountancy (NASBA), and test delivery service provider which are payable to NASBA prior to scheduling the examination.

10:15-27-4. Examination processing fee

If for any reason a candidate fails to take an examination for which that candidate has been approved, a processing fee of Fifty Dollars ($50.00) shall be required with the next application to take an examination. Upon implementation of the computer-based examination, this section shall no longer be applicable.

10:15-27-6. Out of state candidates

The Board shall charge each candidate to be proctored a nonrefundable processing fee of One Hundred Dollars ($100.00) per examination. Upon implementation of the computer-based examination, this section shall no longer be applicable.

10:15-27-13. Portal convenience fees

There shall be a portal convenience fee charge of three and one half percent (3.5%) of the total remittance for use of on-line services.

SUBCHAPTER 29. CONTINUING PROFESSIONAL EDUCATION

10:15-29-1.1. Burden of proof

The burden of proof rests solely upon the registrant to demonstrate to the satisfaction of the Board, in accordance

with the Oklahoma Accountancy Act, that all continuing education courses reported meet all of the requirements as to content and subject matter related to the profession and enhances the ~~applicant's~~ registrant's ability to provide services in the practice of public accounting, or in the industry of the permit holder or ~~applicant's~~ registrant's employer.

10:15-29-3. CPE compliance period for new CPAs and PAs

(a) When a new CPA or PA becomes certified or licensed as a result of successfully completing the examination, including those individuals who are certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction, the new CPA or PA shall be exempt from reporting CPE for the initial permit to practice public accounting.

(b) A new CPA or PA shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement.

(~~b~~c) For the first renewal after the initial permit to practice public accounting has been issued to a new CPA or PA, in order to renew the permit, the new CPA or PA shall be required to report:

(1) Forty (40) hours of acceptable CPE, including two (2) hours of professional ethics, must be reported if the certification or licensure was issued during the months of July, August or September;

(2) Thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, must be reported if the certification or licensure was issued during the months of October, November or December;

(3) Twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics must be reported if the certification or licensure was issued during the months of January, February or March; or

(4) Ten (10) hours of acceptable CPE, including two (2) hours of professional ethics must be reported if the certification or licensure was issued during the months of April, May or June.

10:15-29-4. Required CPE for issuance of a permit

(a) An individual who applies for a permit to practice public accounting shall comply with the CPE requirements prior to filing the application for a permit.

(b) An individual who applies to renew a permit, other than a new CPA, new PA, or reciprocal applicant shall document that the applicant has:

(1) completed a minimum of forty (40) hours of qualifying CPE within the calendar year immediately preceding the filing of the application for the permit; or

(2) completed a minimum of forty (40) hours of qualified CPE within the three hundred sixty-five (365) day period immediately preceding the date of the application for the permit.

(c) An individual who applies for an initial interim permit shall document that the individual has completed within the previous calendar year or within the 365 days immediately preceding the date of application, CPE prorated according to the following schedule:

(1) If permit is applied for any time in July, August, or September, forty (40) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(2) If permit is applied for any time in October, November, or December, thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(3) If permit is applied for any time in January, February, or March, twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, are required; or

(4) If permit is applied for any time in April, May or June, ten (10) hours of acceptable CPE, including two (2) hours of professional ethics, are required.

(5) An individual applying for an initial interim permit shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement.

(d) Unless exempted by 10:15-29-10, every permit holder shall complete at least two (2) hours of professional ethics CPE as a part of the qualifying CPE requirement.

(e) An individual other than a new CPA or PA who applies for a permit after the permit has been suspended or revoked, or has lapsed~~,~~ shall have completed forty (40) hours of qualifying CPE within the three hundred sixty-five (365) day period immediately preceding the date of the application for a permit.

(f) Regardless of the time frame in which CPE credit is earned, once credit has been claimed to the Board toward the issuance of a permit to practice, such credit may not be claimed again.

(g) Qualified CPE credit hours from any one course may not be split in any manner between two consecutive compliance periods. Multiple CPE courses taken on the same day may be claimed between two consecutive compliance periods, but only if the sponsor of each separate CPE course issues a separate letter or certification attesting to the completion of each individual course.

10:15-29-5. Reciprocity

(a) An individual who applies for a certificate or license by reciprocity shall comply with the CPE requirements provided for in the Oklahoma Accountancy Act and the rules implementing that Act, except that an applicant who is not practicing public accounting shall not be required to report CPE in conjunction with the application for reciprocity.

(b) An individual who applies for an initial permit shall document that the applicant has completed within the previous calendar year or within the 365 days immediately preceding the date of application, CPE prorated according to the following schedule:

(1) If permit is applied for any time in July, August, or September, forty (40) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(2) If permit is applied for any time in October, November, or December, thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, are required;

(3) If permit is applied for any time in January, February, or March, twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, are required; or

(4) If permit is applied for any time in April, May or June, ten (10) hours of acceptable CPE, including two (2) hours of professional ethics, are required.

(5) An individual applying for a certificate by reciprocity shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement.

10:15-29-8. Verification

(a) The Board may periodically conduct verification of the CPE credit reported by registrants.

(b) Such verification shall be conducted by requesting the registrant to submit to the Board the documentation and evidence required to be retained by the registrant.

(c) The Board may revoke permits or deny applications for permits for deficiencies in the documentation submitted or for failure to submit the documentation and evidence required to be retained.

(d) If a CPE course is not accepted for credit, the permit holder will be notified and the Board may grant a period of time for the permit holder to correct the deficiency.

(e) In order to determine compliance with the CPE standards, the Board may inspect the records of CPE program sponsors and CPE program developers.

(f) Registrants shall automatically be included in the subsequent verification of CPE in any of the following instances:

(1) If the registrant failed to satisfactorily comply with CPE requirements as determined by the Board;

(2) If the registrant holding a permit has been the subject of an enforcement action by the Board during the preceding credit verification; or

(3) ~~If publication credit claimed does not conform to the requirements of the Board as set forth in Code 10:15-31-4(i)[1].~~

SUBCHAPTER 31. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION [REVOKED]

10:15-31-1. General standards for structured CPE [REVOKED]

~~The following standards are in effect through December 31, 2003:~~

~~(1) The subject matter, content, presentation, measurement, and reporting of CPE courses must meet the standards set forth by rule to qualify for credit pursuant to the provisions of the Oklahoma Accountancy Act.~~

~~(2) Permit holders shall participate in structured programs of learning that maintain or increase their professional competence and ability to deliver public accounting services.~~

~~(A) While permit holders participate in a wide variety of learning activities, CPE credit is allowed only for structured programs of learning.~~

~~(B) An individual performing services of a professional nature needs to have a broad range of knowledge, skills, and abilities that enhance a registrant's ability to serve and deliver public accounting services to clients. The Board shall interpret the concept of professional competence broadly. Programs contributing to the development and maintenance of nontechnical professional skills that relate to the practice of public accounting shall also be recognized as acceptable CPE.~~

~~(3) It is the responsibility of each permit holder to comply with all applicable CPE requirements. A permit holder may also have to meet CPE requirements of other jurisdictions, in order to engage in the practice of public accounting for Oklahoma clients.~~

~~(4) CPE program sponsors have a responsibility to comply with standards established by the Board.~~

10:15-31-2. Standards for structured CPE program development [REVOKED]

~~The following standards are in effect through December 31, 2003:~~

~~(1) Sound administration, adequate resources, competent supervision, and an effective and supportive organizational structure are necessary elements in the design, development, implementation, and monitoring of CPE programs. For each CPE program sponsor, there shall be an identifiable administrator charged with demonstrating compliance with these standards.~~

~~(2) CPE program developers shall state learning objectives and specify the level of knowledge of the program.~~

~~(3) Learning objectives shall specify what participants will be able to perform upon completing the program. A program may have more than one (1) objective, but each objective shall be written to be consistent with the specified level of knowledge of the program. Levels of knowledge shall be described as "basic", "intermediate", "advanced", or "update".~~

~~(4) CPE program developers shall state the prerequisites for education, experience, or both for all programs. All programs shall clearly identify prerequisites, if any. Prerequisites shall be written in precise language so that potential participants can readily ascertain whether they qualify for the program and whether the specified level of knowledge of the program is appropriate for them.~~

~~(5) CPE program developers shall be qualified in the subject matter and knowledgeable in instructional design. Qualification in subject matter and knowledge of instructional design may be obtained through appropriate practical experience, education or both. The level of technical competence and instructional design skills that the CPE program developer shall possess may vary depending on certain characteristics of the program, such as the number of times it will be presented, the length of the program, the~~

~~complexity of the subject matter, and the number of participants.~~

~~(6) CPE program materials shall be reviewed to the extent necessary by a qualified individual other than the developer before the materials are used in order to assure the technical accuracy, current nature, and the sufficiency of the program to achieve the stated learning objectives.~~

~~(A) In order to meet this standard, the program materials must be prepared in advance of the presentation. The nature and extent of review may vary depending on the characteristics of the programs.~~

~~(B) If a review is considered appropriate, the level of technical competence and instructional design knowledge of a reviewer shall be at least equal to those of the CPE program developer.~~

10:15-31-3. Standards for structured CPE program presentation [REVOKED]

~~The following standards are in effect through December 31, 2003:~~

~~(1) CPE program sponsors shall inform participants before they enroll of learning objectives, prerequisites, level of knowledge of the program, program content, nature and extent of advance preparation, teaching methods to be used, recommended CPE credit, and relevant administrative policies.~~

~~(A) In order for potential participants to effectively plan their CPE, the significant features of the CPE program should be disclosed in advance in brochures or other promotional material.~~

~~(B) When CPE programs are offered in conjunction with noneducational activities or when several CPE programs are offered concurrently, an appropriate schedule of events indicating those components that are recommended for CPE credit shall be made available to participants. The CPE program registration policies of the sponsor and procedures should be formalized, published, and made available to participants.~~

~~(2) CPE program sponsors should encourage participation only by individuals with appropriate education, experience, or both. Compliance with this standard may include:~~

~~(A) Allowing enrollment only by eligible participants;~~

~~(B) Making timely distribution of materials; and~~

~~(C) Requiring completion of advance preparation materials by participants.~~

~~(3) CPE program sponsors shall select instructors qualified with respect to both program content and teaching methods used.~~

~~(A) Qualified instructors are those who are capable, through background, training, education, or experience, of communicating effectively and providing an environment conducive to learning.~~

~~(B) Instructors should be competent in the subject matter, skilled in the use of the appropriate teaching methods, and prepared in advance.~~

~~(C) Instructors are responsible for informing participants of any changes necessary to make the program current.~~

~~(4) CPE program sponsors shall evaluate the performance of each instructor at the conclusion of each program to determine their suitability to continue to serve as instructors.~~

~~(5) CPE program sponsors shall ensure that the number of participants and physical facilities are appropriate for the teaching methods specified by the CPE program developer.~~

~~(6) The number of participants, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and shall be carefully controlled by the program sponsor.~~

~~(7) CPE program sponsors shall provide effective means for evaluating the quality of the program. The objective of evaluations is to increase program effectiveness. Evaluations shall be solicited from both participants and instructors. Evaluations may include questionnaires completed after a program, verbal comment and evaluation from participants, or tests for the effectiveness of a program. At a minimum, CPE programs shall be evaluated to determine whether:~~

~~(A) Learning objectives have been met;~~

~~(B) Prerequisites were necessary or desirable;~~

~~(C) Program materials contributed to the achievement of the learning objectives; and~~

~~(D) The program content was timely and relevant.~~

~~(8) For group programs, programs shall be evaluated to determine whether~~

~~(A) The knowledge and presentation skills of the instructor were effective; and~~

~~(B) Facilities where the program was conducted were satisfactory.~~

~~(9) CPE program sponsors shall periodically review the evaluation process to ensure its effectiveness.~~

10:15-31-4. Standards for structured CPE program measurement [REVOKED]

~~The following standards are in effect through December 31, 2003:~~

~~(1) CPE credit shall be recommended only for structured programs of learning that maintain or increase the professional competence of the individuals attending the programs.~~

~~(2) Continuing professional education credit is granted only for structured programs. A structured program of learning is a process that is designed and intended primarily as an educational activity and that complies with the standards set forth by the Board.~~

~~(3) All programs shall be measured in contact hours. The shortest program for CPE credit purposes shall consist of one (1) contact hour.~~

~~(A) A contact hour is fifty (50) minutes of participation in a group program.~~

~~(B) Credit is granted only for full contact hours.~~

~~(C) For programs in which individual segments are less than fifty (50) minutes, the sum of the segments shall be considered one (1) total program.~~

~~(4) CPE program sponsors must monitor organized group programs in order to accurately record the appropriate number of contact hours for participants.~~

~~(5) Structured individual study programs shall be pretested by the developer to determine average completion time.~~

~~(A) Interactive individual study programs shall receive CPE credit equal to the average completion time.~~

~~(B) An interactive individual study program is one which simulates a classroom learning process by providing ongoing responses and evaluation to the learner regarding his or her learning progress. These programs guide the learner through the learning process by:~~

~~(i) Requiring frequent student response to questions that test for understanding of the material presented;~~

~~(ii) Providing evaluative responses and comments to incorrectly answered questions; and~~

~~(iii) Providing reinforcement responses and comments to correctly answered questions.~~

~~(C) Ongoing responses, comments, and evaluations communicate the appropriateness of a learner's response to a prompt or question. Such responses, comments, and evaluations must be frequent and provide guidance or direction for continued learning throughout the program by clarifying or explaining assessment of inappropriate responses, providing reinforcement for appropriate responses, and directing the learner to move ahead or review relevant material. It is the response of the learner that primarily guides the learning process in an interactive individual study program. Not all technology based individual study programs constitute interactive programs. Technology based individual study programs must meet the criteria set forth in the definition of interactive individual study programs, as must other individual study programs developed using different modes of delivery.~~

~~(D) Non interactive individual study programs shall receive CPE credit equal to one-half (1/2) of the average completion time. For example, a non interactive individual study program that takes an average of eight hundred (800) minutes to complete should be recommended for eight (8) contact hours of CPE credit.~~

~~(6) CPE program developers shall keep appropriate records of how the average completion time of individual study programs was determined.~~

~~(7) For university or college courses which are successfully completed for credit, each unit of credit shall equal the following CPE contact hours:~~

~~(A) One (1) semester system hour equals fifteen (15) hours of CPE credit; and~~

~~(B) One (1) quarter system hour equals ten (10) hours of CPE credit.~~

~~(8) Seminar instructors or discussion leaders shall receive CPE credit for their preparation and presentation time if the seminar programs increase their professional competence and if the programs qualify for CPE credit for participants.~~

~~(A) Credit for seminar instructors or discussion leaders shall be measured in contact hours.~~

~~(B) Seminar instructors and discussion leaders shall receive CPE credit for both preparation and presentation. The first time a seminar instructor or discussion leader presents a program, credit for actual preparation hours up to two (2) times the number of presentation hours shall be allowed.~~

~~(C) For repeat presentations, instructors shall receive no credit unless it can be demonstrated that the program content involved was changed and such change required additional study or research.~~

~~(D) The maximum credit for preparation and presentation shall not exceed fifty percent (50%) of the total CPE credit required in a reporting period.~~

~~(9) Registrants who write articles, books, or CPE programs which are published shall receive CPE credit for their research and writing time only for those articles, books, or CPE programs which enhance the ability of a registrant to practice public accounting and which require research and study in excess of the previous knowledge base of the writer.~~

~~(A) Such credit shall be measured in contact hours.~~

~~(B) Writing articles, books, or CPE programs for publication is an activity that involves a formal process of learning. For the registrant to receive CPE credit, the article, book, or CPE program must be published by a publisher not subject to the control of the writer. A nonreturnable copy of the published article, book, or CPE program must be submitted to the Board for determination of credits to be allowed.~~

~~(C) CPE credit from this activity shall be limited to twenty-five percent (25%) of the CPE credit required in a compliance period and will be determined by the Board on a case by case basis.~~

~~(10) The entire continuing education requirement may be accomplished by programs designated as "individual study" programs.~~

10:15-31-5. Standards for structured CPE program reporting by participant [REVOKED]

~~The following standards are in effect through December 31, 2003:~~

~~(1) Participants in structured CPE programs of learning shall maintain documentation of their participation. Such documents shall include, but not be limited to:~~

~~(A) Name of participant;~~

~~(B) Program sponsor;~~

~~(C) Program title or description of content;~~

~~(D) Date completed; and~~

~~(E) Contact hours of credit recommended by the course sponsor.~~

~~(2) Participants in structured CPE programs shall retain the documentation of their participation in CPE programs for a period of five (5) years after the end of the compliance period in which the program is completed. Participants in structured CPE programs shall also retain a brochure and other promotional material which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.~~

~~(3) Acceptable evidence of completion includes, but is not limited to the following:~~

~~(A) For group programs, a certificate or other verification supplied by the sponsor and signed by the sponsor's agent.~~

~~(B) For individual study programs, a certificate supplied by the sponsor after satisfactory completion of a workbook or examination.~~

~~(C) For a university or college course that is successfully completed for credit, an official transcript reflecting the grade earned.~~

~~(D) For instruction credit, evidence obtained from the sponsor of having been the seminar instructor or discussion leader at a program.~~

~~(E) For published articles, books, or CPE programs, evidence of publication.~~

~~(4) Sponsors shall furnish a record of attendance to participants which shall reflect each of the elements listed in 10:15-31-5(1).~~

10:15-31-6. Documentation and record-keeping standards for CPE sponsors [REVOKED]

~~The following standards are in effect through December 31, 2003:~~

~~(1) In order to support the information which may be required of a participant in their courses, a CPE program sponsor of group or individual study programs shall maintain records of programs sponsored which shall include, but not be limited to the following:~~

~~(A) Documentation that the programs were developed and presented in compliance with the standards established by rule;~~

~~(B) Date of each program presentation;~~

~~(C) Location where course was presented;~~

~~(D) Name and qualifications of each seminar instructor, discussion leader, and speaker conducting a program for the sponsor;~~

~~(E) Outline of the course or documentation which is the equivalent of an outline;~~

~~(F) Accurate attendance records;~~

~~(G) Number of CPE contact hours recommended for each course; and~~

~~(H) A summary of the program evaluations by the participants.~~

~~(2) If a CPE program is not developed by the CPE program sponsor, the sponsor shall be responsible for ensuring that the CPE program has been developed in compliance with all applicable standards.~~

~~(3) Each CPE program sponsor shall maintain documentation as to the procedures followed to assure compliance with all applicable standards.~~

~~(4) The CPE program sponsor shall maintain records and information required by (1) and (2) of this Section for a period of five (5) years after the end of the compliance period in which the CPE course was completed.~~

~~(5) Failure of a CPE program sponsor to comply with the CPE standards may be cause for a hearing before the Board to determine whether the Board will accept credit for courses offered by the CPE sponsor until such time as the CPE sponsor can demonstrate to the Board that the compliance standards are being met.~~

SUBCHAPTER 32. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

10:15-32-1. Standards for permit holders

~~The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter:~~

(~~1~~a) All permit holders should participate in learning activities that maintain and/or improve their professional competence.

(~~A~~1) Selection of learning activities should be a thoughtful, reflective process addressing the individual registrant's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(~~B~~2) Registrants' fields of employment do not limit the need for CPE. Those performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(~~C~~3) Acceptable subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the registrant's professional competence.

(~~D~~4) To help guide their professional development, registrants may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development. It should be reviewed periodically and modified as professional competence needs change.

(~~2~~b) Permit holders should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with

the Standards for CPE Program Presentation and Standards for CPE Program Reporting.

(~~A~~1) Permit holders are responsible for compliance with all applicable CPE requirements, rules, and regulations of state licensing bodies, other governmental entities, membership associations, and other professional organizations or bodies. They should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(~~B~~2) Periodically, registrants participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If registrants propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to state licensing bodies and/or all other professional organizations or bodies that the learning activity is equivalent to one which meets all these Standards.

(~~3~~c) Registrants are responsible for accurate reporting of the appropriate number of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including:

(~~A~~1) name and contact information of CPE program sponsor;

(~~B~~2) title and description of content;

(~~C~~3) date(s) of program; and

(~~D~~4) number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(~~4~~d) To protect the public interest, regulators require CPAs and PAs to document maintenance and enhancement of professional competence through periodic reporting of CPE. For convenience, measurement is expressed in CPE credits. However, the objective of CPE must always be maintenance/enhancement of professional competence, not attainment of credits. Compliance with regulatory and other requirements mandates that registrants keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements, a reasonable policy is to retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(~~5~~e) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(~~A~~1) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;

(~~B~~2) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;

(~~C~~3) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;

(~~D~~4) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;

(~~E~~5) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and

(~~F~~6) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer on a form prescribed by the Board supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(~~6~~f) Individuals who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(~~7~~g) Registrants may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(~~8~~h) Registrants may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(~~9~~i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(~~A~~1) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(~~B~~2) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(~~i~~A) All the requirements of the independent study as outlined in the learning contract are met;

(~~ii~~B) The CPE program sponsor reviews and signs the participant's report;

(~~iii~~C) The CPE program sponsor reports to the participant the actual credits earned; and

(~~iv~~D) The CPE program sponsor provides the participant with contact information.

(~~C~~3) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(~~D~~4) Complete the program of independent study in 15 weeks or less.

(~~10~~j) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

10:15-32-2. Standards for CPE Program Sponsors

~~The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.~~

(~~1~~a) CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(~~2~~b) CPE program sponsors may have to meet specific CPE requirements of state licensing bodies, other governmental entities, membership associations, and/or other professional organizations or bodies. Professional guidance for CPE program sponsors is available from the AICPA and NASBA; state-specific guidance is available from the state boards of accountancy. CPE program sponsors should contact the appropriate entity to determine requirements.

10:15-32-3. Standards for CPE Program Development

~~The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.~~

(~~1~~a) Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities. Learning activities provided by CPE program sponsors for the benefit of CPAs should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Levels include, for example, basic, intermediate, advanced, update, and overview.

(~~2~~b) CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants. To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(~~3~~c) CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed. CPE program sponsors must be qualified in the subject matter.

(~~A~~1) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated timely. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(~~B~~2) CPE program sponsors must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(~~4~~d) CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to assure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs. Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(~~5~~e) CPE program sponsors of independent study learning activities must be qualified in the subject matter. A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(~~A~~1) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(~~B~~2) Review and sign the written report developed by the participant in independent study.

(~~C~~3) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(~~6~~f) Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(~~A~~1) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course. Examinations may contain questions of varying format, (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(~~B~~2) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

10:15-32-4. Standards for CPE Program Presentation

~~The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.~~

(~~1~~a) CPE program sponsors must provide descriptive materials that enable registrants to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of learning objectives,

prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements.

(~~A~~1) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(~~B~~2) CPE program sponsors should distribute program materials timely and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(~~2~~b) CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(~~A~~1) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance.

(~~B~~2) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(~~3~~c) CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(~~A~~1) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(~~i~~A) Stated learning objectives were met;

(~~ii~~B) If applicable, prerequisite requirements were appropriate;

(~~iii~~C) Program materials were accurate;

(~~iv~~D) Program materials were relevant and contributed to the achievement of the learning objectives;

(~~v~~E) Time allotted to the learning activity was appropriate;

(~~vi~~F) If applicable, individual instructors were effective;

(~~vii~~G) Facilities and/or technological equipment was appropriate;

(~~(viii)~~(H)) Handout or advance preparation materials were satisfactory; or

(~~ix~~I) Audio and video materials were effective.

(~~B~~2) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(~~4~~d) CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(~~A~~1) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(~~B~~2) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

10:15-32-5. Standards for CPE Program Measurement

~~The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.~~

(~~1~~a) Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(~~A~~1) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits. When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(~~B~~2) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(~~C~~3) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits:

(~~i~~A) Semester System 15 credits; and

(~~ii~~B) Quarter System 10 credits;

(~~D~~4) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded

only for the actual classroom time spent in the non-credit course.

(~~E~~5) Credit is not granted to participants for preparation time.

(~~F~~6) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(~~2~~c) CPE credit for self-study learning activities must be based on a pilot test of the average completion time. A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program. The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(~~3~~d) Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards. The maximum credit for preparation and presentation shall not exceed fifty percent (50%) of the total CPE credit required in a reporting period.

(~~A~~1) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation.

(~~B~~2) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(~~4~~e) Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence. CPE credit from this activity shall be limited to twenty-five percent (25%) of the CPE credit required in a compliance period and will be determined by the Board on a case by case basis. Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. CPE credits should be claimed only upon publication.

(~~5~~f) CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract. The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

10:15-32-6. Standards for CPE Program Reporting

~~The following standards are effective for all CPE earned beginning January 1, 2004 and thereafter.~~

(~~1~~a) CPE program sponsors must provide program participants with documentation of their participation, which includes the following:

(~~A~~1) CPE program sponsor name and contact information;

(~~B~~2) Participant's name;

(~~C~~3) Course title;

(~~D~~4) Course field of study;

(~~E~~5) Date offered or completed;

(~~F~~6) Type of instructional/delivery method used;

(~~G~~7) Amount of CPE credit recommended; and

(~~H~~8) Verification by CPE program sponsor representative.

(~~2~~b) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(~~A~~1) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;

(~~B~~2) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;

(~~C~~3) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;

(~~D~~4) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;

(~~E~~5) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and

(~~F~~6) For published articles, books, or CPE programs,

(~~i~~A) A copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor; and

(~~ii~~B) A statement from the writer on a form prescribed by the Board supporting the number of CPE hours claimed.

(~~3~~c) CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(~~A~~1) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to:

(~~i~~A) Records of participation;

(~~ii~~B) Dates and locations;

(~~iii~~C) Instructor names and credentials;

(~~iv~~D) Number of CPE credits earned by participants; and

(~~v~~E) Results of program evaluations.

(~~B~~2) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(~~C~~3) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(~~i~~A) When the pilot test was conducted;

(~~ii~~B) The intended participant population;

(~~iii~~C) How the sample was determined;

(~~iv~~D) Names and profiles of sample participants; and

(~~v~~E) A summary of participants' actual completion time.

SUBCHAPTER 33. QUALITY/PEER REVIEW

10:15-33-1. Establishment of quality/peer review program

The following rules are effective July 1, 2005 and thereafter.

(1) Pursuant to the Oklahoma Accountancy Act, §15.30, the Board establishes a Quality/Peer review program to monitor firm's compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. The program shall emphasize education, including appropriate remedial procedures, which may be recommended or required when financial statement reports do not comply with professional standards. In the event a firm does not comply with established professional standards, or a firm's professional work is so inadequate as to warrant disciplinary action, the Board shall take appropriate action to protect the public interest.

(2) This subchapter shall not require any firm to become a member of any sponsoring organization.

10:15-33-2. Special definitions

Effective July 1, 2005, the following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Adverse report" means there are significant deficiencies in the design of the firm's system of quality control, pervasive instances of noncompliance with the system as a whole, or both, resulting in several material failures to adhere to professional standards on engagements.

(2) "Modified report" means the design of the firm's system of quality control created a condition in which the firm did not have reasonable assurance of complying with professional standards or that the firm's degree of compliance with its quality control policies and procedures did not provide it with reasonable assurance of complying with professional standards. A report modified due to scope limitations specifically related to compilations would not be considered modified for the purposes pursuant to theses rules.

(3) "Performance of Services" is deemed to start when an engagement letter is signed or agreement reached.

(4) "Quality/Peer Review Due Date" must be a date within six (6) months after the peer review year end, plus any extensions granted by the sponsoring organization or the Board.

(5) "Quality/Peer Review Year End" means the year end as determined by the firm and its reviewer.

(6) "Review program" means the Quality/Peer review conducted under the Quality/Peer review program.

(7) "Review year" means the Quality/Peer review covers a one-year (twelve-month) period. Engagements selected for Quality/Peer review normally would have periods ending during the year under Quality/Peer review.

(8) "Sponsoring organization" means an individual or entity that meets the standards specified by the Board for administering the Quality/Peer review. The Board shall periodically publish a list of sponsoring organizations, which have been approved by the Board.

(9) "Unmodified Report" means the reviewed firm system of quality control has been designed to meet the requirements of the quality control standards for an accounting and auditing practice and the system was being complied with during the quality/peer review year to provide the firm with reasonable assurance of complying with professional standards.

10:15-33-3. Standards for quality/peer reviews and sponsoring organizations

The following rules are effective July 1, 2005 and thereafter.

(1) The Board adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the American Institute of Certified Public Accountants, as its minimum standards for Quality/Peer review of registrants, or other standards as approved by the Board.

(2) Qualified sponsoring organizations shall be any organization approved by the Board.

10:15-33-4. Enrollment and participation

The following rules are effective July 1, 2005 and thereafter.

(1) Participation in the program is required of each firm holding a permit from the Board that performs any review or audit services.

(2) Firm enrollment is required as follows:

(A) An existing firm required to participate under subsection (1) shall enroll in the Quality/Peer review program of an approved sponsoring organization within one (1) year from the performance of services that require a quality/peer review. The firm shall adopt the Quality/Peer Review Due Date assigned by the sponsoring organization, and must notify the Board of the date within thirty (30) days of its assignment. In addition, the firm shall schedule and begin an additional quality/peer review within three (3) years of the previous Quality/Peer Review Due Date, or earlier as may be required by the sponsoring organization. It is the responsibility of the firm to anticipate its needs for quality/peer review services in sufficient time to enable the reviewer to complete

the quality/peer review by the assigned review due date.

(B) An existing firm that subsequently begins providing services as set forth in subsection (1) shall notify the Board of the change in status within thirty (30) days and provide the Board with enrollment information within twelve (12) months of the date the services were first provided and have a quality/peer review within eighteen (18) months of the year end of the engagement performed. This provision shall also apply to any new firm that provides the services set forth in subsection (1).

(3) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. Any dispute of the sponsoring organization's determination shall be resolved by the Board. The succeeding firm shall retain its quality/peer review status and the quality/peer review due date.

(4) The Board will accept extensions granted by the sponsoring organization to complete a quality/peer review, provided the Board is notified by the firm within thirty (30) days of the date that an extension is granted.

(5) A firm that has been rejected by a sponsoring organization for whatever reason shall notify the Board of:

(A) Name of sponsoring organization rejecting the enrollment;

(B) Reasons for the rejection;

(C) Name of subsequently selected sponsoring organization.

(6) A firm choosing to change to another sponsoring organization may do so only once a final acceptance letter has been issued indicating that all outstanding corrective actions have been completed and outstanding fees paid.

10:15-33-5. Effect of successive modified/adverse reports

The following rules are effective July 1, 2005 and thereafter.

(1) A firm, including a succeeding firm, which receives two (2) consecutive modified and/or one (1) adverse report(s), may be required by the Board or its designee to have an accelerated Quality/Peer review within eighteen (18) months of the firm's last Quality/Peer review.

(2) If the accelerated review required by subsection (1) above results in a modified or adverse report:

(A) The firm may complete any review and audit engagement for which field work has already begun only if:

(i) Prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the Board or its designee; and

(ii) The engagement is completed within ninety (90) days of the acceptance of the quality/peer review report, letter of comments, and letter of response by the sponsoring organization;

(B) The firm shall be referred to the Vice Chair of the Board for enforcement investigation.

(C) A firm may petition the Board for a waiver from the provisions of this rule subsection (2).

10:15-33-6. Reporting to the board

The following rules are effective July 1, 2005 and thereafter.

(1) A firm shall submit to the Board:

(A) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is unmodified with or without comments; or

(B) A copy of the report, letter of comments, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is modified in any respect or adverse; and

(C) A copy of the Public Committee Accounting Oversight Board (PCAOB) report, if applicable.

(2) Any report or document required to be submitted under subsection (1) shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization.

(3) Any document submitted to the Board under this subsection is confidential pursuant to the Act.

10:15-33-7. Quality/peer review committee

The following rules are effective July 1, 2005 and thereafter.

(1) The Board shall appoint a Peer Review Committee for the purpose of:

(A) Monitoring sponsoring organizations to provide reasonable assurance that Quality/Peer reviews are being conducted and reported on in accordance with Quality/Peer review minimum standards;

(B) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the Quality/Peer review minimum standards; and

(C) Reporting to the Board on the conclusions and recommendations reached as a result of performing functions in paragraphs (A) and (B) of this subsection.

(2) The Quality/Peer Review Committee shall consist of three (3) members nominated by the Chair and approved by the Board, none of whom is a current member of the Board. Initial appointment of the three (3) committee members shall be as follows: one (1) member appointed for three (3) years; one (1) member appointed for two (2) years; and one member appointed for one (1) year. Subsequent committee members shall serve three (3) year terms. A committee member shall not be allowed to be reappointed until a three (3) year period has lapsed after his/her previous appointment. Compensation, if any, of Quality/Peer Review Committee members shall be set by the Board, not to exceed One Hundred Twenty Five Dollars ($125.00) per hour. Each member of the Quality/Peer Review Committee must be active in the practice of public accounting at a supervisory level or above in the accounting or auditing function while serving on the committee or any employee involved at a supervisory level or

above in an audit function of a state or local government. The member or member's firm must be enrolled in an approved practice/monitoring program and have received an unmodified report on its most recently completed Quality/Peer review. A majority of the committee members must satisfy the qualifications required of system Quality/Peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(A) No more than one Quality/Peer Review Committee member may be from the same firm.

(B) A Quality/Peer Review Committee member may not concurrently serve as

(i) A member of the AICPA's or any state's CPA society's ethics committee; or

(ii) A member of the AICPA's or any state's CPA society's Quality/Peer Review Committee for a period of eighteen (18) months following that persons service on such Quality/Peer Review Committee.

(C) A Quality/Peer Review Committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence or has a conflict of interest. The Board may appoint alternate committee member(s) to serve in these situations.

(3) Information concerning a specific firm or reviewer obtained by the Quality/Peer Review Committee during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the Board. Reports submitted to the Board will not contain information concerning specific registrants, firms or reviewers.

(4) As determined by the Board, the Quality/Peer Review Committee shall make periodic recommendations to the Board, but not less than annually, as to the continuing qualifications of each sponsoring organization as an approved sponsoring organization.

(5) The Quality/Peer Review Committee may:

(A) When necessary in reviewing reports on Quality/Peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures and provide such results to the Board;

(B) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(C) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews or other standards as approved by the Board and the rules promulgated herein by the Board;

(D) Establish a report acceptance process, which facilitates the exchange of viewpoints among committee members and sponsoring organization; and

(E) Communicate to the governing body of the sponsoring organization on a recurring basis:

(i) Problems experienced by the enrolled registrants in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(ii) Problems experienced in the implementation of the Quality/Peer review program; and

(iii) A summary of the historical results of the Quality/Peer review program.

(6) Committee members shall become disqualified to serve on Quality/Peer Review Committee if any of the provisions that qualify the committee member no longer exist or by majority vote of the Board.

SUBCHAPTER 37. ENFORCEMENT PROCEDURES

10:15-37-1. ~~Initiation of investigation~~ Enforcement committee

(a) When a signed, written complaint or information from a published source comes to the Board, an individual member of the Board, the Executive Director, or to any member of the Board staff concerning alleged violations of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board, the information shall be forwarded to the Enforcement Committee. The Enforcement Committee is comprised of the Vice Chairman and one (1) other member of the Board who is not an officer of the Board appointed by the Chairman to receive such information. The Vice Chairman of the Board shall serve as Chairman of the Enforcement Committee.

(b) The member(s) of the Board receiving the information may make appropriate inquiry to verify the information received. Upon completion of the preliminary inquiry, the Board member(s) may take one (1) or more of the following actions:

(1) Terminate the investigation because it appears there has been no violation of the law or rules or there is insufficient evidence to support any allegation of a violation.

(2) Attempt an informal resolution of the allegations of violations contained in the information received.

(3) Refer the matter to the Investigation Committee.

(4) Refer the matter to an individual investigator to obtain additional information.

(5) Refer the information to a special prosecutor, or legal counsel for further action.

(6) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

10:15-37-2. Investigation committee

(a) The Board may appoint an Investigation Committee to conduct investigations of allegations of violations of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board.

(b) The Investigation Committee shall consist of not less than three (3) nor more than nine (9) members who shall serve at the pleasure of the Board.

(1) Only individuals who are holders of permits shall be eligible to serve on the Investigation Committee.

(2) The members of the Investigation Committee shall elect one (1) of their members as Chairman who shall conduct the meetings of the Committee, administer its activities, and perform such other duties as are assigned by the Board.

(c) It shall be the duty of the Investigation Committee upon a request from the ~~Vice Chairman~~ Enforcement Committee ~~and other designated member of the Board,~~ to investigate to determine whether there exists probable cause to believe that misconduct has occurred which justifies the institution of formal proceedings. The investigation shall be conducted in a timely manner.

(d) The Investigation Committee shall report to the ~~Vice Chairman~~ Enforcement Committee ~~and other designated member of the Board~~ the result of any investigation promptly upon its conclusion. Such report shall contain a summary of the evidence considered by the Committee including any material provided by the accused, the conclusions of fact and law of the Committee, and the recommendation of the Committee with respect to institution of formal proceedings.

(e) Before a final report adverse to the accused is made, the Investigation Committee may notify the accused in writing of the allegations and allow the accused not less than ten (10) calendar days to reply in writing.

(1) The accused shall not be entitled to a hearing before the Investigation Committee as a matter of right.

(2) The accused may submit written material for consideration by the Investigation Committee which shall be included in the final report to the ~~Vice Chairman~~ Enforcement Committee.

10:15-37-4. Individual investigator

(a) The ~~Vice Chairman of the Board~~ Enforcement Committee may assign an allegation of a violation to an individual investigator employed by the Board on a part time or full time basis.

(b) An investigator may make use of the Investigation Committee but shall be in full charge of any investigation assigned by the ~~Vice Chairman~~ Enforcement Committee, subject to the direction of the Board.

10:15-37-5. Filing of formal complaint

(a) All formal complaints shall be filed by the ~~Vice Chairman~~ Enforcement Committee ~~and the designated member of the Board~~ only with the agreement of the Special Prosecutor.

(b) The ~~Vice Chairman~~ Enforcement Committee, ~~the designated member of the Board,~~ and the Special Prosecutor must concur. In the event they do not, the Vice Chairman will prepare a report for the Board and the Board will determine future action.

(c) The formal complaint shall be signed by the Special Prosecutor or the Vice Chairman.

(d) The formal complaint shall include a concise statement of the allegations and particular sections of the Oklahoma Accountancy Act and the rules implementing that Act which are involved.

10:15-37-11. Felony convictions and pleas

(a) The provisions of this section shall be applicable, except where indicated, to applicants for the examination, examination candidates, applicants for certificates and licenses, and registrants.

(b) When an applicant has been convicted of or plead guilty or *nolo contendere* to a felony, the applicant shall be required to furnish to the Board documentation of the charges and the final judgment of the Court in the form of certified documents from the Court file. Failure by an applicant for the examination to furnish adequate documentation no later than sixty (60) days prior to the commencement of the examination applied for shall result in denial of the application.

(c) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.

(d) The ~~Vice Chairman~~ Enforcement Committee shall review all documents pertaining to the applicant's conviction or plea and may further require that an investigation be conducted in accordance with Subchapter 37 of the Oklahoma Administrative Code.

(e) The Board may obtain from the Oklahoma State Bureau of Investigation or other sources a criminal record check of any applicant.

(f) The ~~Vice Chairman~~ Enforcement Committee shall make a preliminary determination of whether the applicant satisfies the requirement of good moral character as set forth in Sections 15.8 and 15.9 of the Act. The ~~Vice Chairman~~ Enforcement Committee shall consider, but not be limited to, the nature of the felony conviction or plea and the time period which has elapsed since the offense was committed or judgement was entered.

(g) When, in the opinion of the ~~Vice Chairman~~ Enforcement Committee, public protection requires conditional approval of an applicant, the ~~Vice Chairman~~ Enforcement Committee may negotiate a consent order with the applicant. The consent order shall set forth the terms and conditions proposed by the ~~Vice Chairman~~ Enforcement Committee for approving the application. All consent orders must be either approved or disapproved by the Board.

(h) If the ~~Vice Chairman~~ Enforcement Committee is unable to negotiate a consent order with an applicant, or if the Board does not approve the consent order, a hearing may be held to determine whether the application may be approved and to determine conditions for such approval which may be imposed by the Board as a result of the hearing.

(i) A list of all applicants having criminal histories, with information describing each felony conviction or plea and the penalty imposed for each, shall be presented to the Vice Chair. Board approval must be granted, or a hearing, as ordered by the Board, must be held in conjunction with each application presented to the Board.

(j) Individual registrants who have a felony conviction or plea are subject to the provisions of the Act and the enforcement procedures set forth in this Subchapter.

SUBCHAPTER 39. RULES OF PROFESSIONAL CONDUCT

10:15-39-1. Application

(a) To the extent not contradicted by rule herein, a registrant shall conform in fact and in appearance to the AICPA Code of Professional Conduct.

(~~a~~b) To protect the public interest, the Rules of Professional Conduct are based on the premise that the public and the business community rely on sound financial reporting and on professional competence. This premise is inherent in the authorized use of the titles certified public accountant and public accountant, which imposes on persons registered with the Board certain obligations to the public and to others. These obligations which the Rules of Professional Conduct are intended to enforce, include: the obligation to maintain independence and objectivity of thought and action, to strive continuously to improve professional skills, to observe, where applicable, generally accepted accounting principles and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accounting profession, and to maintain high standards of personal conduct in all matters affecting fitness to practice public accounting.

(~~b~~c) Acceptance by a registrant of a certificate, license, or permit to engage in the practice of public accounting, or to use the titles of certified public accountant, CPA, public accountant, or PA which imply a particular competence, involves acceptance by the registrant of such obligations and, accordingly, of a duty to abide by the Rules of Professional Conduct.

(~~c~~d) The Rules of Professional Conduct are intended to have application to all kinds of professional services performed in the practice of public accounting, including, but not limited to, assurance, attest, auditing, accounting, review and compilation services, tax services, management advisory services and personal financial and investment planning, and intended to apply as well to all certificate, license, or permit holders, whether or not engaged in the practice of public accounting, except where the wording of one of the Rules of Professional Conduct clearly indicates that the applicability is more limited.

(~~d~~e) A registrant who is engaged in the practice of public accounting outside the United States is not subject to discipline by the Board for departing, with respect to such foreign practice, from any of the Rules of Professional Conduct, so long as the conduct is in accordance with the Rules of Professional Conduct applicable to the practice of public accounting in the country in which the registrant is practicing. If the name of a registrant is associated with financial statements in such manner as to imply that the registrant is acting as an independent CPA or PA under circumstances which would entitle the reader to assume that United States practices are followed, the registrant will be expected to comply with the provisions of Code 10:15-39-6(b), 10:15-39-6(c) and 10:15-39-6(d).

(~~e~~f) In interpreting and enforcing these rules, the Board may give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions, appropriately authorized ethics committees of professional organizations and other federal and state agencies.

10:15-39-3. Independence [REVOKED]

~~(a) A registrant who is performing an engagement in which the registrant will issue a report on or compilation of financial statements of any client, other than a report or compilation in which a lack of independence is disclosed, must be independent with respect to the client in fact and appearance.~~

~~(b) Independence will be considered to be impaired if, for example, during the period of the professional engagement or at the time of the issuing of the report:~~

~~(1) The registrant or a related individual:~~

~~(A) had or was committed to acquire any direct or material indirect financial interest in the client; or~~

~~(B) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client; or~~

~~(2) The registrant or a related individual had any joint or closely held business investment with the client or any officer, director or principal stockholder thereof which was material in relation to the net worth of either the client or the registrant; or~~

~~(3) The registrant or a related individual had any loan to or from the client or any officer, director, or principal stockholder of a client except as permitted as follows:~~

~~(A) The following types of loans obtained from a financial institution pursuant to the normal lending procedures of that institution, terms, and requirements and that meet the other specified conditions stated in this section, and that meet the conditions set forth in (B) and (C) of this paragraph.~~

~~(i) Home mortgages.~~

~~(ii) Other secured loans. The collateral on such loans must equal or exceed the remaining balance of the loan.~~

~~(iii) Loans not material to the net worth of the registrant.~~

~~(iv) The following types of personal loans obtained from a financial institution client for which independence is required pursuant to the normal lending procedures, terms, and requirements of that institution and such loans must, at all times, be kept current as to all terms:~~

~~(I) Automobile loans and leases collateralized by the automobile;~~

~~(II) Loans of the surrender value under terms of an insurance policy;~~

~~(III) Borrowing fully collateralized by cash deposits at the same financial institution such as but not limited to "passbook"loans;~~

~~(IV) Credit cards and cash advances on checking accounts with an aggregate balance not paid currently of Five Thousand Dollars ($5,000.00) or less.~~

~~(B) The loans described in (A) of this paragraph must:~~

~~(i) have been obtained from a financial institution prior to it becoming a client requiring independence;~~

~~(ii) have been obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or~~

~~(iii) have been obtained from a registrant's firm's financial institution client requiring independence, by a registrant or related individual borrower prior to that borrower becoming a person with respect to such client for whom independence is required.~~

~~(C) Independence will be considered to be impaired if a CPA or PA obtains a loan of the type described in this paragraph from an entity that, at the time of obtaining the loan, is a client requiring independence. Grandfather loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in (B) of this paragraph.~~

~~(c) Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement or at the time of issuing the report the registrant, the firm of the registrant or a related individual, as defined in this Subchapter:~~

~~(1) was associated with the client as a promoter, underwriter, voting trustee, director, or officer, or in any capacity equivalent to that of a member of management or of an employee; or~~

~~(2) was a trustee for any pension or profit sharing trust of the client; or~~

~~(3) had any direct or material indirect business relationship, other than as a consumer in the normal course of business, with a client or with individuals associated with the client in a decision making capacity, such as officers, directors or substantial stockholders, including but not limited to joint business ventures, limited liability companies or partnerships, limited partnership agreements, investments in supplier or customer companies, leasing interests, except for immaterial landlord tenant relationships, and sales by the registrant of items other than professional services;~~

~~(4) received other compensation from a client or a third party, or had a commitment to receive from the client or a third party, with respect to any services or products procured or to be procured by the client from a third party; or~~

~~(5) had a commitment from the client for a contingent fee. For this purpose, a contingent fee means compensation for the performance of services the payment of which, or the amount of which, is contingent upon the findings or results of such services. However, fees shall not be regarded as being contingent if fixed by a court or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or findings of governmental agencies.~~

~~(d) The examples of impaired independence described in (b) and (c) of this Section are not intended to be all-inclusive.~~

~~(e) The independence of a registrant's firm would be considered to be impaired with respect to an enterprise pursuant to the following:~~

~~(1) The independence of a registrant's firm would be considered to be impaired with respect to an enterprise if:~~

~~(A) during the period of the professional engagement or at the time of expressing an opinion, an individual participating in the engagement has a close relative with a financial interest in the enterprise that was material to the close relative and of which the individual participating in the engagement has knowledge.~~

~~(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:~~

~~(i) An individual participating in the engagement has a close relative who could exercise significant influence over the operating, financial, or accounting policies of the enterprise or who is otherwise employed in a position where the activities of the individual are "audit sensitive"; or~~

~~(ii) A proprietor, partner, shareholder, or individual with a managerial position, any of whom are located in an office participating in a significant portion of the engagement, has a close relative who could exercise significant influence over the operating, financial, or accounting policies of the enterprise.~~

~~(2) The situations described in (1) of this Subsection should be considered minimum standards for the impairment of independence. It is impossible to enumerate all circumstances wherein the appearance of a registrant's independence might be questioned by third parties; but the registrant should be aware that other factors may also impair the independence or appearance of independence of the registrant. For example, a registrant's relationship with a cohabitant may be equivalent to that of a spouse. In addition, in situations involving the assessment of the association of any relative or dependent individual with a client, a registrant must consider whether the strength of personal and business relationships between the registrant and the relative or dependent individual, considered in conjunction with the specified association with the client, would lead a reasonable person aware of all the facts, and taking into consideration normal strength of character and normal behavior under the circumstances, to conclude that the situation poses an unacceptable threat to the registrant's objectivity and appearance of independence.~~

10:15-39-4. Integrity and objectivity [REVOKED]

~~A registrant shall not, in the performance of professional services, knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a registrant may resolve doubt in favor of the client as long as there is reasonable support for that position.~~

10:15-39-5. Disclosure of other compensation and financial interest in transactions [REVOKED]

~~(a) **Disclosure.** A registrant who is not performing services for which the registrant must be independent as defined in Code 10:15-39-3.1(a) and who has any financial interest or receives or agrees to receive other compensation with respect to services or products of third parties recommended, referred, or sold to another person shall, no later than the making of each recommendation, referral, or sale, disclose to such other person in writing the financial interest and the nature, source, and amount or basis of calculation and range of probable amounts or percentages of all such other compensation.~~

~~(b) **Basis for recommendation.** In recommending and providing to clients products or services of others for which the registrant receives other compensation, the registrant must document in writing a reasonable basis for believing that the client is a knowledgeable investor or purchaser and that the recommended products or services of others are suitable for the client after a thorough inquiry and investigation of the situation, needs, and objectives of the client.~~

~~(c) **Payment of referral fees.** A registrant shall not pay a referral fee to a third party to obtain a client unless, prior to being engaged by such client, the registrant discloses to the client in writing the fact and the amount of such referral fees.~~

~~(d) **Exceptions.** This section does not apply to payments received or made by a registrant for the sale of or purchase of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accounting.~~

10:15-39-6. Competence and technical standards [REVOKED]

~~(a) **Competence.** A registrant shall not undertake any engagement for the performance of professional services which he or she cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with (b) through (d) of this Section.~~

~~(b) **Auditing standards.** A registrant shall not permit his or her name to be associated with financial statements in such a manner as to imply that the registrant is acting as an independent CPA or PA with respect to such financial statements unless the registrant has complied with applicable generally accepted auditing standards.~~

~~(c) **Accounting principles.** A registrant shall not issue a report asserting that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the registrant can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the registrant's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.~~

~~(d) **Other professional standards.** A registrant, in the performance of management advisory services, tax services or accounting and review services, shall conform to the professional standards applicable to such services.~~

10:15-39-7. Responsibilities to clients [REVOKED]

~~(a) **Confidential client communications.** Except by permission of the client, or the heirs, successors, or personal representatives of the client, a registrant or any partner, officer, shareholder, or employee of a registrant shall not voluntarily disclose information communicated to the registrant by the client relating to and in connection with professional services rendered to the client by the registrant. Such information shall be deemed confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings pursuant to the provisions of the Oklahoma Accountancy Act, in ethical investigations conducted by private professional accounting organizations, or in the course of quality reviews.~~

~~(b) **Records.**~~

~~(1) Client records do not include the following:~~

~~(A) Records of the procedures applied;~~

~~(B) The tests performed;~~

~~(C) The information obtained and the pertinent conclusions reached in an audit, review, compilation, tax, special report or other engagement; and~~

~~(D) Are not limited to audit or other programs, analyses, memoranda, letters of confirmation and representations, abstracts of company documents and schedules or commentaries prepared or obtained by the registrant.~~

~~(2) The form of working papers may be handwritten, typewritten, printed, photocopies, photographs, computer data, or any other letters, words, pictures, sounds, symbols or combinations thereof.~~

~~(3) Registrants shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period of five years to satisfy applicable professional standards and pertinent legal requirements for record retention.~~

~~(4) Registrants shall retain working papers during any pending Board investigation, disciplinary action, or other legal action or proceeding if no Board investigation is pending.~~

~~(5) Client records include and, if not previously furnished, a registrant shall furnish to the client or former client, upon request and reasonable notice:~~

~~(A) A copy of the working papers of the registrant, to the extent that such working papers include records that would ordinarily constitute part of the records of the client and are not otherwise available to the client; and~~

~~(B) Any accounting or other records belonging to, or obtained from or on behalf of the client, that the registrant removed from the premises of the client or~~

~~received for the account of the client; but the registrant may make and retain copies of such documents of the client when they form the basis for work done by the registrant.~~

~~(6) Unpaid fees do not constitute justification for retention of client records.~~

~~(c) A registrant may furnish the requested records in computerized form, provided that the records must be furnished in a format which is useable by the client or the registrant must furnish readable printed copies of the documents requested. Examples of records described in this section include, but are not limited to, general ledgers, subsidiary ledgers, adjusting, closing, and reclassification entries, journal entries and depreciation schedules, or their equivalents.~~

10:15-39-8. Other responsibilities and practices

~~(a) **Discreditable acts.** A registrant shall not commit any act that reflects adversely on the fitness of the registrant to engage in the practice of public accounting.~~

~~(b) **Acting through others.** A registrant shall not permit others to carry out on behalf of the registrant, either with or without compensation, acts which if carried out by the registrant would place that registrant in violation of the Rules of Professional Conduct.~~

~~(c) **Advertising and solicitation.** A registrant shall not use or participate in the use of any form of communication, written or verbal, having reference to professional services performed by the registrant, which contains a false, fraudulent, misleading, deceptive or unfair statement or claim, nor any form of communication having reference to the professional services of the registrant which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious, or harassing conduct. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:~~

~~(1) contains a misrepresentation of fact; or~~

~~(2) is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or~~

~~(3) is intended or likely to create false or unjustified expectations of favorable results; or~~

~~(4) implies educational or professional attainments or licensing recognition not supported in fact; or~~

~~(5) represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged; or~~

~~(6) contains other representations or implications that in reasonable probability will cause an individual of ordinary prudence to misunderstand or be deceived.~~

(~~d~~ a) **Firm names.**

(1) No registrant shall engage in the practice of public accounting using a professional or firm name or designation that is misleading about the legal form of the firm, or about the individuals who are partners, officers, shareholders, or members of the firm, or about any other matter, provided, however, that names of one (1) or more former owners may be included in the name of a firm or its successor.

(2) A registrant who is a sole proprietor, and not incorporated, who is engaged in the practice of public accounting, shall be allowed to use and employ the designation "d/b/a" with a business name provided the sole proprietor's name is included in the name of the business. No registrant shall use a misleading business name. ~~Such a sole proprietor registrant must continue to register, with the Board, with the "d/b/a" business name. Such registration shall be without charge. There will be no separate permit required for the "d/b/a" business.~~

(~~e~~ b) A registrant shall respond in writing to any communications from the Board requesting a response, within thirty (30) days of the mailing of such communication by registered or certified mail, to the last address of the registrant known to the Board.

[OAR Docket #04-1057; filed 5-26-04]

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

[OAR Docket #04-975]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fee Schedules [AMENDED]
35:2-3-27. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001, §§ 2-4(2), 2-4(20)
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Currently, the Department furnishes to state veterinarians a variety of supplies such as poultry wing bands, poultry leg band pliers, Pullorum test plates and antigens, and booklets of health certificates. The Department proposes to charge fees for the purchase of these supplies. The fees are set at the Department's costs.

CONTACT PERSON:
Dr. Burke Healey, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6131

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 25, 2004:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-27. General animal industry supply fees

(a) Livestock Health Certificates - $7.00 per 25.
(b) Poultry tester supplies:
(1) Wing bands - $5.25 per 100.
(2) Wing band plier - $11.00 each.
(3) Leg bands - $5.60 per 100.
(4) Leg band pliers - $16.40 each.
(5) $10\frac{1}{2}$ x 8 x $\frac{1}{8}$ Pullorum Test Plate - $8.00 each.
(6) 1,000 tests Pullorum Typhoid Antigen - $50.00 per bottle.
(7) Shipping fee per order - $5.00.
(8) Cash On Delivery (C.O.D.) shipping fee per order - actual cost.

[OAR Docket #04-975; filed 5-19-04]

TITLE 70. OKLAHOMA ARTS COUNCIL CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-903]

RULEMAKING ACTION:
PERMANENT final adoption
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 [NEW] [Agency Note: 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]
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53 O.S., Sections 161 et seq.; Oklahoma Arts Council
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ANALYSIS:
Proposed rule changes correct the Agency name, consolidate, clarify and correct wording.
CONTACT PERSON:
Suzanne Tate, Deputy Director - 405.521.2931

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 25, 2004:

SUBCHAPTER 3. GENERAL COURSE AND METHOD OF OPERATING

70:1-3-1. Agency office

The office of the ~~State Arts Council of Oklahoma~~ Oklahoma Arts Council shall be located in Oklahoma City.

70:1-3-2. Agency office hours

The office hours of the ~~State~~ Oklahoma Arts Council shall be from ~~8:00~~ 8:30 a.m. to 5:00 p.m. each day except Saturday and Sunday and any legal holiday established by statute or by proclamation of the Governor.

70:1-3-3. Communications with the Council

Every communication in writing to the ~~State Arts Council of Oklahoma~~ Oklahoma Arts Council shall be addressed to the Executive Director at the office in Oklahoma City, unless the Council directs otherwise.

70:1-3-6. Availability of Council records and policies

All rules, regulations and other written statements of policy or interpretations formulated, adopted and used by the Council in the discharge of its functions and all final orders, decisions, and opinions will be made available for public inspection during regular Agency office hours.

70:1-3-7. Copies of official records

Copies of official records of the ~~State Arts Council of Oklahoma~~ Oklahoma Arts Council may be made with the fee schedule enacted by the Council. Any material of the ~~State~~ Oklahoma Arts Council protected from publication by State law shall not be released.

70:1-3-12. Public petition requesting changes in rules and regulations

(a) Any individual wishing to petition the ~~State~~ Oklahoma Arts Council concerning changes in any rules and regulations may do so by writing the Executive Director at the ~~Oklahoma City~~ Agency office.

(b) The Executive Committee of the Council will act upon the request by the petitioner within forty-five (45) days after receipt of petition. The Executive Committee may meet with the petitioner. Upon finding of sufficient cause, the Executive Committee may order public hearings on the rule(s) and regulation(s) in question. Public hearing will take place within thirty (30) days after ~~Council~~ Executive Committee action concerning sufficient cause. The Council will consider fully all written and oral submissions respecting the proposed new rule(s), amendment or repeal of existing rule(s). The entire process of requesting change of a rule(s) and regulation(s) will be subject to 75 O.S.~~1981~~, ~~Section 301-327 as amended~~ Sections 250 et seq.

(c) The Council shall act within thirty (30) days after the public hearing. The Council decision on the petition for new rule(s) and regulation(s), amendments or repeal of an existing rule(s) will be final.

70:1-3-13. Materials submitted to the Agency become property of the State of Oklahoma

All materials submitted to the Agency may become the property of the State of Oklahoma unless otherwise indicated. Materials may include, but not be limited to, photographs, annual reports, publications of any kind, manuscripts, projection slides, recordings, financial reports, audit reports, letters and books.

AGENCY NOTE: RENUMBERED FROM 70:10-3-24

SUBCHAPTER 5. ADVISORY ~~GROUPS~~ PANELS

70:1-5-1. Establishment of advisory ~~groups~~ panels

The ~~State~~ Oklahoma Arts Council uses advisory panels in its policymaking and application review process. Panels are made up of individuals ~~representing various arts disciplines~~ who have various areas of expertise and a demonstrated interest in the arts. These panels exist to assist the Council by ~~making policy recommendations and by~~ reviewing policies and applications ~~for assistance~~ ~~submitted~~ and making recommendations to the Council.

70:1-5-2. Eligibility

Individuals who are arts professionals, educators, supporters, administrators, and financial management experts knowledgeable about the arts, arts education or arts administration may serve on a panel. ~~Efforts are made to insure an equal geographical representation of panel members.~~ Efforts are made to reflect the diversity of the Oklahoma Arts Council's grant base on the panels by including men and women members with cultural differences, including people with disabilities, people from racial, ethnic, geographical, and culturally diverse backgrounds, as well as people of all ages, and experiences.

70:1-5-3. Selection process

All panel members are selected through an open nomination process. Nominations for panel members are made by individuals or organizations throughout the state. The Council's ~~Executive Committee~~ reviews ~~the information provided for each nominee and makes its final recommendations to the full Council for approval.~~ and approves panel nominees.

SUBCHAPTER 7. ~~RESOURCE DIRECTORIES~~ INFORMATION RESOURCES

70:1-7-1. Establishment of ~~resource directories~~ information resources

The Council may from time to time and for a variety of reasons publish and distribute several different types of ~~resource directories~~ information resources. ~~Resource directories are publications containing~~ Information resources contain information useful to individuals and organizations involved with the arts in the State of Oklahoma.

70:1-7-2. Public notice of ~~resource directories~~ information resources

The Council will provide public notice upon the establishment of any ~~resource directory~~ information resource. The public notice will include deadline dates for submission of information and indicate the dates ~~proper~~ that the required form(s) from the Oklahoma Arts Council will be available to individuals and organizations wishing to submit information for any ~~resource directory~~ information resource.

70:1-7-3. Use of Council forms [REVOKED]

~~All information submitted for any resource directory or number of resource directories must be on form(s) provided~~

~~by the Council. Failure to use Council forms may cause the Council to refuse to publish said information.~~

70:1-7-4. Deadlines for resource directories [REVOKED]

~~Deadlines for return of all resource directory form(s) requesting information for publication will be announced by public notice. Information form(s) for resource directories returned after established deadlines, or incomplete information form(s), may not be accepted by the Council.~~

SUBCHAPTER 9. STATE ART COLLECTION

70:1-9-1. State Art Collection; Committee

The ~~State Arts Council of Oklahoma~~ Oklahoma Arts Council and the State Art Collection Committee will supervise the management and care of the Collection. The Committee will develop policies regarding accession and deaccession with Council approval.

70:1-9-2. Art Collection Chairman

The Chairman of the State Art Collection Committee shall be appointed by the Chairman of the Council from the Council membership. The Chairman will serve at the pleasure of the ~~State Arts Council~~ Oklahoma Arts Council Chairman.

[OAR Docket #04-903; filed 5-13-04]

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

[OAR Docket #04-904]

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PERMANENT final adoption
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] [Agency Note: 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]
AUTHORITY:
53 O.S., Sections 161 et seq.; Oklahoma Arts Council
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n/a
ANALYSIS:
Proposed rule changes consolidate, clarify and correct wording.
CONTACT PERSON:
Suzanne Tate, Deputy Director - 405.521.2931

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 25, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

70:10-1-2. Definitions

As used in these regulations, the following definitions shall apply:

(1) **"Agency"** shall mean the state governmental entity called the Oklahoma Arts Council administered by the Executive Director.

(2) **"Appeal"** shall mean the procedure for bringing grievances that cannot be resolved in the local office of the Oklahoma Arts Council by Council staff.

(3) **"Applicant"** shall mean an organization that has submitted or will submit an application for a grant award.

(4) **"Chairman"** shall mean the Chairman of the Oklahoma Arts Council.

(5) **"Council"** shall mean the fifteen (15) members governing the Oklahoma Arts Council.

(6) **"Executive Committee"** shall mean the officers and members of the Oklahoma Arts Council selected in accordance with 70:1-3-9.

(7) **"Executive Director"** shall mean the Executive Director of the Oklahoma Arts Council.

(8) **"His,"** **"Hers,"** and **"Its"** shall be interchangeable.

70:10-1-3. Oklahoma Arts Council Programs

The Council shall establish such programs as necessary to address the enacting legislation and the mission of the Council and is responsible for the overall design and direction of all programs. The Agency is responsible for developing, monitoring and assuring program guidelines and guideline compliance and for distributing information to constituents throughout the state.

SUBCHAPTER 3. ~~PROJECT~~ FINANCIAL ASSISTANCE ~~PROGRAM~~ PROGRAMS

70:10-3-1. Disbursement of funds [REVOKED]

~~Financial assistance activities include all expenditure of private monies donated to the Council, state, federal funds for any program, project, activity or service for which the Council may contract. All programs, projects, activities or services sponsored in whole or in part with state, private or federal funds shall conform to the following requirements set forth in 53 O.S., Section 171:~~

~~(1) *The State Arts Council of Oklahoma shall dispense funds for arts purposes only. The State Arts Council of Oklahoma shall enter into contracts with other state agencies or nonprofit corporations holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1954, and listed as an exempt organization in Section 501(c)(3) of the Internal Revenue Code, 1954, of the United States, as amended. These nonprofit corporations must demonstrate that the goods and services provided meet the intent of the state policy provided in this act.*~~

~~(2) *Funds shall not be applied, donated or used directly or indirectly for the use, benefit or support of any sect, church, denomination or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.*~~

~~(3) *The State Arts Council of Oklahoma shall provide opportunity, by public notices, to all organizations interested in providing these goods and services, who will submit written applications to be received and acted upon by the Council. At the conclusion of the contract, each state agency or nonprofit corporation shall provide the State Arts Council of Oklahoma with proof of fulfillment of the contract in proper order and must be affirmed on the proper form, provided by the State Arts Council of Oklahoma, by the managing officers of the state agency or nonprofit group making the contract.* [53 O.S., Section 171]~~

70:10-3-2. Deadlines for project assistance [REVOKED]

~~(a) All deadlines for submission of applications, contracts, evaluations and other information used by the Council in contracting for programs, projects, services and activities in all financial assistance will be established by the Council.~~

~~(b) All applications must be submitted on form(s) provided by the Agency. An original and the required number of copies of the proper form(s) and other information requested is necessary before proposals will be processed. Failure to provide adequate copies of all form(s) and other information requested, or failure to complete required form(s), may result in the application being rejected by the Council.~~

~~(c) Public notice of deadlines for all financial assistance will be published in the Oklahoma Register, or successor publication, and in a newspaper of general distribution. General information on all financial assistance will be available in various publications of the Agency. Publications of the Agency will be distributed to all individuals and organizations requesting such publications.~~

~~(d) Proposals, applications and other requested information submitted after established deadlines, or incomplete proposals/applications, may not be accepted by the Council.~~

70:10-3-3. Proof of nonprofit and tax exempt status [REVOKED]

~~All organizations applying for financial assistance in any program of the Council must submit proof of nonprofit and tax exempt status of the organization.~~

70:10-3-4. Final report requirement [REVOKED]

~~All projects supported in whole or in part with Agency funds must file a final report, on form(s) approved by the Council, and have it accepted after staff review before any funds will be distributed by the State Arts Council of Oklahoma.~~

70:10-3-5. Credit line requirement [REVOKED]

~~(a) All organizations receiving any financial assistance from any Agency program will include the following credit line "With the assistance of the State Arts Council of Oklahoma", in all printed promotion and publicity materials for the assisted project, and may be requested to give credit to the National Endowment for the Arts.~~

~~(b) Failure of the organization to include credit line in all printed promotion and publicity materials may result in the Council terminating the contract for any project, program, activity or service.~~

70:10-3-8. Council share of contracts [REVOKED]

~~(a) The local sponsor or sponsors must provide one half or more of the total expenses for any project, program, activity or service contracted by the Council. In the Oklahoma Touring Program, the Council may provide no more than one half of the producer or touring group's fee. Federal government grants from the National Endowment for the Arts may not be included as part of an organization's matching funds.~~

~~(b) There may be exceptions in the Council share of contracts just described. The Council may upon occasion fund more than one half of the total expenses for special constituencies or for special projects, programs, activities or services which are unique, new, revised, being expanded or for any other reason the Council believes appropriate.~~

70:10-3-9. In-kind contributions [REVOKED]

~~The Council will accept in kind contributions of goods and services as part of the local match on Council contracts. However, in-kind contributions of goods and services shall not be credited for more than fifty percent of the total local match and may not be used as a match for any other projects contracted by the Council.~~

70:10-3-10. Financial records requirements [REVOKED]

~~(a) Separate financial records must be maintained by the organization for any project that has received funding from the State Arts Council. These records must be kept on file for a minimum of three fiscal years and are subject to state and/or federal audits any time during those three years.~~

~~(b) The State Arts Council must be notified immediately, in writing, of any changes concerning original application specifics. This requirement includes any changes in dates, telephone numbers, project titles, project director or budgets, etc. If the intent of the project must be altered from its original purpose, written notification of such change must be approved by the Council prior to beginning the project.~~

70:10-3-11. Fiscal year requirement [REVOKED]

~~All projects, programs, activities or services funded in whole or in part with private funds donated to the Agency, state and/or federal funds must begin and end within the fiscal year of the State of Oklahoma, July 1st to June 30th.~~

70:10-3-12. Limitation of Council funding [REVOKED]

~~Funding limitations shall be determined by the State Arts Council in accordance with policies of the National Endowment for the Arts and the State of Oklahoma.~~

70:10-3-13. Legal assurances for all contracts [REVOKED]

~~All organizations receiving Agency funds to support in whole or in part any program, project, activity or service contracted by the Council agrees to the legal assurances stated in financial assistance applications and contracts in accordance with state and federal regulations.~~

70:10-3-14. Return of contracts deadline [REVOKED]

~~Contracting organization must return completed, properly signed and notarized contract form(s) within ten (10) days from date of receipt. Failure to return complete, properly signed and notarized contract form(s) may result in the termination of approved Council financial assistance.~~

70:10-3-15. Permanent mailing address requirement

The contracting organization should obtain a post office box or other permanent mailing address for the organization. Any change of address requires immediate notification to the Agency.

70:10-3-16. Limitation on changes of contracts [REVOKED]

~~The contracting organization must notify the Council of any significant changes in personnel, goals, objectives, activities, project beginning and ending dates, costs and/or expenses of any project, program, activity, or service contracted by the Council. Notification of any changes in the project will be immediate and in writing and sent to the Agency office in Oklahoma City.~~

70:10-3-17. Final report deadline [REVOKED]

~~The contracting organization must complete final report form(s) provided by the Agency no later than thirty (30) days after the ending date of the project. Failure to return the requested final report form(s), or incomplete form(s), may result in the termination of the approved Council financial assistance.~~

70:10-3-18. Protest procedure for project assistance [REVOKED]

~~Any organization qualified to submit applications to the Council for any financial assistance category may protest action of the Council concerning said application.~~

~~(1) Every step of the protest procedure will be documented with necessary reports, letters, data and other material necessary for a complete record of the protest procedure.~~

~~(2) Protest against any proposed or contracted project, program, activity or service must be made in writing no more than twenty (20) days after receipt of official notice by the organization submitting application. Protest must be in writing and sent to Executive Director at the Oklahoma City office.~~

~~(3) The Agency Executive Director will respond in writing within ten (10) days of receiving written protest from organization.~~

~~(4) Upon finding of sufficient cause, the Executive Director may request a special meeting of the Executive Committee of the Council to review the protest filed by the organization in question. The Executive Committee may meet with the organization filing a protest. The special meeting of the Executive Committee will take place within thirty (30) days after the Executive Director's response to the organization's filing of the written protest. The Executive Committee will make a recommendation concerning any protest to the full Council for action at the next Council meeting following the special meeting of the Executive Committee.~~

~~(5) Within twenty (20) days after the Council meeting, the Chairman of the Council shall respond in writing to the organization filing a protest. The Chairman's response to the organization which filed the protest will be the final decision of the Council.~~

70:10-3-19. Evaluation of projects, programs, activities and services [REVOKED]

~~All projects, programs, activities or services contracted by the State Arts Council of Oklahoma with state and/or federal or private funds are subject to evaluation by Council, Council Staff, various committees, panels, consultants, technical experts, task forces, or any other group or individuals the Council believes necessary to acquire an accurate statement of the value of funds disbursed to any organization.~~

70:10-3-20. Project assistance categories [REVOKED]

~~(a) Categories will be established by the Council to best serve the needs of qualified organizations within the necessary structure to dispense funds within the time restraints of the fiscal year of the State of Oklahoma.~~

~~(b) Agency publications will contain guidelines and funding criteria and such publications will be available to the public and distributed to individuals and organizations requesting such publications.~~

70:10-3-21. Counter proposals and counter offers of Council [REVOKED]

~~The Council may, if it so desires, make a counter proposal or counter offer to any organization submitting a proposal and/or application to any program of the Council for any project, program, activity or service.~~

70:10-3-22. Council funding decision [REVOKED]

~~Project Assistance applications may be reviewed by advisory panels selected in accordance with Council policy and administration as written in 70:1-5-1 through 70:1-5-5. The Council makes the final awards decision for all Project Assistance applications and is responsible for insuring that applications are in compliance with policies, rules and regulations. Organizations are notified in writing of Council funding decisions.~~

70:10-3-23. Audit and financial statement requirements [REVOKED]

~~(a) As of July 1, 1983 all qualified organizations receiving financial assistance from the Project Assistance Program may have to submit an independent and certified audit of the organization and of previous Council projects.~~

~~(b) "Independent and certified audit" shall mean an audit performed by a Public Accountant or Certified Public Accountant registered with the Oklahoma Board of Public Accountancy. The audit shall be to the standards established by the Board of Public Accountancy for audits and shall include the specific state and/or federal requirements. Council will establish criteria for selection for organizations to submit audit information.~~

70:10-3-24. Materials submitted to the Agency become property of the State of Oklahoma [REVOKED]

~~All materials submitted to the Council as part of any application may become the property of the State of Oklahoma unless otherwise indicated. Materials may include, but not be limited to, photographs, annual reports, publications of any kind, manuscripts, projection slides, recordings, financial reports, audit reports, letters and books.~~

AGENCY NOTE: RENUMBERED TO 70:1-3-13

70:10-3-25. Qualifications of grant applicants

(a) To be eligible for grants, an applicant must be a non-religious, non-profit, tax-exempt 501(c)(3) organization, agency of government, sovereign Indian Nation, public library, college, university or public school. Non-profit organizations must be incorporated in the State of Oklahoma. Organizations qualifying for applicant status must provide to the Agency the following documents: A copy of the U.S. Department of Treasury, Internal Revenue Service Division determination letter for 501(c)(3) tax-exempt status or the official document identifying the applicant organization as a unit of either state, local or tribal government. All organizations must also have on file a completed login form provided by the Agency.

501(c)(3) non-profit organizations must have on file with the Agency these additional documents: Oklahoma Certificate of Incorporation, Articles of Incorporation, and the organization's By-laws. Documents are reviewed to determine organization's eligibility to apply for Council grant programs. Failure to submit any of the above items will result in determining that the organization is ineligible to apply for grant programs.

(b) Applicants must comply with all National Endowment for the Arts requirements as well as state and federal legislation as stated in the Legal Assurances section of the grant application. For a copy of the Legal Assurances, contact the Agency office.

70:10-3-26. Grantmaking power of the Oklahoma Arts Council

The Council establishes guidelines for all grant programs. The guidelines establish deadlines, forms, procedures on application submission, funding criteria, review process, evaluation process and the final reporting process. Grant programs and guidelines are evaluated and revised as needed. Guidelines can be viewed on the Agency website or copies of guidelines are available to the public by writing or calling the Agency.

70:10-3-27. Council funding decisions

Financial assistance applications may be reviewed by advisory panels selected in accordance with Council policy and administration as written in 70:1-5-1 through 70-1-5-5. The Council makes the final award decisions for all financial assistance applications and is responsible for insuring that applications are in compliance with policies, rules and regulations. Organizations are notified in writing of Council funding decisions.

70:10-3-28. Disbursement of funds

(a) Financial assistance disbursements include all expenditures of state and federal funds as well as private monies donated to the Council, for any program, project, activity or service for which the Council may contract. All programs, projects, activities or services sponsored in whole or in part with state, private or federal funds shall conform to the following requirements set forth in 53 O.S., Section 171:

(b) *The Oklahoma Arts Council shall dispense funds for arts purposes only. The Oklahoma Arts Council shall enter into contracts with other state agencies or nonprofit corporations holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1954, and listed as an exempt organization in Section 501(c)(3) of the Internal Revenue Code, 1954, of the United States, as amended. These nonprofit corporations must demonstrate that the goods and services provided meet the intent of the state policy provided in this act.*

(c) *Funds shall not be applied, donated or used directly or indirectly for the use, benefit or support of any sect, church, denomination or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.*

(d) *The Oklahoma Arts Council shall provide opportunity, by public notices, to all organizations interested in providing these goods and services, who will submit written applications to be received and acted upon by the Council. At the conclusion of the contract, each state agency or nonprofit corporation shall provide the Oklahoma Arts Council with proof of fulfillment of the contract in proper order and must be affirmed on the proper form, provided by the Oklahoma Arts Council, by the managing officers of the state agency or nonprofit group making the contract.* [53 O.S., Section 171]

70:10-3-29. Limitations on changes of contracts

The contracting organization must notify the Agency of any significant changes in personnel, goals, objectives, activities, project beginning and ending dates, costs and/or expenses of any project, program, activity or service contracted by the Council. Notification of any changes in the project must be immediate and in writing and sent to the Agency office in Oklahoma City and must be approved prior to beginning the project.

70:10-3-30. Appeal procedure

Any organization qualified to submit applications to the Council for financial assistance may appeal the action of the Council concerning said applications.

(1) Every step of the procedure will be documented with necessary reports, letters, data and other material necessary for a complete record of the appeal procedure.

(2) Appeals against any proposed or contracted project, program, activity or service must be made in writing no more than 10 days after receipt of official notice by the organization submitting application and sent to the Executive Director at the Agency office.

(3) The Executive Director will respond in writing within thirty (30) days of receiving written appeal from the organization.

(4) Upon finding sufficient cause, the Executive Director may request a special meeting of the Executive Committee of the Council to review the appeal filed by the organization in question. The Executive Committee may meet with the organization filing an appeal. The special meeting of the Executive Committee will take place within thirty (30) days after the Executive Director's response to the organization's filing of the written appeal. The Executive Committee will make a recommendation concerning any appeal to the full Council for action at the next Council meeting following the special meeting of the Executive Committee.

(5) Within twenty (20) days after the Council meeting, the Chairman of the Council shall respond in writing to the organization filing an appeal. The Chairman's response to the organization, which has filed the appeal, will be the final decision of the Council.

70:10-3-31. Audit and financial records

(a) Separate financial records must be maintained by the organizations for any project that has received funding from the Oklahoma Arts Council. These records must be kept on file

for a minimum of three years following submission of the final report and are subject to state and/or federal audits any time during those three years.

(b) As of July 1, 1983 all qualified organizations receiving financial assistance may have to submit an independent and certified audit of the organization and of previous Council projects. "Independent and certified audit" shall mean an audit performed by a Public Accountant or Certified Public Accountant registered with the Oklahoma Board of Public Accountancy. The audit shall be to the standards established by the Board of Public Accountancy for audits and shall include the specific state and/or federal requirements. Council will establish criteria for selection for organizations to submit audit information.

SUBCHAPTER 5. OKLAHOMA TOURING PROGRAM [REVOKED]

70:10-5-1. Sponsors and presenters [REVOKED]

~~(a) Presenters/Sponsors of the Oklahoma Touring Program must meet criteria established by the Council for financial assistance.~~

~~(b) Presenters/Sponsors will apply to the Council within established deadlines.~~

~~(c) The Council will only fund artistic fees up to 50% of a maximum fee authorized by the Council.~~

70:10-5-2. Producers and touring groups [REVOKED]

~~(a) Producers authorized to tour under the auspices of the Oklahoma Touring Program will apply to the Council meeting deadlines and criteria as established by Council policy.~~

~~(b) Advisory panels will be used to evaluate applicants to the program. Selection criteria for panelists is covered in 70:1-5-1 through 70:1-5-5.~~

~~(c) Final selection of touring producers will be made by the Council.~~

SUBCHAPTER 7. ARTISTS-IN-RESIDENCE PROGRAM - SCHOOL AND COMMUNITY CATEGORIES [REVOKED]

70:10-7-1. Program purpose and scope [REVOKED]

~~The Artists-in-Residence Program provides qualified artists to reside in schools, communities, institutions, and nonprofit organizations and provide structured activities to enhance the quality of life of participants and provide a deeper appreciation of various art forms and artists.~~

70:10-7-2. Deadlines for program [REVOKED]

~~Deadlines and funds awarding procedure for the Artists-in-Residence Program will be set and proper notification made through public announcement and notices.~~

70:10-7-3. Use of Council forms [REVOKED]

~~Applications for any residency under the Artists-in-Residence Program must be on proper form(s) provided by the Council. An original application and the required number of copies must be submitted to the Council. Applications which are incomplete or are not accompanied by all requested information may be rejected by the Council.~~

70:10-7-4. Council action on funding of program [REVOKED]

~~Council will determine and approve financial assistance for residencies, in accordance with guidelines in the Artists-in-Residence Handbook.~~

70:10-7-7. Sponsor and artists responsibilities [REVOKED]

~~The responsibility for planning, implementing, documenting, and assessing each residency lies with the sponsor(s) and artist(s).~~

70:10-7-8. Residency schedule requirements [REVOKED]

~~A residency schedule is based on a five day, forty (40) unit hours work week. The resident artist must spend twenty (20) unit hours with residency participants in contact time and must spend the other twenty (20) unit hours in studio time where the artist further develops professional artistic skills.~~

70:10-7-9. Self-employed artists [REVOKED]

~~Artists participating in the Artists-in-Residence Program, School and Community categories are not employees of the Council. Each artist is self-employed and responsible for making proper federal and state tax deductions. Artists are contracted for professional services by the sponsoring organization(s). Residencies are based on requests from the sponsors and on available financial assistance from the Council.~~

70:10-7-10. Annual assessment of program [REVOKED]

~~The Agency may annually assess the needs of the Artists-in-Residence Program, School and Community categories and determine the number of additional artists, if any, that the program will need for the next fiscal year. Public notice and announcement will be made when artists are needed for the Artists-in-Residence Program.~~

70:10-7-11. Council responsibility for program [REVOKED]

~~(a) The State Arts Council of Oklahoma is responsible for the overall design and direction of the Artists-in-Residence Program, School and Community categories. The Agency is responsible for providing and monitoring program guidelines and for distributing information to sponsors and artists.~~

~~(b) Other Agency responsibilities are to:~~

~~(1) Identify and solicit qualified professional artists to participate in the Artists in Residence Program.~~

~~(2) Identify potential sponsors statewide and provide them with information about the Artists in Residence Program.~~

~~(3) Review Artists in Residence Program Residency Applications and notify sponsors of financial assistance recommendations.~~

~~(4) Inform sponsors and artists of all program guidelines and responsibilities. The State Arts Council is responsible for the interpretation of all guidelines and regulations.~~

~~(5) Assist sponsors and artists with residency planning, implementation, problem solving and conflict resolution, when necessary.~~

~~(6) Provide financial assistance to sponsors for residencies.~~

~~(7) Provide sponsors and artists with forms and publications necessary for the efficient operation of the Artists in Residence Program.~~

70:10-7-12. Solicitation of new artists [REVOKED]

~~Solicitation of artists for the Artists in Residence Program will follow the procedures below:~~

~~(1) Artists wishing to participate in the Council's Artists in Residence Program must complete an application which is available from the Council, when a new round of solicitations is announced.~~

~~(2) Artists wishing to participate in the Artists in Residence Program must appear before an artistic panel and an interview panel.~~

~~(3) Artists must attend an orientation session sponsored by the Council.~~

~~(4) Artists applying to the Artists in Residence Program must comply with all deadlines, dates and other instructions contained in the public notice announcement and in the application forms.~~

~~(5) Artists are appointed to serve in the program for a period of two years, July 1 to June 30.~~

70:10-7-13. Contracting and payment procedure [REVOKED]

~~Contracting and payment procedures for all events under the Artists in Residence Program, will be made in accordance with the Procedures Manual of the Office of State Finance and the Purchasing Procedures Manual of the Department of Central Services Central Purchasing Division.~~

70:10-7-14. Payment contract return requirement [REVOKED]

~~The payment contract must be properly signed and notarized and returned to the Council office in Oklahoma City no later than ten (10) days after the sponsor receives said payment contract. Failure to return a properly completed payment contract within the time period specified may result in the Council withdrawing financial assistance.~~

70:10-7-15. Grievance procedure [REVOKED]

~~(a) At the beginning of every fiscal year each artist in the Artists in Residence Program shall receive a copy of the Artists in Residence Policy Statement. Each artist must sign and return, to the Agency, a copy of the Artist Enrollment Agreement with the understanding that the artist agrees to abide by the Artists in Residence Policy Statement. Only upon Agency receipt of a properly completed and signed Artist Enrollment Agreement will the artist be eligible to conduct residencies.~~

~~(b) An artist in the Artists in Residence Program has the right to file a grievance regarding suspension or dismissal from the program in accordance with the procedures established by the Council.~~

SUBCHAPTER 9. ARTIST ROSTERS

70:10-9-1. Purpose

The Council shall establish artist rosters to provide structured activities to enhance the quality of life of participants and provide a deeper appreciation of various art forms and artists.

70:10-9-2. Rosters

The Council is responsible for developing, monitoring, and assuring roster quality and standards. The Oklahoma Arts Council will screen, select and renew artists for rosters based on criteria established through the application and panel process. Roster applications may be reviewed by advisory panels selected in accordance with Council policy and administration as written in 70:1-5-1 through 70:1-5-5. The Council makes the final roster selection and is responsible for insuring roster artists meet and maintain all criteria and standards. The Oklahoma Arts Council retains the right to select, renew or dismiss any roster artist based on the Oklahoma Arts Council established criteria and standards.

70:10-9-3. Assessment of rosters

The Oklahoma Arts Council may assess the roster(s) and determine areas of need for the next fiscal year. Based on the assessment, public notice and announcement will be made when artists are needed for roster(s).

70:10-9-4. Self-employed artists

Artists listed on Oklahoma Arts Council roster(s) are not employees of the Council. Each artist is self-employed and responsible for making proper federal and state tax deductions. Artists are contracted for professional services by the sponsoring organization(s).

70:10-9-5. Roster appeal procedure

The following appeal procedure is established for any qualified artist not selected or dismissed from the roster:

(1) Every step of the procedure will be documented with necessary reports, letters, data and other material necessary for a complete record of the appeal procedure.
(2) Appeals against decisions to reject or to dismiss an artist from the roster must be made in writing no more than 10 days after receipt of official notice by the artist.
(3) The Agency Executive Director will respond in writing within thirty (30) days of receiving written appeal from the artist.
(4) Upon finding sufficient cause, the Executive Director may request a special meeting of the Executive Committee of the Council to review the appeal filed by the artist in question. The Executive Committee meeting will take place within thirty (30) days after the Executive Director's response to the artist's filing of the appeal. The Executive Committee will make a recommendation concerning any appeal to the full Council for action at the next Council meeting following the special meeting of the Executive Committee.
(5) Within twenty (20) days after the Council meeting, the Chairman of the Council shall respond in writing to the artist filing an appeal. The Chairman's response to the artist, who has filed the appeal, will be the final decision of the Council.

[OAR Docket #04-904; filed 5-13-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #04-1004]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-7. Procedure for adoption of rules [AMENDED]
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-2. Fees for the Petroleum Storage Tank Division [AMENDED]
Subchapter 7. Commencement of a cause
Part 3. Oil and Gas
165:5-7-11. Change of operator [AMENDED]
165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; Article IX, §18 of the Oklahoma Constitution, 75 O. S. § 501 *et seq.*
DATES:
Comment period:
February 19, 2004 thru March 29, 2004
Public hearing:
March 29, 2004
Adoption:
March 29, 2004
Submitted to Governor:
March 30, 2004
Submitted to House:
March 30, 2004
Submitted to Senate:
March 30, 2004
Gubernatorial approval:
May 13, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2004.
Final adoption:
May 21, 2004
Effective:
July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:5-1-7 concerning procedure for adoption of rules, is amended to extend the comment period to 30 days prior to a hearing in accordance with amendments to the Administrative Procedures Act, pursuant to SB 948. OAC 165:5-3-2 concerning fees for the Petroleum Storage Tank Division, is amended to add fees in conjunction with the new license requirements for Underground Storage Tank Installers, Underground Storage Tank Removers, Aboveground Storage Tank Installers and Vapor Monitoring Well Technicians. OAC 165:5-7-11 concerning change of operator, is amended to correct a typographical error. OAC 165:5-7-14 concerning tax exemptions pursuant to OAC 165:10, Subchapter 21, is amended to correct a typographical error.
CONTACT PERSON:
Jeff Southwick (405) 522-4457

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

PART 1. GENERAL

165:5-1-7. Procedure for adoption of rules

(a) The Commission shall comply with all applicable provisions of the Administrative Procedures Act ("APA"), 75 O.S. §250 et seq., and Article IX of the Oklahoma Constitution.
(b) In addition to the statutory requirements of the APA, notice of proposed rulemaking action shall be published one time at least ~~fifteen (15)~~ thirty (30) days prior to public hearing in a newspaper of general circulation published in Oklahoma County. If, however, the Commission finds that an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstance requires an emergency rulemaking, the Commission may promulgate, pursuant to applicable provisions of the APA, any such rule without notice and hearing.
(c) All rulemakings concerning the Petroleum Storage Tank Division shall be developed as follows:
(1) **Storage Tank Advisory Council.**
(A) Pursuant to 17 O.S. (Supp. 1997) § 340, the Storage Tank Advisory Council has the authority to recommend to the Commission rules to implement the Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Tank Release Indemnity Fund Program.
(B) The staff of the Petroleum Storage Tank Division shall have no standing to recommend to the Commission en banc proposed permanent rules or

changes to such rules which have not previously been submitted to the Storage Tank Advisory Council for action at least forty five (45) days prior to the hearing for adoption of the rules by the Commission en banc.

(C) For rulemakings initiated by the Storage Tank Advisory Council, the Council shall depend on the Commission staff to follow the applicable rulemaking procedures of the APA and the rules of the Commission.

(D) All actions of the Storage Tank Advisory Council with regard to rulemaking shall be deemed actions of the Commission for the purposes of complying with the APA.

(E) The Commission may adopt permanent rules without the advice of the Storage Tank Advisory Council or not in accord with the advise of the Council. However, if any permanent rules are so adopted, the Commission shall detail the reasons on the rule report submitted to the Governor and the Legislature pursuant to the APA.

(2) **Emergency rulemakings.** The Commission may promulgate emergency rules without the advise of the Storage Tank Advisory Council when time constraints of the emergency as determined by the Commission, do not permit timely development of recommendations by the Storage Tank Advisory Council.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) **General.**

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission - Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(b) **Fees.**

(1) **Application fee.** The amount of fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is $35.00.

(2) **Annual fee.** An annual storage tank permit fee shall be charged to all owners of regulated petroleum storage tanks for each storage tank currently in use as follows:

(A) For petroleum storage tanks - $25.00 per tank.

~~(B) For hazardous substances UST facilities - $100.00 per tank.~~

(~~C~~B) A facility which has both petroleum and hazardous substance will be considered as one facility.

(~~D~~C) For noncommercial agricultural underground storage tanks containing petroleum products - $10.00 per tank.

(~~E~~D) For any facility installed or permanently abandoned during a calendar year, the full yearly fee shall be assessed.

(~~F~~E) Billings will be mailed out approximately 60 days in advance of the due date as noted on the billing.

(3) **UST Installer licensing fee.** Any individual who is to be licensed as a ~~petroleum storage tank~~ an underground storage tank installer shall pay the following fees:

(A) Application fee - $25.00

(B) Examination fee/re-exam fee - $25.00

(C) License fee (2-Year license) - $50.00 ~~(November 1-October 31)~~

(D) License renewal fee (2-year license) - $50.00

(E) If licensed for six months or less - $25.00

(4) ~~**Petroleum Storage Tank Professional fee.**~~ **Remediation Consultant License.** Any individual who qualifies as a ~~Petroleum Storage Tank Professional pursuant to OAC 165:25~~ Remediation Consultant shall pay the following ~~fee~~ fees:

(A) Application fee - $25.00

(B) Examination/re-exam fee - $25.00

(C) License fee (2-year license) - $50.00 ~~(January 1 - December 31)~~

(D) License renewal fee (2-year license) $50.00

(E) If licensed for six months or less - $25.00

(5) **UST Remover licensing fee.** Any individual who is to be licensed as an underground storage tank remover shall pay the following fees:

(A) Application fee - $25.00

(B) Examination fee/re-exam fee - $25.00

(C) License fee (2-Year license) - $50.00

(D) License renewal fee (2-year license) - $50.00

(E) If licensed for six months or less - $25.00

(6) **AST Installer licensing fee.** Any individual who is to be licensed as an aboveground storage tank installer shall pay the following fees:

(A) Application fee - $25.00

(B) Examination fee/re-exam fee - $25.00

(C) License fee (2-Year license) - $50.00

(D) License renewal fee (2-year license) - $50.00

(E) If licensed for six months or less - $25.00

(7) **Vapor Monitoring Well Technician licensing fee.** Any individual who is to be licensed as a monitoring technician shall pay the following fees:

(A) Application fee - $25.00

(B) Examination fee/re-exam fee - $25.00

(C) License fee (2-Year license) - $50.00

(D) License renewal fee (2-year license) - $50.00

(E) If licensed for six months or less - $25.00

(~~5~~8) **Miscellaneous fees.**

(A) **Certified copies.** A fee of $1.00 is charged for each certified copy of an order or other document on file with the Commission, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

~~(i) Mail out copies of any file or order - flat fee to cover research, copying and postage not to exceed 30 pages.~~

~~(I) 1 to 15 pages - $5.00~~

~~(II) 16 to 30 pages - $10.00~~

~~(III) Documents exceeding 30 pages - $0.25 per page plus postage~~

~~(ii) Microfilmed images from coin operated microfilm reader (coin box) $0.25~~

(~~iii~~i) Batch reproduction on continuing basis (per page) - $0.25

(~~iv~~ii) Copy of any document prepared in OCC offices (per page) - $0.25

~~(v) Copy of any Chapter of Commission rules and regulations - $10.00~~

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $7.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

(~~6~~9) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus:

(A) Assess payment of a penalty of 50% of the computed total fee of that application or facility; and/or

(B) Suspend tank operation until payment of any fee or penalty assessed under this subsection.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 3. OIL AND GAS

165:5-7-11. Change of operator

(a) **Scope.** This Section addresses designation of operators under forced pooling orders, location exception orders, and increased density orders.

(b) **Designation of operator under a forced pooling order.** Each order forced pooling the rights and equities in a drilling and spacing unit shall designate at least one operator to operate the well or unit. In addition, the Commission may designate one or more alternate operators in the order.

(c) **Procedure for obtaining a change of operator under a forced pooling order.** Application, notice and hearing shall be prerequisites to the issuance of an order changing or deleting a designation of operator in any forced pooling order. Notice shall be given by certified mail at least fifteen (15) days prior to the hearing to the respondents to the pooling order or to their successors in interest and shall be published as required in OAC 165:5-7-1. Provided, however, this procedure shall not be the exclusive method of obtaining a change of operator under a forced pooling order as the use of the optional procedure set forth in OAC 165:5-7-11(g) below is still available. If such optional Form ~~1973A~~ 1073A application is used, Applicant must still provide personal notice by certified mail to the respondents to the pooling order or their successors in interest as well as notice by publication.

(d) **Optional designation of operator for location exception and increased density orders.** A designation of operator shall not be necessary for an order for either a well location exception or increased well density. In any situation where a location exception or increased density order designates an operator, the Commission may issue an order either appointing a successor operator or removing the designation of operator provision.

(e) **Procedure for obtaining a change in operator designation regarding increased density and location exception orders.** Application, notice and hearing shall be prerequisites to issuance of an order changing or deleting a designation of operator; provided, that no application, notice, or hearing shall be required to change or delete the designation of operator in increased density or location exception orders when:

(1) The interest of the currently designated operator is transferred to its subsidiary or parent company, or a subsidiary of a parent company;

(2) The interest of the currently designated operator is transferred to a surviving or resulting corporation or business entity due to, respectively, a merger, consolidation or

reorganization involving the transferor and transferee. As used in this paragraph, "business entity" means a domestic or foreign partnership, whether general or limited; limited liability company; business trust; common law trust, or other unincorporated business; or

(3) The currently designated operator undergoes a name change. The relief afforded by this paragraph is not applicable to situations where the name change involves the following conditions:

(A) The assignment of a new Federal Employer Identification number by the Internal Revenue Service to the new company;

(B) The name change is accompanied by a change in the majority of partners in a partnership;

(C) The name change is associated with a divorce between a husband and wife when the husband and wife comprise a partnership;

(D) The name change is associated with the death of one spouse in a partnership comprised of a husband and wife;

(E) The name change involves a sole proprietorship; or

(F) The name change is associated with such other circumstances where the Commission determines upon application, notice and hearing that the relief provided in this paragraph is not applicable, or that an exception to any exclusion should be granted.

(G) As used in this subsection, the term "partnership" means a domestic or foreign partnership, whether general or limited.

(4) In such events, the parent, subsidiary, surviving or resulting corporation or business entity or currently designated operator who has undergone a name change shall be substituted as designated operator upon filing and approval of Form 1073, required by OAC 165:10-1-15.

(f) **Amendment of multiple orders.** The applicant may use one application to amend two or more orders, even though the orders grant different types of relief. For purposes of this Chapter, such an application shall be considered as an application for a single form of relief.

(g) **Use of Optional Form 1073A application.**

(1) An applicant shall have the option to use Commission Form 1073A for the application and Form 1073B for notice of application or Form 1073C for notice of hearing.

(2) The Form 1073A shall include the following information:

(A) The order number and type of order.

(B) The name and legal description of the applicable well or drilling and spacing unit.

(C) The OTC operator numbers of the current operator and the proposed operator.

(D) The OTC lease number and API number.

(E) The classification of the well.

(3) If the space provided on the form is insufficient to include the necessary information related to amendment of multiple orders, then the applicant shall attach to the form an exhibit with the necessary information.

(h) **Personal notice requirements for location exception and increased density orders.** With respect to a location exception or increased density order, the applicant shall mail or deliver a copy of the application and notice of hearing to each current working interest owner in the well.

(i) **Special notice provisions applicable to notices of hearing.** For purposes of this Section, the notice of hearing shall contain a special provision apprising the respondent of the requirements for protests under (j) of this Section.

(j) **Requirements for protests.** Any person desiring to protest an application shall have fifteen (15) days after receipt of notice in which to file a written protest to the application. Failure to submit a written protest within the fifteen (15) day period shall be deemed consent to the granting of the application. If the application is protested within the fifteen (15) days allowed, the applicant shall have the notice of hearing published pursuant to 165:5-7-1(n)(2).

(k) **Summary disposition of unprotested applications.** Applications not contested may be disposed of by announcement, without necessity of counsel appearing.

(l) **Compliance with Form 1073 requirement.** The order changing the operator designation shall be deemed equivalent to filing of the Form 1073, required by 165:10-1-15 if the order contains the information required by (g)(2) of this Section.

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21

(a) **Form of application.**

(1) Each application under OAC 165:10-21, Part 13 shall be filed with the Court Clerk on an OCC Form 1139 with the exhibits required by OAC 165:10-21, Part 13.

(2) Each application under OAC 165:10-21, Parts 6, 7, 8, 9, 11 and 14, shall be filed with the Court Clerk on an OCC Form 1534 with the exhibits required by the provisions of OAC 165:10-21, which pertain to each specific gross production tax exemption.

(3) Each application under OAC 165:10-21, Part ~~14A~~ 17 shall be filed with the Court Clerk on an OCC Form 1535 with the exhibits required by the provisions of OAC 165:10-21, which pertain to sales tax exemptions for electricity sold to operate reservoir dewatering projects.

(b) **Referral to Conservation Division.** Upon filing of the application with required exhibits, the Commission shall refer the matter to the Conservation Division for the purpose of reviewing the application and making findings and recommendations by report to the Commission.

(c) **Notice.** No notice shall be required.

(d) **Right to hearing if application recommended for denial or modification.** If the Conservation Division recommends denial or modification of the application, then the applicant may move for a hearing de novo within ten (10) days after the date of report denying the application.

(e) **Appeal.** Any person adversely affected by the report of the Conservation Division may appeal said report subject to requirements of OAC 165:5-13-5.

[OAR Docket #04-1004; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL AND GAS CONSERVATION

[OAR Docket #04-1003]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Gas well operations and permitted production
165:10-17-9. Special allocated gas pools [AMENDED]
Subchapter 21. Applications for tax exemptions
Part 6. Production enhancement projects
165:10-21-21. General [AMENDED]
165:10-21-22. Definitions [AMENDED]
165:10-21-24. Rebates - Refund procedure [AMENDED]
Part 7. Re-establishment of production from an inactive well
165:10-21-36. Definitions [AMENDED]
165:10-21-38. Rebates - Refund procedure [AMENDED]
Part 8. Deep wells
165:10-21-45. General [AMENDED]
165:10-21-47.1. Rebates - Refund procedure [AMENDED]
Part 9. New discovery wells
165:10-21-55. General [AMENDED]
165:10-21-58. Rebates - Refund procedure [AMENDED]
Part 11. Horizontally drilled producing wells
165:10-21-66. Definitions [AMENDED]
165:10-21-68. Rebates - Refund procedure [AMENDED]
165:10-21-69. Time periods for exemption from gross production tax levied on horizontally producing wells [AMENDED]
Part 13. Incremental production from enhanced recovery projects
165:10-21-76. Definitions [AMENDED]
165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
165:10-21-80. Expiration of exemption for incremental production [AMENDED]
Part 14. Production of oil, gas or oil and gas from any well located within boundaries of a three-dimensional seismic shoot
165:10-21-82. General [AMENDED]
165:10-21-82.2. Qualification procedure [AMENDED]
165:10-21-82.3. Rebates - Refund procedure [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission, 17 O.S. 2001 Section 52; 27A O.S. 2001 Section 1-3-101, 52 O.S. 2001, 52 O.S. 2001 Section 139; and 52 O.S. 2001 Sections 239 and 240, and 68 O.S., 2003 Supp., Section 1001.
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SUPERSEDED EMERGENCY ACTIONS:
Subchapter 17. Gas well operations and permitted production
165:10-17-9. Special allocated gas pools [AMENDED]
Subchapter 21. Applications for tax exemptions
Part 6. Production enhancement projects
165:10-21-21. General [AMENDED]
165:10-21-22. Definitions [AMENDED]
165:10-21-24. Rebates - Refund procedure [AMENDED]
Part 7. Re-establishment of production from an inactive well
165:10-21-36. Definitions [AMENDED]
165:10-21-38. Rebates - Refund procedure [AMENDED]
Part 8. Deep wells
165:10-21-45. General [AMENDED]
165:10-21-47.1. Rebates - Refund procedure [AMENDED]
Part 9. New discovery wells
165:10-21-55. General [AMENDED]
165:10-21-58. Rebates - Refund procedure [AMENDED]
Part 11. Horizontally drilled producing wells
165:10-21-66. Definitions [AMENDED]
165:10-21-68. Rebates - Refund procedure [AMENDED]
165:10-21-69. Time periods for exemption from gross production tax levied on horizontally producing wells [AMENDED]
Part 13. Incremental production from enhanced recovery projects
165:10-21-76. Definitions [AMENDED]
165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
165:10-21-80. Expiration of exemption for incremental production [AMENDED]
Part 14. Production of oil, gas or oil and gas from any well located within boundaries of a three-dimensional seismic shoot
165:10-21-82. General [AMENDED]
165:10-21-82.2. Qualification procedure [AMENDED]
165:10-21-82.3. Rebates - Refund procedure [AMENDED]
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
In the instant emergency amendment of OAC 165: Chapter 10, the Oklahoma Corporation Commission ("Corporation Commission" or "Commission") amends language in OAC 165:Chapter 10 through this proceeding to bring the Oil and Gas Conservation Rules into conformity with Senate Bill 535 (2003), codified as amendments to 68 O.S., 2003 Supp., Section 1001 through the addition or amendment of the following provisions: Oil and Gas Conservation Rules, Chapter 10, Subchapter 21, Tax Exemptions, paragraphs OAC 165:10-21-21, 165:10-21-22, 165:10-21-24, 165:10-21-36, 165:10-21-38, 165:10-21-45, 165:10-21-47.1, 165:10-21-55, 165:10-21-58, 165:10-21-66, 165:10-21-68, 165:10-21-69, 165:10-21-76, 165:10-21-78, 165:10-21-80, 165:10-21-82, 165:10-21-82.2, and 165:10-21-82.3 are amended to reflect the extension of the effective date for the exemptions to July 1, 2006 and the implementation of a prospective time-bar to the filing of refund claims with the Oklahoma Tax Commission as provided by S.B. 535. The Oil and Gas Conservation Rule OAC 165:10-17-9(h)(2) is amended to increase the overage limit for the Red Oak special allocated gas (SAG) pool from 48 to 168 times the well allowable as provided in the regulation. This amendment is needed to achieve the most efficient production rate for the Red Oak SAG pool as requested by the operator of the field.
CONTACT PERSON:
Mike Decker (405) 521-4258

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 17. GAS WELL OPERATIONS AND PERMITTED PRODUCTION

165:10-17-9. Special allocated gas pools

(a) **Scope.** This Section applies to special allocated gas pools except any special allocated gas pool with allowables based upon volumetric withdrawals.

(b) **Minimum unit allowable of 150 mcf/d.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the minimum allowable for a drilling and spacing unit in the pool shall be 150 MCF/D regardless of the amount of any location exception penalty charged against a unit well. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(c) **Minimum unit allowable of 450 mcf/d for the Guymon-Hugoton pool.**

(1) For the Guymon-Hugoton Special Allocated Gas Pool, minimum allowables shall be determined as follows: The minimum allowable shall be the lesser of 450 mcf/d or the drilling and spacing unit's capability. Capability shall be defined as the average of the highest three (3) of the last twelve (12) months of production. A drilling and spacing unit receiving a minimum allowable shall not accrue underage. The minimum allowables under this Section shall not affect the calculation of capable well allowables. The field monthly allowable shall be equal to total nominations and not adjusted for underage or overage.

(2) The deliverability standard pressure (DSP) to be used in the application of special allocated rules (field rules) shall be defined as 25 pounds less than the average shut-in wellhead pressure of the pool.

(3) The Corporation Commission shall calculate and publish reports of allowable and production quarterly.

(d) Minimum unit allowable of 2,000 mcf/d for the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools. For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the minimum allowable for a drilling and spacing unit in each pool shall be 2,000 mcf/d. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(e) **Double minimum allowable of 300 mcf/d.**

(1) **Compressor and application required.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, if a drilling and spacing unit has a minimum allowable under (b) of this Section, the operator of a well in the drilling and spacing unit may obtain for the unit a double minimum allowable regardless of any location penalty against a well by installing a compressor on a unit well and applying for a double minimum allowable under (2) of this subsection.

(2) **Request for administrative approval.** To apply for a double minimum allowable, the operator shall submit to the Manager of Production Allowables for the Conservation Division a letter requesting a double minimum allowable and stating the factual basis for the request and the legal description of the well with the compressor.

(f) **Basic allowable.**

(1) **Use of basic allowable for determining overage and underage.** For purposes of determining the amount of overage or underage accrued by a well or drilling and spacing unit, the Conservation Division shall establish on a yearly basis a status factor known as the basic allowable.

(2) **Apportionment of basic allowable.**

(A) **Increased density unit without apportionment of the allowable.** If neither OAC 165:10-13-9 nor an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a unit basis.

(B) **Increased density unit with ratable allowables.** If either OAC 165:10-13-9 or an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a per well basis. For purposes of computing overage and underage, the basic allowable shall be apportioned to each unit well using the formula for determining each well's ratable allowables for the applicable month under (3) of this subsection. The term "ratable allowables" refers to a well's share of the unit allowable under the formula apportioning the allowable amongst the unit wells.

(3) **Computation of the basic allowable.** Except as provided in (C) of this paragraph for basic allowable changes, the basic allowable for the calendar year shall be computed as follows:

(A) **For all pools except the Red Oak Pools.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's January allowable for the calendar year.

(B) **For the Red Oak Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's March allowable for the calendar year.

(C) **Changes in the basic allowable.**

(i) **Test exempt minimum allowable.** If a drilling and spacing unit receives test exempt minimum allowable status as provided in this Section, then the basic allowable shall be a minimum allowable.

(ii) **Test exempt double minimum allowable.** If a drilling and spacing unit receives a test exempt double minimum allowable as provided in this Section, then the basic allowable for the unit shall be a double minimum allowable.

(iii) **Retests.** If the well operator submits to the Conservation Division a retest which is approved by the Conservation Division, then the Conservation Division shall recompute the basic allowable using the retest. Retests are permitted at any time and become effective the first day of the month after acceptance by the Conservation Division.

(g) **Determination of overage and underage.**

(1) **Overage.**

(A) **Drilling and spacing unit without ratable allowables.** If no well in a drilling and spacing unit is subject to a ratable allowable, the current monthly allowable shall be compared with the second prior month's unit production. Production in excess of the current monthly allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, overage shall not reduce any subsequent monthly allowable until accumulated overage exceeds the applicable overage limit under (h) of this Section.

(B) **Drilling and spacing unit subject to ratable allowables.** If any well in a drilling and spacing unit is subject to a ratable allowable, the current monthly ratable allowable for the well shall be compared with the second prior month's production from the well. Production in excess of the ratable allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, the well's overage shall not reduce any subsequent monthly ratable allowable until accumulated overage exceeds the well's overage limit under (h) of this Section.

(2) **Underage.**

(A) **Drilling and spacing unit without ratable allowable.** If no well in a drilling and spacing unit is subject to a ratable allowable under OAC 165:10-13-9, the current monthly allowable for the unit shall be compared with the second prior month's unit production. If production is less than the allowable, the difference between the production and the unit allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly allowable.

(B) **Drilling and spacing unit with ratable allowables.** In a drilling and spacing unit with ratable allowables, the current monthly ratable allowable for a well shall be compared with the second prior month's production from the well. If production was less than the current monthly ratable allowable, the difference between the production and the ratable allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly ratable allowable for the well.

(h) **Overage limits.**

(1) **For all pools Except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and the Red Oak Spiro, the overage limit is six times:

(A) The basic allowable for the drilling and spacing unit, if the overage carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(2) **For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools, the overage limit is ~~48~~ 168 times:

(A) The basic allowable for the drilling and spacing unit, if the overage is carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(3) **Mandatory curtailment for excessive overage.**

(A) **Single well drilling and spacing unit.** If accumulated overage from a single well drilling and spacing unit exceeds the applicable overage limit, production from the unit shall be curtailed to 25 percent of the monthly allowable until accumulated overage is reduced below the overage limit.

(B) **Multiple well unit without ratable allowables.** In a multiple well drilling and spacing unit without ratable allowables, if accumulated overage for the unit exceeds the applicable overage limit, the unit production shall be curtailed to 25 percent of its monthly allowable until the accumulated overage is reduced below the overage limit.

(C) **Multiple well unit with a ratable allowable.** In a multiple well drilling and spacing unit with one or more wells subject to a ratable allowable, if the accumulated overage for a well exceeds its overage limit, production from the well shall be curtailed to 25 percent of its monthly ratable allowable until the well's accumulated overage is reduced below its overage limit.

(i) **Underage limits.**

(1) **For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the underage limit is three times the status factor for:

(A) The drilling and spacing unit,

(i) If the unit has only one well, or

(ii) If the unit has multiple wells but no unit well has a ratable allowable; or

(B) The well, if a well has a ratable allowable.

(2) **For all other special allocated gas pools subject to this Section.** For all other special allocated gas pools subject to the Section, the underage limit is six times the status factor for:

(A) The drilling and spacing unit, if the status factor is determined on a unit basis; or

(B) The well, if the well is subject to a ratable allowable.

(j) **Cancellation of underage.**

(1) **Underage in excess of the underage limit.** If accumulated underage exceeds the applicable underage limit, the accumulated underage shall be cancelled.

(2) **Subsequent underage.** After cancellation, underage shall not accrue until after:

(A) The drilling and spacing unit produces a current monthly allowable, if the unit wells share a unit allowable; or

(B) A well with a ratable allowable produces a current monthly ratable allowable.

(k) **Reinstatement of cancelled underage.**

(1) The operator may apply for reinstatement of cancelled underage by:

(A) An application for administrative approval on Form 1010, if filed within six months after cancellation of underage; or

(B) Application, notice, and hearing under OAC 165:5-7-1.

(2) Reinstated cancelled underage shall be available to increase the monthly allowable or ratable allowable for up to one year without cancellation. If reinstated underage is cancelled, the operator may reapply under (1) of this subsection.

(3) For the Guymon-Hugoton special allocated gas pool, the operator of any drilling and spacing unit in such pool which unit has accumulated cancelled underage credited thereto on the records of the Commission prior to July 1, 1998 shall have until January 1, 2000 to file an application with the Commission pursuant to OAC 165:5-7-1 for the reinstatement of such accumulated cancelled underage as credited to such unit prior to July 1, 1998. Upon the filing of such an application, the cause seeking reinstatement of such accumulated cancelled underage shall be diligently prosecuted. In such proceeding for the reinstatement of such accumulated cancelled underage credited to such drilling and spacing unit prior to July 1, 1998, the Commission shall determine the portion of such accumulated cancelled underage which is proper and valid under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool and shall reinstate only such portion that is determined to be proper and valid under such special pool allocation rules (field rules). If an application for reinstatement of any such accumulated cancelled underage credited to a drilling and spacing unit on the records of the Commission prior to July 1, 1998 is not filed with the Commission on or before January 1, 2000, such accumulated cancelled underage shall be permanently deleted from the records of the Commission and shall not thereafter be able to be reinstated or used for any other purpose under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool.

(l) **Effect of reinstatement of underage on pool allowables.** If cancelled underage has been distributed among the capable wells in the pool, reinstated underage shall not be deducted for the allowables of the capable wells which received distributed cancelled underage.

(m) **Test exempt status.**

(1) **No allowable without test.** For all pools except West Cheyenne Upper Morrow and Purvis Chert, no allowable shall be assigned unless:

(A) **Single well drilling and spacing unit.** The operator submits the required test or the unit has test exempt status under this Section.

(B) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, the operator of at least one well in the unit submits the required test in accordance with applicable pool rules or the unit is granted test exempt status under this Section.

(2) **Automatic test exempt status.**

(A) **For the West Cheyenne Upper Morrow and Purvis Chert Pool.** For the West Cheyenne Upper Morrow and Purvis Chert, a drilling and spacing unit shall have test exempt status as follows:

(i) **Single well drilling and spacing unit.** In a single well drilling and spacing, the well operator does not submit either an initial or an annual test.

(ii) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, none of the well operators in the unit submit either an initial or annual test. A test exempt drilling and spacing unit on the West Cheyenne Upper Morrow and Purvis Chert Pools shall have a minimum allowable under the applicable orders establishing and modifying pool rules as opposed to (b) of this Section.

(3) **Test exempt status upon requests for all other pools.** For all other pools except Guymon-Hugoton a drilling and spacing unit shall be test exempt upon written request to the Conservation Division if the potential for the unit does not exceed:

(A) The applicable minimum allowable under this Section.

(B) A double minimum allowable, if the Conservation Division has granted a double minimum to the unit.

(4) **Termination of requested test exempt status.**

(A) **Automatic termination.** Requested test exempt status shall terminate upon:

(i) **Submission of a retest.** Submission of a retest showing that the well has a potential in excess of a test exempt allowable, or;

(ii) **Overproduction.**

(I) **Single well drilling and spacing unit.** If gas production from a single well drilling and spacing unit exceeds a test exempt allowable during any month while the well has test exempt status, the unit shall lose test exempt status beginning with next month following the month with overproduction.

(II) **Multiple well drilling and spacing unit.** If total gas production from a multiple well drilling and spacing unit exceeds the minimum allowable during any month while the unit has test exempt status, the unit shall lose test exempt status beginning with the next month following the month with overproduction.

(B) **Reinstatement of test exempt status after automatic termination.** After termination of test

exempt status for overproduction, the Conservation Division shall not reinstate test exempt status until:

(i) The operator requests test exempt status; and

(ii) The allowable year during which overproduction occurred expires.

SUBCHAPTER 21. APPLICATIONS FOR TAX EXEMPTIONS

PART 6. PRODUCTION ENHANCEMENT PROJECTS

165:10-21-21. General

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to ~~July 1, 2003~~ July 1, 2006 shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. Section 1001(M)(1).

165:10-21-22. Definitions

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

"Base production" means the average monthly amount of production for the twelve-month (12) period immediately prior to the commencement of the project or the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

"Effective date" means the project beginning date for the production enhancement project.

"Exemption period" means a period of twenty-eight (28) months from the date of first sale after completion of the production enhancement project.

"Incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

"Production enhancement project" means: for production enhancement projects having a project beginning date prior to July 1, 1997, any workover as defined in this Section, recompletion as defined in this Section, or fracturing of a producing well; for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, "production enhancement project" means any workover as defined in this Section, recompletion as defined in this Section, reentry of plugged and abandoned wellbores, or addition of well or field compression.

"Recompletion" means: for production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well; for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, "recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

"Workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, "workover" includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, "workover" includes, but is not limited to, the following: acidizing; reperforating; fracture treating; sand/paraffin/scale removal or other wellbore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil and/or gas wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. "Workover" shall not mean the routine maintenance, routine repair, or like-for-like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

165:10-21-24. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as production enhanced.

(2) A Copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(4) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Production Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 7. RE-ESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

165:10-21-36. Definitions

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

"Effective date" means the date on which the reestablishment of production has occurred.

"Exemption period" means a period of twenty-eight (28) months from the date upon which production from an inactive well is reestablished.

"Inactive well" means a well which may be defined under one (1) of the following three (3) categories:

(A) A well which after July 1, 1997 experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which causes cessation of production, shall be considered an inactive ~~wells~~ well. For use within this sub-paragraph "mechanical failure" means a well which experiences mechanical failure or loss of mechanical integrity because of, but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which results in a workover of the well and cessation of production as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before ~~June 30, 2003~~ June 30, 2006, that has not produced oil, gas or oil and gas for a period of not less than one (1) year as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well.

(C) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas or oil and gas for a period of not less than two (2) years as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well's status.

165:10-21-38. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as an inactive well for which production has been reestablished.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320C that shows the date of the re-establishment of production of oil and/or gas.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Reestablished Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 8. DEEP WELLS

165:10-21-45. General

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "**depth**" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 2000, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 2000, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and ~~June 30, 2003~~, June 30, 2006, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and ~~June 30, 2003,~~ June 30, 2006, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) **Exemption for wells spudded between July 1, 2002, and ~~June 30, 2003~~ June 30, 2006.** Deep wells spudded between July 1, 2002, and ~~June 30, 2003,~~ June 30, 2006, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) **12,500 to 14,999 feet.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

165:10-21-47.1. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in OAC 165:10-21-45.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320A that shows date of first sale of production.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Deep Well Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 9. NEW DISCOVERY WELLS

165:10-21-55. General

(a) Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and ~~June 30, 2003,~~ July 1, 2006, which qualify as a new discovery well pursuant to Title 68, Section 1001(I), shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to Title 68, Section 1001(M)(1).

(b) **"New discovery"** means production of oil, gas or oil and gas from:

(1) A well spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities and is located more than one mile from the nearest oil well producing from the same interval.

(2) A well, spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers crude oil in paying quantities and is located more than one mile from the nearest oil well producing from the same interval of the same formation.

(3) A well, spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities beneath current production in a deeper producing formation located more than one mile from the nearest oil well producing from the same deeper interval.

(4) A well, spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers crude oil in paying quantities beneath current production in a deeper producing interval located more than one mile from the nearest oil well producing from the same deeper interval.

(5) A well, spudded or reentered, prior to July 1, 1997, which discovers natural gas in paying quantities and is located more than two miles from the nearest gas well producing from the same producing interval.

(6) A well, spudded or reentered, on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers natural gas in paying quantities and is located more than two miles from the nearest gas well producing from the same producing interval.

(7) A well, spudded or reentered, prior to July 1, 1997, which discovers natural gas in paying quantities beneath current production in a deeper producing interval that is

more than two miles from the nearest gas well producing from the same deeper interval.

(8) A well, spudded or reentered, on or after July 1, 1997, and prior to ~~July 1, 2003,~~ July 1, 2006, which discovers natural gas in paying quantities beneath current production in a deeper producing interval that is more than two miles from the nearest gas well producing from the same deeper producing interval.

165:10-21-58. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and ~~June 30, 2003~~ June 30, 2006.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320A that shows date of first sale of production.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "New Discovery Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 11. HORIZONTALLY DRILLED PRODUCING WELLS

165:10-21-66. Definitions

In addition to terms defined in 165:10-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Angle of deviation" means that angle in which a wellbore may deviate from the vertical.

"Date of completion of a gas well" means the date that gas is capable of being delivered to a pipeline purchaser.

"Date of completion of an oil well" means the date that the well first produces into the lease tanks through permanent well head equipment.

"Effective date" means that the first production must have commenced after July 1, 1995 and before ~~July 1, 2003~~ July 1, 2006.

"Horizontal displacement" means that distance drilled into the pay zone of a formation at an angle exceeding seventy (70) degrees.

"Horizontally drilled payout" means the point at which gross working interest revenue from the horizontally drilled well equals the cost of drilling and completing such well.

"Horizontally drilled well" means an oil, gas, or oil and gas well drilled or completed in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from the vertical and which laterally penetrates a minimum of one hundred and fifty (150) feet into the pay zone of the formation.

"True vertical depth" means that depth measured from the surface perpendicular to the surface.

165:10-21-68. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A Corporation Commission order certifying the well as a horizontally drilled well.

(2) A copy of OCC Form 1534 submitted to the Corporation Commission.

(3) A copy of an approved OTC Form 320A that shows the date of initial production.

(4) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(5) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Horizontal Drilling Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

165:10-21-69. Time periods for exemption from gross production tax levied on horizontally drilled producing wells

(a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.

(b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.

(1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.

(2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well producing prior to July 1, 2002, which production commenced after July 1, 1995.

(c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to ~~July 1, 2003~~ July 1, 2006, which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [See: 68 O.S. Supp. 2002, Section 1001(E)(1)]

PART 13. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS

165:10-21-76. Definitions

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

"Base production amount" means the average monthly amount of productions for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

"Completion date" means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

"Enhanced recovery project costs" means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

"Existing tertiary recovery project" means, for purposes of the exemption described in 68 O.S. Section 1001(D)(1), a tertiary recovery project whose beginning date is prior to October 16, 1987.

"Incremental production" means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

"Incremental working interest revenue" means the gross value of the incremental production, less the royalty interest therein.

"Monthly rate of production decline" means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

"New enhanced recovery project" means, for purposes of the exemption described in 68 O.S. Section 1001(D)(1), a secondary or tertiary recovery project whose beginning date is on or after October 16, 1987.

"Project beginning date" means the date on which the injection of liquids, gas or other matter begins on an enhanced recovery project.

"Project payback or payout" means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

"Secondary recovery properties" means secondary recovery properties approved or having an initial project beginning date on or after July 1, 2000 and before ~~July 1, 2002~~ July 1, 2006, such that any incremental production attributable to the working interest which results from such secondary recovery property shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, whichever occurs first. [Applicant may omit payback report for such secondary recovery properties.]

165:10-21-78. Recovery of costs allowed as payback factors

(a) **Enhanced recovery project, project beginning date between October 17, 1987 and June 30, 1990.** For any enhanced recovery project with a project beginning date between October 17, 1987, and June 30 1990, allowed enhanced recovery costs shall include only incremental capital costs and incremental operating expenses associated with enhanced recovery operations.

(b) **Enhanced recovery project, project beginning date between July 1, 1990 and June 30, 1993.** For any enhanced recovery project with a project beginning date between July 1, 1990, and June 30, 1993, allowable enhanced recovery project costs shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. With respect to completing or converting a well, no expenditure after completion or conversion for enhanced recovery purposes shall be included.

(c) **Secondary recovery project, project beginning date on or after July 1, 1993 and before July 1, 2000.** For any secondary recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, allowed enhanced recovery project costs shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however that the period for project payback

shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project, project beginning date on or after July 1, 1993 and before ~~July 1, 2003~~ July 1, 2006.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before ~~July 1, 2003~~ July 1, 2006, allowable enhanced recovery project costs shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses. The capital expenses of pipelines constructed to transport carbon dioxide to a tertiary recovery project shall not be included in determining project payback. The period for project payback shall not exceed ten (10) years from the project beginning date.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the "Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations" and "COPAS Bulletin No. 16", or subsequent revisions thereto.

165:10-21-80. Expiration of exemption for incremental production

For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to ~~July 1, 2003~~ July 1, 2006, once the gross working revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the Gross Production Tax thereon.

PART 14. PRODUCTION OF OIL, GAS OR OIL AND GAS FROM ANY WELL LOCATED WITHIN BOUNDARIES OF A THREE-DIMENSIONAL SEISMIC SHOOT

165:10-21-82. General

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of which is commenced on or after July 1, 2000, and prior to ~~July 1, 2003,~~ July 1, 2006, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, shall be determined according to the provisions of this Part.

165:10-21-82.2. Qualification procedure

(a) **Applicable wells.** The provisions of this Section establish criteria for determining if an operator producing oil, gas or oil and gas from a well, drilling of which is commenced on or after July 1, 2000, and prior to ~~July 1, 2003,~~ July 1, 2006, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, has met the required conditions to qualify the production from such a well for the exemption from the Gross Production Tax. [See: 68 O.S. §1001(J)]

(b) **Application to Oklahoma Corporation Commission; determination; order.** An operator seeking an exemption of the gross production tax on production from a well located within the boundaries of a three-dimensional seismic shoot and drilled based on such technology, shall make application to the Oklahoma Corporation Commission on a Form 1534 for a determination that the well qualifies for such exemption, as provided in 68 O.S. 2000 Supp. §1001(J).

(1) If the application is administratively approved, an order of the Oklahoma Corporation Commission shall be issued.

(2) To obtain the tax exemption, the operator shall forward a copy of the Oklahoma Corporation Commission order to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-82.3.

(3) Any data, maps and other information submitted with the Form 1534 for determination that a well qualifies for the exemption provided in this paragraph shall be held as confidential information by the Conservation Division and/or Commission, and upon approval through issuance of a Commission order, shall be returned to the applicant or destroyed.

165:10-21-82.3. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced on or after July 1, 2000, and prior to ~~July 1, 2003,~~ July 1, 2006, that it is located within the boundaries of a three-dimensional seismic shoot and was drilled based on such technology, and indicating whether the seismic shoot was shot either prior to or on or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) OTC Form 320A, 320C, and 320U, as are necessary, to set up the OTC Production Units, to request merge numbers, and to show the entity who will remit taxes.

(4) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for ~~qualifying wells.~~ prior periods; claim limitation after July 1, 2003.** Approval of a "Three-Dimensional Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the

rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

[OAR Docket #04-1003; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #04-1005]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:15-1-6. Fuel Specialists' ~~Behavior~~Identification [AMENDED]
165:15-1-8. ~~Fuel Specialists' Interpretation Of Rules~~ [REVOKED]
Subchapter 3. Fuel Specialists, Testing, Accessibility, And Assistance
Part 1. General Authority
165:15-3-1. Authority To Enter And/Or Stop For Inspection [AMENDED]
165:15-3-2. Authority To Lock Or Seal For Violation [AMENDED]
165:15-3-3. Authority To Remove Lock Or Seal After Correction Of Violation [AMENDED]
Part 3. Motor Fuels And Antifreeze
165:15-3-11. Testing Methods [AMENDED]
Part 5. Liquid Measuring Devices
165:15-3-15. Fuel Specialist's ~~official~~ duty [AMENDED]
165:15-3-16. Inspection for compliance [AMENDED]
Part 7. Storage Tanks And Ancillary Equipment
165:15-3-20. Water in storage tanks [AMENDED]
165:15-3-21. Containment of petroleum products [AMENDED]
165:15-3-22. Equipment installation [AMENDED]
165:15-3-24.2. Fleet and commercial facility inspections [AMENDED]
165:15-3-24.3. Farm inspections [AMENDED]
Part 11. Accessibility And Assistance
165:15-3-34. Authority to block off [AMENDED]
165:15-3-35. Marina docks [AMENDED]
Subchapter 9. Description Of Motor Fuel
165:15-9-2. Display on pump [AMENDED]
165:15-9-3. Ethyl alcohol [AMENDED]
Subchapter 15. Liquid Measuring Devices
Part 3. Calibration And Tolerances
165:15-15-9. Tolerances [AMENDED]
Subchapter 19. Violations And Contempt
165:15-19-3. Notices of Violation [AMENDED]
165:15-19-4. Re-inspection and Fine Citation [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission 17 O.S. (Supp. 1998) § 301 *et seq.* 52 O.S. (Supp. 1998) § 321 *et seq.* 75 O.S. (Supp. 1998) § 250 *et seq.*
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None
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None
ANALYSIS:
OAC 165:15-1-6 concerning Fuel Specialists' identification, is amended to clarify the duties of fuel inspectors and provides for proof of identification if requested. OAC 165:15-1-8 concerning Fuel Specialists' interpretation of the rules is revoked, strikes Fuel Specialists' interpretation of the rules. OAC 165:15-3-1 concerning authority to enter and/or stop for inspection, is amended to strike certain redundant language and reference to business hours entry to allow after hours site review in case of necessity or emergency. OAC 165:15-3-2 concerning authority to lock or seal for violation, is amended to strike certain redundant language. OAC 165:15-3-3 concerning authority to remove lock or seal after correction of violation, is amended to require a person removing a Commission lock or seal to notify the Commission in writing of this action. OAC 165:15-3-11 concerning testing methods, is amended to remove redundant language and allow Fuel Specialists to use their discretion in octane testing for others. OAC 165:15-3-15 concerning Fuel Specialists' duty, is amended to clarify that a Fuel Specialist may place a dispenser out of service for inaccurate readings. OAC 165:15-3-16 concerning inspection for compliance, is amended to make grammatical changes. OAC 165:15-3-20 concerning water in storage tanks, is amended to resolve water contamination problems in and around the tank system. Also provides the possibility for enforcement action in the event a second notification of water contamination is issued. OAC 165:15-3-21 concerning containment of petroleum products, is amended to eliminate the stricture of abandoning an old leak detection system in the event of a leak detection upgrade. OAC 165:15-3-22 concerning equipment installation, is amended to strike references to underground and aboveground storage tank rules. Additional grammatical changes are also made. OAC 165:15-3-24.2 concerning fleet and commercial facility inspections, is amended to strike the purpose of required fencing. OAC 165:15-3-24.3 concerning farm inspections, is amended to strike references to what the Commission suggests for farm tank leak detection and allows the Commission to adopt a neutral position as to farm leak detection methods. OAC 165:15-3-34 concerning authority to block off, is amended for grammatical purposes and provides that an attendant may assist a Fuel Specialist to insure a safe working area. OAC 165:15-3-35 concerning marina docks, is amended to allow an attendant to assist a Fuel Specialist in returning fuel to the tank system or as otherwise directed. OAC165:15-9-2 concerning display on pump, is amended to remove an obsolete date. OAC 165:15-9-3 concerning ethyl alcohol, is amended for grammatical purposes. OAC 165:15-15-9 concerning tolerances, is amended to strike language concerning errorless valves in dispenser measurements. OAC 165:15-19-3 concerning notices of violation, is amended for grammatical purposes. OAC 165:15-19-4 concerning re-inspection and fine citation, is amended for grammatical purposes.
CONTACT PERSON:
Jeff Southwick (405) 522-4457

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

165:15-1-6. Fuel Specialists' ~~behavior~~ Identification

Fuel Specialists must:

(1) Identify themselves before they begin working and offer identification if requested.
(2) ~~Give clerks a short explanation of what they are going to do and leave~~ Leave a copy of the completed inspection form.
(3) ~~Not block driveways unnecessarily and return~~ Return all samples to their respective tanks.
~~(4) Maintain a courteous, professional and helpful attitude, and dress appropriately. The attitude should be one of cooperation with the facility owner or operator and his or her employees to help them solve problems and ensure safe operations.~~

165:15-1-8. Fuel Specialists' interpretation of rules [REVOKED]

~~The rules of the Petroleum Storage Tank Division exist to accomplish concrete practical results, assuring the quality of products sold to the public and protecting people and property from harm. When enforcing a rule, Fuel Specialists and compliance officers need to consider its purpose. For example, where the fencing requirements around tanks cannot be reasonably met on a site and other equally effective security systems are in place or available, they should be allowed. If the application of the rule doesn't make sense to the Commission's enforcement personnel or to the citizen involved, a re-examination of the purpose of the rule and the situation is in order. Rules are never perfect and must always be applied with common sense.~~

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 1. GENERAL AUTHORITY

165:15-3-1. Authority to enter and/or stop for inspection

(a) A Fuel Specialist has the ~~responsibility and the~~ authority to enter upon the premises ~~during business hours~~ of any manufacturer, bulk dealer, or retailer of any motor fuel, as well as any other place where motor fuel is sold or stored prior to sale or use, and perform tests required by this Chapter, take samples, or make any other investigation in order to ensure compliance with this Chapter or the laws of the State.
(b) The Fuel Specialist has the authority to inspect any records and documents pertaining to the ordering of, delivery of, and/or payment for petroleum products offered for sale.

165:15-3-2. Authority to lock or seal for violation

A Fuel Specialist has the ~~responsibility and~~ authority to place or to direct that a lock or seal be placed on any pump, delivery device, receptacle, or container tank used in the sale, distribution or storage of motor fuel in Oklahoma when the rules in this Chapter are being violated.

165:15-3-3. Authority to remove lock or seal after correction of violation

The authority to remove a lock or seal by the owner or operator after a violation is corrected may be obtained by:
(1) Verbal permission from the Fuel Specialist who placed the lock or seal on the device; ~~or~~ coupled with written confirmation to PSTD by the person removing the seal or lock; or
(2) Written or verbal permission from the Division Director or the Director's designee; or
(3) Application to and order of the Commission.

PART 3. MOTOR FUELS AND ANTIFREEZE

165:15-3-11. Testing methods

(a) ~~From time to time, a~~ A Fuel Specialist will test the octane rating or check for any contaminants or foreign substances as necessary for each type of motor fuel sold at any retail facility, airport, bulk plant or marina using the Zeltex machine or other Commission-approved device.
(b) Though Fuel Specialists are not required to test the octane in motor fuel dispensed at fleet or commercial facilities at which a company dispenses fuel for its own use, they ~~will~~ may, time permitting check fuel octane as a courtesy ~~at any~~ to an owner or ~~operator's~~ operators' request.

PART 5. LIQUID MEASURING DEVICES

165:15-3-15. Fuel Specialist's ~~official~~ duty

Fuel Specialists have the responsibility to implement and enforce the rules of this Chapter, which includes determining that a measuring device and equipment are accurate and as safe as possible for the public and the environment. ~~If a liquid measuring device conforms to all of the official requirements, the Fuel Specialist seals it to indicate approval.~~ If ~~it~~ a measuring device does not conform to all official requirements, the Fuel Specialist is required to prohibit its use until the device is brought into compliance.

165:15-3-16. Inspection for compliance

(a) ~~Generally, retail~~ Retail liquid measuring devices subject to the rules of this Chapter are calibrated with a five- (5-) gallon test measure by the Fuel Specialist from time to time or as often as ~~he or she deems~~ deemed necessary. High volume dispensers (those that are used to pump at a rate of at least 20 gallons per minute) used to fill large tanks must be calibrated using a 50- or 100-gallon prover.
(b) All wholesale liquid measuring devices subject to the rules of this Chapter must be calibrated by the Fuel Specialist ~~from time to time or every~~ no more than 10 million gallons of use, ~~whichever comes first,~~ or more often if the Fuel Specialist deems it necessary.
(c) Before a new facility is open for business and before new dispensers are put into service at a pre-existing facility, the owner or operator must have the dispensers calibrated and

be able to show written proof when ~~it is~~ requested by the Fuel Specialist.

(d) These tests may be ordered or directed by the Commission at any time. ~~The purpose of the test is to determine whether dispensers comply with this Chapter. When dispensers are in compliance the service technician will attach an approved seal.~~

(e) When a liquid measuring device is found not to be in compliance with this Chapter, the owner or operator will be advised of the problem and the device placed out of service.

(f) A Fuel Specialist has the responsibility to place or to direct that a lock or seal be placed on a measuring device. The lock or seal must remain in place until the defective measuring device is repaired or replaced and complies with ~~the required tests~~ Commission standards.

(g) The owner or operator of a locked measuring device may obtain permission to remove the lock or seal after repair by:

(1) Verbal permission from the Fuel Specialist who placed the lock or seal on the device; ~~or~~ coupled with written confirmation to PSTD by the person removing the seal or lock or;

(2) Written or verbal permission from the Petroleum Storage Tank Division Director or the Director's designee; or

(3) Order of the Commission.

(h) For a fleet or commercial facility where fuel is dispensed for internal use by the company or its agents, there is no requirement that a Commission Fuel Specialist check the calibration of that facility's dispensers. However, a Fuel Specialist ~~will~~ may do so time permitting as a courtesy for an ~~at the request of any~~ owner or operator.

PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

165:15-3-20. Water in storage tanks

(a) **Inspection.** All underground storage tanks must be checked for water by the Fuel Specialist from time to time.

(b) **Area surrounding fill pipe.** The area surrounding the fill pipe to the storage tank must not contain any water. When water is present, the owner or operator is responsible for promptly removing the water ~~upon request of the Fuel Specialist~~. Upon the ~~third~~ second notice of violation of this subsection, the owner or operator must make whatever system modifications are necessary to prevent water from entering the spill containment and may be subject to citation or formal enforcement action.

(c) **Fill pipe.** All fill pipes to storage tanks must have watertight caps that must be securely fastened at all times, except when servicing the tank(s).

(d) **Water removal; repairs.** When a Fuel Specialist checks a motor fuel storage tank at a retail outlet and finds water in it, it is the responsibility of the owner or operator of the retail outlet to completely remove the water and make necessary repairs to prevent any water intrusion to the storage tank. The owner or operator is required to find the source of the water including, but not limited to, digging up and replacing the product lines and/or the storage tanks as necessary. This must be done as quickly as possible. The Fuel Specialist ~~is to be notified~~ may be notified orally, but written confirmation must be submitted to notify when the water is removed and when the necessary repairs have been completed.

(e) **Water from dispensing nozzle.** When a Fuel Specialist checks a retail outlet for water and finds water coming through the dispensing nozzle, it is the responsibility of the Fuel Specialist to immediately take the affected dispensing unit or units out of operation. The owner or operator is required to find the source of the water, including but not limited to, digging up and replacing the product lines and/or the storage tanks as necessary. The product dispensing units are to remain out of operation until the problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health and safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards met to prevent ~~those~~ releases to the greatest extent possible.

(1) **Spill and overfill protection.** Fuel Specialists must ensure that appropriate spill and overfill protection devices are in place.

(2) **Leak detection on tanks.** Fuel specialists must check the condition of an owner or operator's selected method(s) of leak detection at a location. ~~If a tank owner has upgraded to a different, superior system like automatic tank gauging, he or she will not be required to continue the use of a redundant, inferior system like vapor monitoring even if the old system is still in place.~~ The requirements of each method listed below are offered as a general outline; a complete list of leak detection requirements is in OAC 165:25 and 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively.

(A) **Vapor monitoring wells.** Vapor monitoring wells may not be used for leak detection on tanks on or after three years from the effective date of this Section. If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) Installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(iv) Any single vapor monitoring well reading above 4,000 parts per million (ppm) for gasoline and 1,500 ppm for diesel fuel should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the

facility knowing the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 ppm should have been reported. If this has not been reported, the Fuel Specialist should report it.

(B) **Groundwater monitoring wells.** The Fuel Specialist must ensure, if groundwater monitoring wells are an owner or operator's method of leak detection, that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) Installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(iv) Any indication of product discovered should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist should report it.

(C) **Monthly inventory reconciliation with tightness testing.** The Fuel Specialist must check to see that a tank tightness test was performed correctly at least once during the year. The Fuel Specialist must confirm the results of a tightness test with monthly inventory records if the tank contained an unusually small amount of product at the time of the test. Requirements for inventory reconciliation are the same as for (D)(i) and (ii) below.

(D) **Statistical Inventory Reconciliation (SIR).**

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.

(ii) The tank must be equipped with a drop tube and measured for water at least monthly.

(iii) Records must be submitted to a certified SIR vendor for monthly evaluation.

(E) **Automatic tank gauging (ATG).**

(i) The ATG must be in operating condition. It must perform a monthly test capable of detecting a 0.1 or 0.2 gallons per hour (gph) leak rate; and if the system detects a 0.2 gph leak rate, inventory reconciliation must be done in conjunction with it.

(ii) If the Fuel Specialist has ~~reservations~~ concerns about the operation of the system, ~~he or she~~ they may require notice ~~to return to the facility~~ and be present when an authorized person is printing relevant reports from the ATG.

(F) **Manual tank gauging.** Fuel Specialists must check to make sure, if manual tank gauging is the selected form of leak detection, that the test duration is appropriate, and that tank tightness testing is performed in conjunction with manual tank gauging in accordance with OAC 165:25 or 165:26~~, the Commission's Underground and Aboveground Storage Tank Rules, respectively~~. Manual tank gauging is only accepted as a method of leak detection on tanks with a capacity of up to 2,000 gallons, except on farm tanks as detailed in OAC 165:25.

(G) **Interstitial monitoring.** The tank must be double-walled, and a release must not be able to go undetected for more than 30 days.

(H) **Other methods.** If a method of leak detection other than those listed in this Chapter is used, it must be approved by the Commission and checked by the Fuel Specialist.

(3) **Leak detection on pressurized lines.** The Fuel Specialist must check ~~the methods listed below~~ for leak detection on pressurized piping. ~~If a tank owner has upgraded to a different, superior system like automatic tank gauging, he or she will not be required to continue the use of a redundant, inferior system like vapor monitoring even if the old system is still in place. The requirements of each method listed below are offered as a general outline; a~~ A complete list of requirements is in OAC 165:25 and 165:26~~, the Commission's Underground and Aboveground Storage Tank Rules, respectively~~. All pressurized piping must have electronic/automatic or mechanical line leak detectors, or a sump sensor, float or similar mechanical device located at each sump, capable of detecting a 3 gallons per hour leak. Installations after the effective date of this Section must have double-walled piping, with either a sensor, float or similar mechanical device installed at each sump, or line leak detectors and at least one sensor at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient. An annual line tightness test is required unless the alternative criteria listed in (C) below are met.

(A) **Electronic/automatic and mechanical line leak detectors; sump sensors, floats and similar mechanical devices.**

(i) Automatic or mechanical line leak detectors must be installed on all pressurized lines, or a system must have sumps with a sensor, float or similar mechanical device at each sump. ~~If line leak detectors are installed after the effective date of this Section,~~ Line leak detectors must have one sensor, float or similar mechanical device must be installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(ii) The line leak detectors, floats and other devices must be tested annually according to manufacturer's specifications.

(B) **Annual line tightness testing.** An annual line tightness test, either hydrostatic or electronic, must be done unless the requirements of (C) below are met.

(C) **Alternative to line tightness testing.** A certified line leak detector or a sensor at each sump may be used in lieu of an annual line tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(D) **Vapor monitoring wells.** ~~Vapor monitoring wells may not be used for leak detection on tanks on or after three years from the effective date of this Section.~~ If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(iv) Any single vapor monitoring well reading above 4,000 parts per million (ppm) for gasoline, and 1,500 ppm for diesel or a tankpit containing both diesel and gasoline, should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing the results. If this has not been reported, the Fuel Specialist should report it.

(E) **Groundwater monitoring wells.**

(i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(iv) Any indication of product discovered should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist should report it.

(F) **Interstitial monitoring.**

(i) All double-walled piping must be sloped to allow a leak to flow to the sump at the tank or dispensers.

(ii) Containment sumps connected to product piping must be equipped with automatic leak detection.

(iii) A leak detection device must detect any liquid or leaking petroleum product.

(G) **Statistical Inventory Reconciliation (SIR).**

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.

(ii) The tank must be equipped with a drop tube and measured for water at least monthly.

(iii) Records must be submitted to a certified SIR vendor for monthly evaluation.

(4) **Suction piping.** A line tightness test must be performed every 3 years according to manufacturer's specifications unless one of the line leak detection methods listed above is used, or unless it is safe suction piping that meets the specifications of (5) below.

(5) **Safe suction piping.** No annual line tightness test and no leak detection method is required if piping meets these specifications: below-grade piping must operate under vacuum, be sloped to allow product to drain back into the tank, and have only one check valve installed on each line directly below the pump. Compliance with these standards must be readily determined by the Fuel Specialist.

(6) **Cathodic protection.** The Fuel Specialist must ensure, for all metal tanks and piping, that cathodic protection is installed and in proper working order. Cathodic protection can be an impressed current or galvanic system with these requirements:

(A) A site map and anode information should be made available to the Fuel Specialist if the owner or operator has the information, and all tanks and lines must be protected.

(B) Continuity tests must be conducted, and the soil-to-structure potential must be at least -0.85 volts.

(C) Rectifier and cathodic protection tests must be done by a ~~NACE~~ qualified cathodic protection tester once every three years.

165:15-3-22. Equipment installation

Fuel Specialists must ensure that tanks and ancillary equipment are installed properly and conform to Commission ~~approved~~ standards. These standards apply to all facilities~~, and are only general guidelines for the Fuel Specialist and tank owner or operator~~. Requirements are listed in detail in OAC 165:25 and 165:26~~, The Commission's Underground and Aboveground Storage Tank Rules, respectively~~.

(1) **~~At unattended~~ Unattended self-service stations.**

(A) Operating instructions must be conspicuously posted.

(B) There must be a properly placed emergency shutoff device and conspicuously posted emergency instructions. A telephone or other approved means to notify the fire department must be on site.

(2) **Emergency pressure release venting.** Aboveground storage tanks must have some form of construction or device that will relieve excessive internal pressure caused by exposure to fires, and have some form of emergency pressure venting. This applies to all compartments and interstitial spaces of tanks, and any enclosed spaces around tanks that can contain liquid.

(3) **Release vent construction.** An aboveground tank must have some form of pressure-relieving construction to appropriately control and direct a tank rupture. The tank owner or operator must present, upon request, evidence certifying the construction if the owner has the information.

(4) **Venting and venting specifications.** The Fuel Specialist will ensure that vent piping size, height, width, placement and construction meet approved standards, vent vapors upward and do not present collision or fire hazards.

(5) **Piping requirements.** The Fuel Specialist must ensure piping is appropriately constructed and protected from physical damage and corrosion where appropriate. Appropriate valves must be in place in piping to prevent leaks and fires. Aboveground storage tank piping and associated parts such as flanges and bolts must be constructed to resist fire to the appropriate extent.

(A) All piping installed after the effective date of this Section must be double-walled with sumps and a sensor, float or similar mechanical device at each dispenser sump; or

(B) Piping must have automatic line leak detectors with one sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(6) **Equipment and materials.** All pipes, valves, couplings, faucets, flexible connectors, fittings and other pressure-containing parts must meet material specifications and pressure and temperature limitations, adhering to Commission~~-adopted~~ standards. Underground equipment must be cathodically protected where appropriate and aboveground equipment must resist fire to the approved extent. Impact/shear valves and breakaway valves must be in place to prevent leaks and stop their flow in an emergency.

(7) **Electrical equipment.** All electrical equipment must meet the requirements NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions. All electrical wiring and equipment must be suitable for the locations in which it is installed, and required emergency switches must be provided and appropriately placed.

(8) **Vault requirements.** Vaults are superior installation systems that are not required, but can be used above or below grade and must meet standards listed in OAC 165:26-24-45~~, the Commission's Aboveground Storage Tank Rules~~. The Fuel Specialist will ensure that those standards are met. ~~The Fuel Specialist should not enter the vault without being properly suited according to HAZMAT requirements.~~

(9) **Fill pipes.** Fill pipes must be properly installed and labeled, and overfill sump lids must be color coded.

(10) **Collision barriers.** Aboveground storage tanks and all dispensers exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. Secondary containment may serve as a collision barrier.

(11) **Fencing requirements.** All aboveground tanks must be enclosed by an appropriate security fence.

(12) **Spill Prevention Control and Countermeasure Plan.** Owners or operators of aboveground storage tanks must have an approved Spill Prevention Control and Countermeasure Plan (SPCC Plan) that is updated every five years and signed by a registered professional engineer. Each facility location must have its own plan. Owners of underground storage tanks at sites with a total aggregate capacity of at least 42,000 gallons must also have a properly updated and signed SPCC Plan on site.

(13) **Corrosion protection.** Any portion of a tank or its piping system in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design listed in OAC 165:26-8-18~~, the Commission's Aboveground Storage Tank Rules~~. A tank sitting on a concrete pad will be considered in contact with the soil unless it is insulated from the concrete by some dielectric material.

(14) **Storage tank spacing and buffer distances.**

(A) Aboveground storage tanks must be appropriately spaced; the Fuel Specialist will determine whether the spacing ~~must be~~ is in accordance with ~~Appendix H of~~ OAC 165:26~~, the Commission's Aboveground Storage Tank Rules,~~ or whether variance from those standards does not pose a serious hazard to people or property.

(B) Minimum distances from aboveground storage tanks must also be maintained between tanks and the nearest important building on the same property, fuel dispensers, public ways, and property lines. These distance requirements can have mitigating factors which will be evaluated by the Fuel Specialist.

(15) **Secondary containment requirements for aboveground storage tanks.** Double-walled tanks do not require additional containment if conditions listed in OAC 165:25 and 165:26~~, the Commission's Underground and Aboveground Storage Tank Rules, respectively, are met~~.

165:15-3-24.2. Fleet and commercial facility inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to fleet and commercial facilities.

(1) **Requirements for dispensers.** There are no minimum distance requirements between dispensers and tanks

at fleet and commercial facilities. Owners at these facilities often enclose the dispenser with the aboveground tank inside a secondary containment to protect against potential leaks caused by the dispenser.

(2) **Fencing.**

(A) Aboveground tanks at fleet and commercial facilities must have appropriate fencing.

(B) Aboveground tanks are not required to be enclosed within a fence if the property on which the tanks are located already has a perimeter security fence.

~~(C) The purpose of fencing is to protect tanks against vandals and to prevent access by children, and the requirements should be checked with that purpose in mind. The Fuel Specialist will use common sense to determine whether a lack of compliance with fencing rules presents a real security problem.~~

165:15-3-24.3. Farm inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to farm petroleum storage tank systems.

(1) **Leak detection.** Because the primary purpose of the Commission's regulation of farm tanks is to prevent leaks, the farmer must select some form of leak detection. Any leak detection method referenced in ~~this Chapter~~ OAC 165:25 and 165:26 respectively may be used~~, but the Commission recommends for purposes of practicality that farmers use manual tank gauging. Manual tank gauging may be used for farm tanks with a capacity of up to 8,000 gallons, and the method is detailed in OAC 165:25, the Commission's Underground Storage Tank Rules~~. Fuel Specialists will check manual tank gauging records to ensure the monthly standards are not exceeded. If the standards are exceeded, there is most likely a leak in the tank which should have been reported to a Commission hydrologist at 405-521-6575 within 24 hours of the owner or any of his or her employees knowing the gauging results.

(2) **Cathodic protection.** The Fuel Specialist must ensure, for any metal tanks or piping, that cathodic protection is installed and in proper working order. ~~Cathodic protection can be an impressed current or galvanic system.~~

(3) **Electrical requirements.** Fuel Specialists will ensure that all electrical equipment meets the requirements of NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions, or other approved local code, and is suitable for the locations in which it is installed.

PART 11. ACCESSIBILITY AND ASSISTANCE

165:15-3-34. Authority to block off

A Fuel Specialist has ~~the responsibility and~~ the authority to block off a portion or all of a service station driveway when, in the opinion of the Fuel Specialist, there is a safety problem for the Fuel Specialist, ~~for the~~ equipment, or for both. These actions should take place when the openings to the underground storage tanks are located in the driveway or parking area adjacent to the service station. If necessary, the service station owner, ~~or~~ operator, or attendant may be required to assist the Fuel Specialist in the performance of these actions. Driveways should never be blocked unless safety requires it, and then only to the minimum extent necessary.

165:15-3-35. Marina docks

(a) At a marina dock, when the distance from the motor fuel dispensing device to the fuel return opening is fifty (50) yards or more, the owner, ~~or~~ operator, or attendant must assist the Fuel Specialist, as requested, or return the fuel to the storage tank.

(b) If the petroleum storage tanks at a marina dock are aboveground, the owner or operator must provide a safe means of returning fuel to the storage tank(s) used for checking the calibration of measuring devices.

(c) When the fuel return opening to the storage tank is reached only by using steps, stairs or a ladder, or is not located at ground level, the owner or operator must:

(1) Provide safe containers with sufficient volume to complete a required inspection.

(2) Label each container with the particular contents of the product being stored.

(3) Store containers outside the diked area.

(4) Properly dispose of the product used in checking the calibration in accordance with applicable law.

SUBCHAPTER 9. DESCRIPTION OF MOTOR FUEL

165:15-9-2. Display on pump

(a) Every pump or delivery device used for sale of motor fuel to the public must legibly display the type of motor fuel offered for sale or any specified lesser designation as stated in 165:15-7-2(b) (1) or (2).

(1) **Liquefied petroleum gas.** For liquefied petroleum gas, the display on the pump must read: Propane or Propane LPG.

(2) **Compressed natural gas.** For compressed natural gas, the display on the pump must read: Compressed Natural Gas.

(b) Any motor fuel or special motor fuel product must be displayed as provided for by ~~order of~~ the Commission.

(c) Grade No. 1-D Diesel fuel must be displayed as "DIESEL #1." Grade No. 2-D Diesel fuel must be displayed as "Diesel" or "DIESEL #2."

(d) Kerosene must be displayed as "KEROSENE" in a legible manner. The term, "1-k" or "k-1" may be added to the label of kerosene products if they meet the requirements of this Chapter.

165:15-9-3. Ethyl alcohol

~~Fuel~~ Motor fuel sold at regional or smaller airports for fueling aircraft must be labeled with the percent of alcohol in the

fuel, if any. At all other retail facilities the retailer may post on the dispenser or elsewhere on the premises any information regarding the fuel's additives which the retailer believes is appropriate to inform customers.

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 3. CALIBRATION AND TOLERANCES

165:15-15-9. Tolerances

(a) The official tolerances prescribed by the Commission for commercial equipment are the limits of inaccuracy officially permissible within the State of Oklahoma. ~~It is recognized that errorless value or performance of mechanical equipment is unattainable.~~ Tolerances are established, ~~therefore,~~ to fix the range of inaccuracy within which equipment will be officially approved for commercial use. Tolerances using a five (5) gallon test measure are ± 3 cubic inches when applied to new or newly reconditioned or adjusted equipment. Tolerances using a five (5) gallon test measure on all measuring devices must not exceed ± 6 cubic inches.

(b) Tolerances for new or newly reconditioned equipment apply as follows:

(1) To any equipment about to be put into commercial use for the first time.

(2) To equipment that has been placed in commercial service within the preceding 30 days and is being officially tested for the first time.

(3) To equipment that has been returned to commercial service following official rejection for failure to conform to performance requirements and is being officially tested for the first time within 30 days after corrective service.

(4) To equipment that is being officially tested for the first time within 30 days after major reconditioning or overhaul.

(c) Tolerances for retail and wholesale liquid measuring devices are as set forth in the charts in Appendix A to this Chapter.

SUBCHAPTER 19. VIOLATIONS AND CONTEMPT

165:15-19-3. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(b) Each violation that can have an NOV issued is listed in OAC Chapter 25 and 26, ~~Appendix N; it also states the amount of the fine.~~

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and act as a notification that a Warning or Fine Citation will be issued or further Commission enforcement action will occur if the violation is not corrected.

(2) There are some violations that are not eligible for a Warning Citation. For these violations, a Fine Citation will be issued to the tank owner or operator.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(c) A Notice of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) A date by which to request a hearing.

(4) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(d) A Fuel Specialist will give the NOV(s) to the owner or operator of the storage tank facility, if ~~he or she is~~ they are at the facility. If the owner or operator is not present, managers at the storage tank facility can be given NOVs, but the Commission must also mail a copy of the NOV to the owner or operator at the last known address shown by Commission records. The NOVs will be faxed rather than mailed at any company's request.

165:15-19-4. Re-inspection and Fine Citation

(a) After the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist ~~may~~ will:

(1) Refer the violation to the Division's Manager of Inspection and Compliance for enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard, it may be shut down pending a correction of the problem or a hearing on the issue.

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TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #04-1006]

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RULES:

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Part 1. Purpose
165:25-1-1. Purpose [AMENDED]
Part 3. Definitions
165:25-1-11. Definitions [AMENDED]
Part 6. Administrative Provisions
165:25-1-29. Notices [AMENDED]
Part 7. Codes And Standards [REVOKED]
165:25-1-31. Sources of standards [REVOKED]
165:25-1-32. Incorporated codes and standards [REVOKED]
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Part 8. General Requirements For Underground Storage Tank Systems [REVOKED]
165:25-1-34. Approved tanks, tank design [REVOKED]
165:25-1-35. Storage tank spacing [REVOKED]
165:25-1-36. Fill pipe requirements [REVOKED]
165:25-1-37. Spill and overfill protection [REVOKED]
165:25-1-38. Corrosion protection [REVOKED]
165:25-1-39. Underground storage tank piping materials [REVOKED]
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165:25-1-42. New Tank Systems [AMENDED]
165:25-1-46. Tank removal and closure [REVOKED]
165:25-1-48. Tank and line tightness testing ~~results~~ [AMENDED]
165:25-1-51. Transfer Of Ownership [AMENDED]
Part 11. Recordkeeping
165:25-1-53. Availability Of Records [AMENDED]
165:25-1-54. Repair Records [AMENDED]
165:25-1-55. Tank Installation, Closure And Removal Records [AMENDED]
165:25-1-56. Release Detection And Cathodic Protection Records [AMENDED]
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165:25-1-64. Fees [AMENDED]
Part 15. Shutdown Of Operations [AMENDED]
165:25-1-67. Shutdown Of Operations [AMENDED]
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165:25-2-2. Incorporated codes and standards [NEW]
165:25-2-3. Other standards and regulations [NEW]
165:25-2-4. Financial responsibility [NEW]
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165:25-2-37. Storage tank spacing [NEW]
165:25-2-38. Fill pipe requirements [NEW]
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165:25-2-53. Frequency and criteria of inspections and tests [NEW]
165:25-2-54. Underground storage tank piping materials [NEW]
165:25-2-55 Underground storage tank internal lining requirements [NEW]
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165:25-3-62. Temporary removal from service [AMENDED]
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165:25-10-16. Required signs [REVOKED]
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165:25-12-7. Dispensers [REVOKED]
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165:25-12-13. Tightfill Connection Requirements [REVOKED]
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165:25-18-11. Notices Of Violation [AMENDED]
165:25-18-12. Re-Inspection And Fine Citation [AMENDED]
165:25-18-13. Payment Of Fine Or Hearing [AMENDED]
Appendix R. Manual Tank Gauging Guide for Farm Tanks [REVOKED]
Appendix S. Fine Citations Table [NEW]

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

OAC 165:25-1-1 concerning the purpose of the promulgated rules, is an amendment to include prevention of pollution and reduction of fire and explosion. The amendment also includes a recommendation to follow current National Fire Protection Association guidelines.

OAC 165:25-1-11 concerning the definitions section, is amended to include the following terms of "ATG", "Backfill", "BTEX", "OWRB", "TCLP", "TPH", "Used Oil". The definition of "Division" is amended to include PSTD. The definition of "Farm" removes private airstrips. The definition of "Release" is a new definition added for clarification as determined from written comments received. The definition of "Repair" has been amended to include system failure as a cause of release. "Retail facility" has been amended to include convenience stores and other facilities open to the public. "Transporter" has been amended to correct a typographical error. "Underground Storage Tank" has been amended to include tank to the definitions.

OAC 165:25-1-29 concerning notices, has been amended to correct the Commission mailing address.

OAC 165:25-1-31 concerning underground storage tank installation, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-1.

OAC 165:25-1-32 concerning incorporated codes and standards, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-2.

OAC 165:25-1-33 concerning other standards and regulations, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-3.

OAC 165:25-1-34 concerning approved tanks and tank design, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-33.

OAC 165:25-1-35 concerning storage tank spacing, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-37.

OAC 165:25-1-36 concerning fill pipe requirements, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-38.

OAC 165:25-1-37 concerning spill and overfill protection, has been revoked.

OAC 165:25-1-38 concerning corrosion protection, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-51.

OAC 165:25-1-39 concerning underground storage tank piping materials, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-54.

OAC 165:25-1-40 concerning electrical equipment, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-77.

OAC 165:25-1-41 concerning general reporting requirements, has been amended to designate use of required Commission forms and availability of these forms on the Commission website.

OAC 165:25-1-42 concerning new tank systems, has been amended to establish monitoring wells as a means of leak detection in accordance with existing rules and prevents re-use of metallic lines that fail due to corrosion.

OAC 165:25-1-46 concerning tank removal and closure, has been revoked and re-established at another subchapter and is found as OAC 165:25-3-60.

OAC 165:25-1-48 concerning tank and line tightness testing, has been amended to include a Commission prescribed form for the hydrostatic and line leak detection tests to be certified by the tester that the line leak detection is installed correctly.

OAC 165:25-1-51 concerning transfer of ownership, has been amended to delete redundant language regarding the provision of the new owner's name.

OAC 165:25-1-53 concerning record availability, has been amended to include sampling and testing records and deletes language regarding records retention.

OAC 165:25-1-54 concerning records, has been amended to include record transfer to a new owner.

OAC 165:25-1-55 concerning tank installation, has been amended to delete a reference to an obsolete date and a requirement to sample close to the tank system upon closure.

OAC 165:25-1-56 concerning release detection records, has been amended to require release detection records retained for one year and must include the design and installation of cathodic protection, rectifier readings conducted every 60 days, and the name, instrument used, and calibration date of external leak detection device.

OAC 165:25-1-64 concerning fees, has been amended to include fees for Licensed UST installers and Monitoring Well Licensees.

OAC 165:25-1-67 concerning shut down of operations, has been amended to include a reference to the Petroleum Storage Tank Division (PSTD).

OAC 165:25-2-1 concerning source of standards, is a new rule re-established from OAC 165:25-1-31, deleting a reference in this section regarding National Leak Prevention Association.

OAC 165:25-2-2 concerning incorporated codes and standards, is a new rule re-established from OAC 165:25-1-32 adding a reference for Ken Wilcox Associates as a source.

OAC 165:25-2-3 concerning other standards, is a new rule re-established from OAC 165:25-1-33.

OAC 165:25-2-4 concerning financial responsibility, is a new rule requiring to the owner/operator responsibility for the $5,000.00 deductible and incorporating by reference EPA's financial responsibility requirements (40 C.F.R. 290-90-280-111).

OAC 165:25-2-31 concerning underground storage tank installation, is a new rule requiring all installation of storage tank system components to be done by a licensed UST Installer, with a UST Licensed Installer present during installation.

OAC 165:25-2-32 concerning compatibility, is a new rule re-established from OAC 165:25-3-31.

OAC 165:25-2-33 concerning approved tank design, is a new rule re-established from OAC 165:25-1-34.

OAC 165:25-2-34 concerning compliance with nationally recognized codes and manufacturer's instruction, is a new rule re-established from OAC 165:25-3-41.

OAC 165:25-2-35 concerning pre-installation site review, is a new rule re-established from OAC 165:25-3-42.

OAC 165:25-2-36 concerning tank system installation, is a new rule re-established from OAC 165:25-3-43.

OAC 165:25-2-37 concerning storage tank spacing, is a new rule re-established from OAC 165:25-1-35.

OAC 165:25-2-38 concerning fill pipe requirements, is a new rule re-established from OAC 165:25-1-36.

OAC 165:25-2-39 concerning spill and overfill protection, is a new rule re-established from OAC 165:25-1-37 and OAC 165:25-3-6. Amendments include a prohibition of ball float valves on suction systems and tight fill connection used on all deliveries.

OAC 165:25-2-40 concerning tank system testing, is a new rule re-established from OAC 165:25-3-4.

OAC 165:25-2-41 concerning installation drawing, is a new rule re-established from OAC 165:25-3-46.

OAC 165:25-2-42 concerning certification of installation, is a new rule re-established from OAC 165:25-3-47.

OAC 165:25-2-51 concerning corrosion protection, is a new rule re-established from OAC 165:25-1-38.

OAC 165:25-2-52 concerning compliance with manufacturer's corrosion protection standards, is a new rule re-established from OAC 165:25-3-81.

OAC 165:25-2-53 concerning the frequency and criteria of inspections and tests, is a new rule re-established from OAC 165:25-3-82.

OAC 165:25-2-54 concerning UST piping materials, is a new rule re-established from OAC 165:25-1-39.

OAC 165:25-2-55 concerning UST lining requirements, is a new rule setting forth the parameters for and time frames for use of liners within an underground storage tank system.

OAC 165:25-2-71 concerning dispensers, is a new rule. The rule sets forth the requirements for dispensers including control devices, hose break-away devices, and preventive measures for accidental discharge.

OAC 165:25-2-72 concerning dispenser hoses, is a new rule re-established from OAC 165:25-10-8.

OAC 165:25-2-73 concerning nozzles, is a new rule re-established from OAC 165:25-10-9.

OAC 165:25-2-75 concerning required signs, is a new rule re-established from OAC 165:25-12-15 and adds new instructions for fueling.

OAC 165:25-2-76 concerning sources of ignition, is a new rule re-established from OAC 165:25-8-37.

OAC 165:25-2-77 concerning electrical equipment, is a new rule re-established from OAC 165:25-1-40.

OAC 165:25-3-5.2 concerning manual tank gauging, is a new rule that re-establishes and eliminates farm tanks with storage in excess of 8,000.

OAC 165:25-3-5.3 concerning testing or monitoring for vapors, is amended to include requirements for the use of vapor monitoring wells to check for contamination, the construction and placement of wells, and provision of monitoring well information to the Commission.

OAC 165:25-3-5.4 concerning tests or monitoring for liquids on groundwater, is amended to include requirements for the use of groundwater monitoring wells to check for contaminations, the construction and placement of wells, and provision of monitoring well information to the Commission.

OAC 165:25-3-5.6 concerning automatic tank gauging (ATG) systems, is amended to include certification of ATG equipment by an independent 3rd party from the National Work Group on Leak Detection Evaluations.

OAC 165:25-3-5.7 concerning manual tank gauging, is an amendment to provide manual tank gauging (sticking) for certain sized tanks and is a combination of manual tank gauging and tank tightness tests for other systems.

OAC 165:25-3-6 concerning monitoring requirements for piping, is amended to provide for annual line tightness testing and distinguishes methods to test pressurized line and sump sensors.

OAC 165:25-3-8 concerning release investigation and confirmation, is an amendment to confirm a release in the event of elevated chemical constituents are detected.

OAC 165:25-3-25 concerning spill and overfill prevention, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-39.

OAC 165:25-3-26 concerning spill and overfill prevention equipment, has been revoked.

OAC 165:25-3-31 concerning compatibility, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-32.

OAC 165:25-3-41 concerning compliance with nationally recognized code of practice and manufacturer's instructions has been revoked and re-established at another subchapter and is found as OAC 165:25-2-34.

OAC 165:25-3-42 concerning pre-installation, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-35.

OAC 165:25-3-43 concerning tank system installation, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-36.

OAC 165:25-3-44 concerning tank system testing, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-40.

OAC 165:25-3-46 concerning installation drawing, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-41.

OAC 165:25-3-47 concerning certification of installation, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-42.

OAC 165:25-3-48 concerning licensing of Underground Storage Tank Installers, has been revoked and re-established at another subchapter and is found as OAC 165:25-3-50.

OAC 165:25-3-49 concerning underground storage tank installation, has been revoked.

OAC 165:25-3-50 concerning licensing for UST Installers, is amended to provide for a time frame of 1 year to complete examinations after application, provides for continuing education requirement of 4 hours every 2 years, and prohibits UST Installers from doing tank removal unless they have a UST Remover license.

OAC 165:25-3-52 concerning licensing for UST Removers, is a new rule that establishes a licensing procedure for UST Removers, and provides for continuing education requirement of 4 hours every 2 years.

OAC 165:25-3-53 concerning licensing for Monitoring Well Technicians, is a new rule that establishes a licensing procedure for Monitoring Well Technicians, and provides for continuing education requirement of 4 hours every 2 years.

OAC 165:25-3-55 concerning repairs to USTs, is an amendment to require repairs be done by a qualified and experienced personnel and will be permanent (life of system) in length, in accordance with standard codes of practice. Routine and minor maintenance are excluded. Tightness tests are required after all repairs.

OAC 165:25-3-60 concerning tank removal and closure, is a new rule re-established from OAC 165:25-1-46 and further amended to reflect the necessity for using a UST Remover to take out tank systems.

OAC 165:25-3-62 concerning temporary removal from service, is amended to reflect notification to the Commission on a prescribed form for a change in service.

OAC 165:25-3-64 concerning permanent closure, is amended to add a licensed UST Remover for tank closure.

OAC 165:25-3-64.1 concerning UST removal, is amended to require a UST Remover on site at all times of removal.

OAC 165:25-3-65 concerning site assessment and closure, provides 14 day lead time notice to the Commission, requires sampling events be done outside the UST system, and includes chemical constituent test action level.

OAC 165:25-3-66 concerning applicability to previously closed systems, is amended to change the date from April 13, 1989 to April 21, 1989.

OAC 165:25-3-81 concerning compliance with corrosion protection, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-51.

OAC 165:25-3-82 concerning frequency and criteria of inspections and tests, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-53.

OAC 165:25-6-1 concerning application of rules to airports, is amended to include previous subchapters (1, 2, 3, 4) as applicable to this subchapter. Requires the use of UST Installers.

OAC 165:25-6-15 concerning airport dispensers, has been amended to reflect a grammatical change.

OAC 165:25-6-17 concerning emergency controls, is a new rule that provides for emergency fuel cutoffs, and the location of the cutoff.

OAC 165:25-8-1 concerning application to marinas, is amended to include subchapters (1, 2, 3, 4) as applicable to this subchapter and requires the use of a UST Installer.

OAC 165:25-8-5 concerning underground piping materials, is a new rule specifying July 15, 2005 as a date of compliance, and includes the type of piping to be used. The rule also provides for complete piping replacement in the event of line failure.

OAC 165:25-8-7 concerning aboveground piping at marinas, is amended to reflect July 15, 2005 as compliance deadline for aboveground piping and the specifications for in and around a dock fueling station.

OAC 165:25-8-8 concerning installation and monitoring requirements for marina piping, is a new rule that reflects July 15, 2005 as compliance deadline and the individual requirements for pressurized piping, section piping and the methods of leak detection for each including sump sensors.

OAC 165:25-8-13 concerning dispensers, is revoked.

OAC 165:25-8-14 concerning dispensers, is amended to provide for hose protection on hoses in excess of 18 feet long and limits total hose length to 50 feet.

OAC 165:25-8-23 concerning tightfill connections, is revoked.

OAC 165:25-8-36 concerning fire extinguishers, is amended to make grammatical changes.

OAC 165:25-8-37 concerning sources of ignition, is revoked.

OAC 165:25-10-1 concerning application for retail facilities, is revoked.

OAC 165:25-10-7 concerning dispensers, is revoked.

OAC 165:25-10-8 concerning dispenser hoses, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-72.

OAC 165:25-10-9 concerning nozzles, has been revoked and re-established at another subchapter and is found as OAC 165:25-2-73.

OAC 165:25-10-10 concerning tightfill connections, is revoked.

OAC 165:25-10-16 concerning required signs, is revoked.

OAC 165:25-10-17 concerning sources of ignition, is revoked.

OAC 165:25-12-7 concerning dispensers, is revoked.

OAC 165:25-12-13 concerning tightfill connections, is revoked.

OAC 165:25-12-19 concerning required signs, is revoked.

OAC 165:25-12-20 concerning sources of ignition, is revoked.

OAC 165:25-14-1 concerning application for UST systems for bulk plant facilities, is amended to include subchapters (1, 2, 3, 4) as applicable to this subchapter and requires the use of a UST Installer.

OAC 165:25-14-34 concerning sources of ignition, is revoked.

OAC 165:25-16-1 concerning application of rules regarding backup generators ,is revoked.

OAC 165:25-16-7 concerning tightfill connections, is revoked.

OAC 165:25-16-13 concerning sources of ignition, is revoked.

OAC 165:25-17-1 concerning application of rules to farm USTs, is revoked.

OAC 165:25-17-7 concerning placement of farm USTs, is revoked.

OAC 165:25-17-8 concerning USTs, out of service is revoked.

OAC 165:25-17-9 concerning farm tank venting, is revoked.

OAC 165:25-17-15 concerning farm tank leak detection, is revoked.

OAC 165:25-18-10 concerning warnings and notice of violations, is amended to eliminate language of mitigation.

OAC 165:25-18-11 concerning notices of violation, is amended to reference Notices of Violations to Appendix S.

OAC 165:25-18-12 concerning re-inspection, is amended for grammatical purposes only.

OAC 165:25-18-13 concerning fines or hearing, is amended for grammatical purposed only.

Appendix R concerning chart for manual tank gauging for farm tanks, is revoked.

Appendix S concerning chart of proposed fines and range of fines, is a new chart to implement fines.

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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

PART 1. PURPOSE

165:25-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive regulatory program for the safe operation of underground storage tank systems in Oklahoma and to prevent and contain pollution caused by leaking underground storage tank systems and to reduce the hazards of fire and explosion. It is recommended that all underground storage tanks, whether regulated by these rules or not, follow the National Fire Protection Association (NFPA) guidelines, including NFPA 30 and 30A.

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Abandoned system" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, ~~1988~~ 1989.

"Airport" means landing facility for aircraft that is are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to, piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the earthen material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"BTEX" means benzene, toluene, ethylbenezne and xylene.

"Bulk plant" means a storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current or galvanic anode system.

"Change in service" means discontinuing the use of a storage tank system for purposes regulated by the Commission.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for a limited period of time at a construction site.

"Contaminants" or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.

"Corrosion expert" means a person who has knowledge of the physical sciences and principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be NACE-certified or be a Registered Professional Engineer who has education and experience in corrosion control of buried or submerged metal tanks and metal piping systems.

"Corrosion technician" or **"cathodic protection tester"** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Director" means the Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

"Division or PSTD" means the Petroleum Storage Tank Division (PSTD) of the Oklahoma Corporation Commission.

"Excavation zone" or **"excavation area"** means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof containing one or more underground storage tanks or systems.

"Farm" means the planting, growing, cultivation and harvesting of shrubs, flowers, trees and other plants for sale. Farms also include ranching and dairy operations ~~and private airstrips~~. Rural residential or non-commercial agricultural tanks are not included.

"Flammable liquids" means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.

(A) Class I liquids.

(i) Class IA liquids have flash points below 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(ii) Class IB liquids have flash points below 73 degrees Fahrenheit and boiling points at or above 100 degrees Fahrenheit.

(iii) Class IC liquids have flash points at or above 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(B) Class II liquids. Class II liquids have flash points at or above 73 degrees Fahrenheit and below 140 degrees Fahrenheit.

(C) Class III liquids.

(i) Class IIIA liquids have flash points at or above 140 degrees Fahrenheit and below 200 degrees Fahrenheit.

(ii) Class IIIB liquids have flash points at or above 200 degrees Fahrenheit.

"Fleet and commercial" means any person (as defined in this Chapter) that uses underground storage tanks to store gasoline or diesel fuel for use in its own vehicles.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to a regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge into the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, contains a regulated substance, and/or has a regulated substance regularly added to or withdrawn from it.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants), to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into

a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Marina" means any fuel storage facility located by the water for the purpose of fueling ~~aircraft~~ watercraft.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole, installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"Observation tube" means a leak detection device placed within the tank field that reaches two feet (2') below the tank bottom and can be inspected periodically to determine whether contamination by a regulated substance has occurred.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Operator" means any person in control of or having responsibility for the daily operation of the underground storage tank system, whether by lease, contract, or other form of agreement. The term also includes a past operator at the time of a release or violation of state statutes or Commission rules.

"Out of service" means an underground storage tank or system that:

(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and

(B) Is intended to be placed back in service.

"Overfill" means a release that occurs when an underground storage tank is filled beyond its capacity.

"OWRB" means the Oklahoma Water Resources Board.

"Owner" means any person who holds title to, controls or possesses an interest in a storage tank system or a piece of property that has a storage tank system used to store motor fuels. In the case of a storage tank system no longer in use, the term "owner" also means any person who held title to, controlled, or possessed an interest in a system immediately before the discontinuation of its use. The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the system.

"Permit" means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system.

"Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, municipality, county, school district, or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.

"Person in charge" means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a storage tank system or facility, such as the transfer of regulated substances to or from any points at a facility.

"Petroleum" means ethylene glycol-based antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol.

"Pollution" means the presence in the environment of any regulated substances as a result of a release from a regulated petroleum storage tank system. It includes quantities requiring reporting under this Chapter, as well as quantities that are or may be potentially harmful to human health, welfare, or aesthetic sensibilities, or to property, animals, plant life or the environment.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate that a release from an underground storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's home, analogous to a garage and driveway used only by the owner.

"Regulated substance" means ethylene glycol-based antifreeze, gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuel, like kerosene and ethanol. It does not include compressed natural gas.

"Release" means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Repair" means to restore a tank or petroleum storage tank system component that has failed, ~~caused~~ causing a release of product from the system.

"Residential tank" means an underground storage tank or system located on the property where contents are used by the residential occupants of the property.

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around an underground storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"Source of ignition" means cigarettes, cigarette lighters or operating internal combustion engines and includes fixed sources of ignition like open flame heaters, pilot lights, electric heating elements or electric motors with exposed brushes or any machinery that produces exposed sparks while in operation.

"Storage Tank Advisory Council" means a committee appointed pursuant to 17 O.S. § 340 et seq., which has the authority to recommend rules and make written comments and recommendations to the Commission, and to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction.

"Storage tank system" means one or more tanks used to contain regulated substances, including the piping, hoses, dispensers and other ancillary equipment associated with the tanks.

"TCLP" means a test for highly volatile metals in the soil.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" means the status of an underground storage tank system that has been taken out of service but not removed from the ground or filled with inert solid material.

"TPH" means total petroleum hydrocarbons.

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another for wholesale or ~~retain~~ retail gain.

"Underground storage tank" or **"UST"** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment.

"Used Oil" is any oil or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-29. Notices

Notices, applications and reports may be submitted by fax or sent to: Oklahoma Corporation Commission, Petroleum Storage Tank Division, Jim Thorpe Office Building, Room 241, P.O. Box 52000~~-2000~~, Oklahoma City, Oklahoma 73152-2000, (405) 521-4683, or toll free at 1-888-621-5878, fax number (405) 521-4945.

PART 7. CODES AND STANDARDS [REVOKED]

165:25-1-31. Sources of standards [REVOKED]

~~The standards referenced in this Chapter are available for inspection at the offices of the Petroleum Storage Division during regular business hours and from the following sources:~~

~~(1) American Petroleum Institute (API), 1220 L. Street, N.W., Washington, D.C. 20005. Telephone (202) 682-8375.~~

~~(2) National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, Texas 77218. Telephone (713) 492-0535, ext. 810.~~

~~(3) National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269. Telephone (800) 344-3555.~~

~~(4) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103. Telephone (610) 832-9500.~~

~~(5) Underwriter's Laboratory (UL), 333 Pfingston Road, Northbrook, Illinois 60062. Telephone (708) 272-8800, ext. 42612.~~

~~(6) Petroleum Equipment Institute (PEI), P.O. Box 2380, Tulsa, Oklahoma 74101. Telephone (918) 464-9696.Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois, 60047. Telephone (708) 438-8265.~~

~~(8) American Society of Mechanical Engineers (ASME/ANSI), 22 Law Drive, Fairfield, New Jersey 07007. Telephone (708) 438-8265.~~

~~(9) National Leak Prevention Association (NLPA) Publication Dept., P.O. Box 1643, Cincinnati, Ohio 45229. Boise, Idaho 83701. Telephone (208) 389-2074.~~

165:25-1-32. Incorporated codes and standards [REVOKED]

~~Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof is adopted and incorporated by reference as a standard, but only to the extent that it is specifically referenced in this Chapter:~~

~~(1) National Fire Protection Association Standards:~~

~~(A) Standard Number 30, 1996, "Flammable and Combustible Liquids Code".~~

~~(B) Standard Number 329, 1992, "Underground Leakage of Flammable and Combustible Liquids".~~

~~(C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids.~~

~~(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".~~

~~(E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers".~~

~~(F) Standard Number 30A, 1996, "Automotive and Marine Service Station Code".~~

~~(2) American Petroleum Institute Standards:~~

~~(A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems".~~

~~(B) Recommended Practice 1632, 1996, "Cathodic Protection of Underground Storage Tank and Piping Systems".~~

~~(C) Recommended Practice 1604, 1987, "Removal and Disposal of Used Underground Service Station Tanks".~~

~~(D) Recommended Practice 1631, 1992, "Interior Lining of Underground Storage Tanks".~~

~~(E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets".~~

~~(F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations".~~

~~(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent~~

~~Blends at Distribution Terminals and Service Stations".~~

~~(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".~~

~~(I) Publication 2200, 1994, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines".~~

~~(J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks".~~

~~(3) National Association of Corrosion Engineers:~~

~~(A) Standard Number RP 0169-92, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".~~

~~(B) Standard Number RP 0184-94, "Repair of Lining Systems".~~

~~(C) Standard Number RP 0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems".~~

~~(D) Standard Number RP 0286-86, "The Electric Isolation of Cathodically Protected Pipelines".~~

~~(4) Underwriter's Laboratory Standards:~~

~~(A) Standard UL58, 8th Edition, 1986, "Steel Underground Tanks for Flammable and Combustible Liquids".~~

~~(B) Standard UL1316, 2nd Edition, 1994, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products".~~

~~(C) Standard UL1746, 2nd Edition, 1993, "External Corrosion Protection Systems for Steel Underground Storage Tanks".~~

~~(D) Standard UL567, 7th Edition, 1992, "Pipe Connectors for Flammable and Combustible Liquids and LP Gas".~~

~~(5) American Society for Testing Materials:~~

~~(A) Standard D-4021-92, "Standard Specifications for Glass Fiber Reinforced Polyester Underground Petroleum Storage Tanks".~~

~~(B) Standard ES 40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection."~~

~~(6) Petroleum Equipment Institute PEI/RP 100-97, "Recommended Practices for Installation of Underground Liquid Storage Systems".~~

~~(7) Steel Tank Institute STI-F894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".~~

~~(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks".~~

~~(9) Factory Mutual 1920, "Flexible Pipe Couplings".~~

~~(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection".~~

~~(11) National Water Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)".~~

~~(12) American Society for Testing and Materials, ASTM Designation: E-1739-95, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".~~

~~(13) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE)."~~

165:25-1-33. Other standards and regulations [REVOKED]

~~This Chapter is a part of, or is in addition to, any other standards of nationally recognized associations or any other regulations of federal, state, city, county, or local governing bodies.~~

PART 8. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-1-34. Approved tanks, tank design [REVOKED]

~~The material used in the construction or lining of a new tank must be compatible with the regulated substance to be stored in the tank. Tanks must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion as specified below:~~

~~(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.~~

~~(2) Steel tanks clad with fiberglass reinforced plastic must conform to the standards contained in UL 1746 or ACT-100.~~

~~(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 1746 and NACE RP 0285 and must be protected in the following manner:~~

~~(A) The tank must be coated with a suitable dielectric material.~~

~~(B) Field installed cathodic protection systems must be designed by a corrosion expert.~~

~~(C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.~~

~~(D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.~~

~~(4) The tank may be constructed of metal without additional corrosion measures, provided that:~~

~~(A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life.~~

~~(B) Records are maintained that demonstrate compliance with the requirements of (4)(A) above for the remaining life of the tank.~~

~~(5) The Commission may permit alternative types of tank construction, design, and corrosion protection if the owner affirmatively demonstrates to the Commission's satisfaction that the alternative construction, design, and corrosion protection system will prevent the release of any stored regulated substance in a manner no less protective of human health and the environment than those set out in this Section.~~

165:25-1-35. Storage tank spacing [REVOKED]

~~(a) Underground storage tanks must be at least thirty six inches (36") from the property line of the property on which they are installed.~~

~~(b) Fiberglass and steel tanks must have an amount of spacing between tanks and between tanks and excavation walls in the tank pit in accordance with manufacturer's instructions.~~

165:25-1-36. Fill pipe requirements [REVOKED]

~~(a) Fill pipes that enter the top of a tank must have drop tubes installed and terminate within 6 inches (6", or 15 cm) of the bottom of the tank.~~

~~(b) Fill pipes should be installed or arranged so that vibration is minimized.~~

~~(c) Each fill pipe for liquid storage must be identified by a tag or other marking to show the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding may also be used in addition to marking.~~

165:25-1-37. Spill and overfill protection [REVOKED]

~~Underground storage tanks must have spill and overfill protection.~~

165:25-1-38. Corrosion protection [REVOKED]

~~(a) Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:~~

~~(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;~~

~~(2) Underwriters Laboratories of Canada ULC-S603.1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;~~

~~(3) Steel Tank Institute Standard No. Sti-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;~~

~~(4) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;~~

~~(5) National Association of Corrosion Engineers Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and~~

~~(6) Underwriters Laboratories Inc., Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL-1746, Part 1.~~

~~(b) Approved or listed corrosion resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.~~

165:25-1-39. Underground storage tank piping materials [REVOKED]

~~(a) On or after July 15, 2002, all underground pressurized piping installed at new facilities must be as follows:~~

~~(1) Nonmetallic;~~

~~(2) Double-walled;~~

~~(3) A tracer locator wire must be installed in all piping trenches; and (4) Tank and dispenser sumps must be installed, and they must be monitored per 165:25-3-6.~~

~~(b) On or after July 15, 2002, all new suction piping meeting the requirements of 165:25-3-6(2)(A) through (D) must be installed as follows:~~

~~(1) Nonmetallic;~~

~~(2) May be either single- or double-walled;~~

~~(3) A tracer locator wire must be installed in all piping trenches; and~~

~~(4) Dispenser sumps must be installed and monitored by a sensor, float or similar mechanical device at each sump.~~

~~(c) On or after July 15, 2002, all new suction piping not meeting the requirements of 165:25-3-6(2)(A) through (D) must be double-walled and a sump must be installed at each dispenser.~~

~~(d) Existing facilities that have metallic piping failure due to corrosion must upgrade per (a), (b) or (c) of this section.~~

~~(e) Existing facilities that have metallic or single-walled nonmetallic piping and are replacing a fuel island must install dispenser sumps and monitor as per 165:25-3-6. Any additions to the metallic piping must be nonmetallic single- or double-walled piping.~~

~~(f) Existing facilities that are replacing dispensers where the fuel islands are not being relocated may add to the existing piping using the same piping material, and dispenser sumps do not have to be installed.~~

~~(g) Existing facilities that are replacing underground storage tanks may re-use single-walled nonmetallic piping. Tank sumps must be installed, and they must be monitored as per 165:25-3-6.~~

~~(h) Existing facilities that are replacing underground storage tanks must replace all metallic piping per (a) or (b) of this section.~~

165:25-1-40. Electrical equipment [REVOKED]

~~(a) All electrical work must be installed by a state or federally licensed electrical contractor.~~

~~(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.~~

~~(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.~~

~~(d) NFPA 30A regulations should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.~~

~~(e) Electrical wiring and electrical utilization equipment integral to the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.~~

~~(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for Class I Division 1 or 2 classified locations, set forth in NFPA 70, National Electrical Code.~~

~~(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.~~

~~(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Chapter 7 of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.~~

~~(i) Electrical equipment that was installed in compliance with a state or national code in existence before the effective date of this Section will not be required to change unless the equipment is hazardous to people or property in the vicinity.~~

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

The Commission may require owners and operators of underground storage tank systems to provide information it deems necessary for the protection of human health, property and the environment. Use of the designated OCC form(s) is required for tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PST Division webpage: www.occ.state.ok.us, follow link to Petroleum Storage Tank Division and link to PST Forms.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give the Petroleum Storage Tank Division notification of the installation at least 24 hours before the tank and/or lines are to be installed.

~~(b) If monitoring wells are the selected method of leak detection, the plans for their placement must be approved by the Petroleum Storage Tank Division before they are installed. Vapor monitoring wells may not be used as a method of leak detection on or after three years from the effective date of this Section.~~

(b~~e~~) Owners of all new underground storage tank systems must notify the Commission of a new installation before any fuel is dispensed at a facility. The notice must be given on a form specified by the Commission and include at a minimum, the date of installation, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, and the type of regulated substance being stored.

(c~~d~~) Owners of new systems must certify, either in the notification form or attachments to the form, the following:

(1) Installation of tanks and piping meets the requirements of this Chapter.

(2) Cathodic protection of steel tanks meets the requirements of this Chapter.

(3) The release detection method utilized meets the requirements of this Chapter.

(4) If monitoring wells are the selected method of leak detection, the plans for their placement must be approved by the Petroleum Storage Tank Division before they are installed. The installation and use of monitoring wells for the purpose of monthly release detection must comply with 165:25-3-5.3 and/or 165:25-3-5.4.

(d~~e~~) All owners of new underground storage tank systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping ~~comply~~ complies with the requirements of this Chapter.

(e~~f~~) Any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's installation notification obligations under this Chapter.

165:25-1-46. Tank removal and closure [REVOKED]

~~(a) Owners of all underground storage tank systems must notify the Petroleum Storage Tank Division at least in 14 days prior to the removal or permanent closure of underground storage tanks. If events require the owner to change the date of removal, the Division should be given 48 hours' notice of the new date.~~

~~(b) An authorized agent of the Commission may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.~~

~~(c) Tanks and lines must be removed upon closure unless the Petroleum Storage Tank Division grants a variance that allows the tanks to be closed in place by filling.~~

165:25-1-48. Tank and line tightness testing ~~results~~

(a) The results of any tank and line tightness testing required by this Chapter in which any part of the tank system tested fails to perform in accordance with the requirements of this Chapter must be reported by the owner and/or operator within 10 days of the testing. The notice shall include:

(1) The types of testing equipment used.

(2) The name of the company performing the test.

(3) The name of the tester performing the test.

(4) The method of testing used.

(5) The results of the test.

(6) The details of steps taken or to be taken by the owner to repair, replace or remove the tank system.

(b) Hydrostatic line tightness tests and line leak detector tests must be conducted and reported on the prescribed Commission form.
(c) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

165:25-1-51. Transfer of ownership

~~(a)~~ When the owner of an underground storage tank transfers ownership of the facility or tank to another person, the new owner must notify the Commission within 30 days of the transfer, by completing the appropriate Commission form. ~~The notice must include at a minimum, the name of the new owner, the location of the facility and the date of the transfer of ownership.~~
~~(b)~~ The former owner ~~will~~ must advise the Commission of the name and address of the new owner.

PART 11. RECORDKEEPING

165:25-1-53. Availability of records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must cooperate with Commission requests for submission of inventory and monitoring records. All leak detection records, including but not limited to, sampling, testing, inventory and monitoring records, must be available for each tank for at least the preceding 12 months~~, and must be maintained until either a tank and lines are removed and a clean closure letter is received by the tank owner or issued by the Petroleum Storage Tank Division, or, if a case is opened, until the cleanup case is closed~~. Copies of all records required to be kept pursuant to this Chapter must be available to the Fuel Specialist at the time of a facility's annual UST inspection.
(b) Failure to have the required records available when requested by the Commission may result in enforcement action.
(c) The owner may voluntarily forward the required records for compliance inspection monthly to the Petroleum Storage Tank Division. These records will be made electronically available only to the Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.
(d) Release detection records must be maintained on forms specified by the Commission.
(e) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by the Commission must be transferred at no cost to the new owner or operator.

165:25-1-54. Repair records

Owners and operators of underground storage tank systems regulated by this Chapter must maintain records that identify the location and nature of the repair, including documentation regarding the repair. These records must be kept for the remaining operating life of the storage tank system. In the event of a transfer of ownership the records transfer to the new owner. ~~"Repairs" are defined as work done to restore a storage tank system component that has failed, causing a release of fuel from the system.~~

165:25-1-55. Tank installation, closure and removal records

(a) Owners and operators of underground storage tank systems ~~installed after the effective date of this Section~~ must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to the Petroleum Storage Tank Division for retention in the Division's files. Owners who have purchased systems must maintain the installation information if it is available.
(b) Owners and operators of underground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. These closure and removal records must provide the results of any excavation area site assessment required in 165:25-3-65 for permanently removed tanks. These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:
(1) By the owner or operator who took the underground storage tank system out of service,
(2) By the current owner or operator of the property where the tanks were located, or
(3) By mailing these records to the Commission.
(c) The owner or owner's representative (as directed by the owner) must submit a report in writing to the Commission within 45 days from the date the tanks are permanently taken out of service or removed. The information must include, but is not limited to, the following:
(1) Owner's name, address and facility location.
(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations. ~~Sampling must be done close to the tank.~~
(3) Disposition of the soil removed from the tank and piping areas.
(4) Disposition of the tanks.
(5) Copies of laboratory reports on any samples collected ~~if any were required~~. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed Remediation Consultant in supervisory control of the sampling.

165:25-1-56. Release detection and cathodic protection records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must maintain ~~records on~~ release detection records for a minimum of one year.
(b) Owners and operators of underground storage tank systems regulated by this Chapter who use cathodic protection must maintain records that demonstrate compliance with the

performance standards of this Chapter. ~~These records must provide the results of the last 3 inspections done by a cathodic protection technician.~~

(1) Records must include the original cathodic protection design with drawings or plans depicting all of the Cathodic Protection system components, along with the credentials of the company which designed the system.

(2) Rectifier readings for impressed current systems conducted at least every 60 days.

(3) Results of the last three inspections or Cathodic Protection system tests completed by a corrosion technician.

(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument ~~who did the inspection, the type of instrument used, and calibration data on the instrument~~.

PART 13. FEES

165:25-1-64. Fees

This Chapter requires the following persons to pay fees according to the schedule set out in ~~165:5-3-1~~ 165:5-3-2:

(1) Owners or operators of all underground storage tank systems in use during the fiscal year.

(2) Licensed UST Installers, UST ~~or~~ Removers, or individuals who hold a monitoring well license who become licensed pursuant to the provisions of this Chapter.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) The Commission may close (shut down) a UST system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(b) Only Commission Petroleum Storage Tank Division designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) of this Section. The PSTD employee must explain to the owner or operator the reason the UST system is being locked or sealed.

(c) Owners or operators who remove a lock or seal without permission from the Commission will be subject to penalties imposed by this Chapter.

(d) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment or the permit fees have been paid, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) Verbal or written permission from the Commission employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Inspection and Compliance; or

(3) Application to and order of the Commission.

(e) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by the Commission of an application for a hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-1. Sources of standards

The standards referenced in this Chapter are available for inspection at the offices of the Petroleum Storage Division during regular business hours and from the following sources~~:~~. New editions of codes and standards supersedes all previous editions.

(1) American Petroleum Institute (API), 1220 L. Street, N.W., Washington, D.C. 20005. Telephone (202) 682-8375.

(2) National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, Texas 77218. Telephone (713) 492-0535, ext. 810.

(3) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269. Telephone (800) 344-3555.

(4) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103. Telephone (610) 832-9500.

(5) Underwriter's Laboratory (UL), 333 Pfingston Road, Northbrook, Illinois 60062. Telephone (708) 272-8800, ext. 42612.

(6) Petroleum Equipment Institute (PEI), P.O. Box 2380, Tulsa, Oklahoma 74101. Telephone (918) 464-9696.

(7) Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois, 60047. Telephone (847) 438-8265.

(8) American Society of Mechanical Engineers (ASME/ANSI), 22 Law Drive, Fairfield, New Jersey 07007. Telephone (800) 843-2763.

165:25-2-2. Incorporated codes and standards

Specific references to documents listed below are made throughout this Chapter. Each of these documents or part thereof is adopted and incorporated by reference as a standard. New editions of codes and standards supersede all previous editions.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".

(B) Standard Number 329, 1992, "Underground Leakage of Flammable and Combustible Liquids".

(C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids".

(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".
(E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers".
(F) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".
(2) American Petroleum Institute Standards:
(A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems".
(B) Recommended Practice 1632, 1996, "Cathodic Protection of Underground Storage Tank and Piping Systems".
(C) Recommended Practice 1604, 1987, "Removal and Disposal of Used Underground Service Station Tanks".
(D) Recommended Practice 1631, 1992, "Interior Lining of Underground Storage Tanks".
(E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets".
(F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations".
(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations".
(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".
(I) Publication 2200, 1994, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines".
(J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks".
(3) National Association of Corrosion Engineers:
(A) Standard Number RP-0169-92, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".
(B) Standard Number RP-0184-94, "Repair of Lining Systems".
(C) Standard Number RP-0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems".
(D) Standard Number RP-0286-86, "The Electric Isolation of Cathodically Protected Pipelines".
(4) Underwriter's Laboratory Standards:
(A) Standard UL58, 8th Edition, 1986, "Steel Underground Tanks for Flammable and Combustible Liquids".
(B) Standard UL1316, 2nd Edition, 1994, "Glass-Fiber- Reinforced Plastic Underground Storage Tanks for Petroleum Products".
(C) Standard UL1746, 2nd Edition, 1993, "External Corrosion Protection Systems for Steel Underground Storage Tanks".
(D) Standard UL567, 7th Edition, 1992, "Pipe Connectors for Flammable and Combustible Liquids and LP Gas".
(5) American Society for Testing Materials:
(A) Standard D 4021-92, "Standard Specifications for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks".
(B) Standard ES 40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection."
(6) Petroleum Equipment Institute PEI/RP 100-2000, "Recommended Practices for Installation of Underground Liquid Storage Systems".
(7) Steel Tank Institute STI-F894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".
(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks".
(9) Factory Mutual 1920, "Flexible Pipe Couplings".
(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection".
(11) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)".
(12) American Society for Testing and Materials, ASTM Designation: E 1739-95, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".
(13) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."
(14) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

165:25-2-3. Other standards and regulations

This Chapter does not limit the Commission to the above listed reference and standards, and the commission may use any other standards of nationally recognized associations or any other regulations of federal, state, city, county, or local governing bodies in discharing the Commission's regulatory duties.

165:25-2-4. Financial responsibility

(a) An owner or operator may satisfy the requirements of Title 40 Code of Federal Regulations (CFR), 280.90 through 280.111, in (b) above, by use of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund (Indemnity Fund) (ref: Okla. Stat. Tit. 17 §350 et seq.) (ref: Okla. Stat. Tit. 17 §350 et seq.). There is a $5,000 deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanism outlined in 40 CFR 280.90 through 280.111.
(b) The following above regulations promulgated on or before November 9, 1989 by the United States Environmental Protection Agency are hereby adopted as provisions of this

Chapter as though set forth herein with the exception that, and unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to the "Oklahoma Corporation Commission," and all references to "Administrator," "Regional Administrator," "Director," or "State Director" shall be considered references to the "Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission."

PART 3. DESIGN AND INSTALLATION

165:25-2-31. Underground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a UST installation shall be installed by personnel possessing appropriate skills, experience, and required Commission license to complete the installation in accordance with recognized industry standards and this Chapter. A licensed UST installer must be present at all times during the installation.

165:25-2-32. Compatibility

Owners and operators of all underground storage tank systems must use an underground storage tank system that is made of or lined with materials that are compatible with the substance stored in the system. In addition, any material used as an impervious barrier as defined in this Chapter must also be compatible with the substance stored.

165:25-2-33. Approved tanks, tank design

The material used in the construction or lining of a new UST must be compatible with the regulated substance to be stored in the UST. Tanks must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion as specified below:

(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.

(2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746 or ACT-100.

(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 1746 and NACE RP-0285 and must be protected in the following manner:

(A) The tank must be coated with a suitable dielectric material.

(B) Field-installed cathodic protection systems must be designed by a corrosion expert.

(C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.

(D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.

(4) The Commission may permit alternative types of tank construction, design, and corrosion protection if the owner affirmatively demonstrates to the Commission's satisfaction that the alternative construction, design, and corrosion protection system will prevent the release of any stored regulated substance in a manner no less protective of human health and the environment than those set out in this Section.

165:25-2-34. Compliance with nationally recognized code of practice and manufacturer's instructions

(a) All new underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(b) Compliance with the standards listed in this Chapter will be deemed compliance with this Part.

165:25-2-35. Pre-installation

(a) All installers of underground storage tank systems must perform an analysis of the installation site prior to the system's construction and installation. The analysis must include, at a minimum, the following:

(1) A determination of local soil conditions.

(2) The level of the water table in the area.

(3) Drainage conditions.

(4) The presence of any underground utility lines or conduits.

(b) Pre-approval by the Manager of Inspection and Compliance for PSTD is required for new installation plans if vapor or groundwater monitoring wells will be the method used for leak detection.

165:25-2-36. Tank system installation

(a) Backfill material

(1) Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer.

(2) In the case of fiberglass-reinforced plastic tanks, the backfill material used must be in accordance with the tank manufacturer's specifications.

(b) UST installation

(1) Following the required 24-hour notification of new UST installations, the assigned Fuel Specialist will obtain the construction schedule from the contractor. An on-site inspection may be required at the following critical junctures. The Fuel Specialist may observe and/or inspect:

(A) The air/soap test of tanks.

(B) The tank pit prior to the placement of tank(s).

(C) The backfilling of the lower quadrant of tank(s).

(D) The air/soap test and layout of piping prior to backfilling.

(E) The tightness test of tanks and piping, and leak detector tests prior to startup.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.
(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, adequate clearance must be provided to prevent contact between piping segments.
(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank, unless otherwise approved by the Commission.
(5) The owner and/or tank installer must continuously supervise backfilling operations to ensure that the proper procedures are followed.
(6) If a tank is installed in an area with a high water table, anchoring must be used to prevent tank flotation, or the tank must be installed according to manufacturer's specifications to eliminate flotation if the tank is empty.
(7) Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

165:25-2-37. Storage tank spacing

(a) Underground storage tanks must be at least thirty-six inches (36") from the property line of the property on which they are installed.
(b) Fiberglass and steel underground storage tanks must have an amount of spacing between tanks and between tanks and excavation walls in the tank-pit in accordance with manufacturer's instructions.

165:25-2-38. Fill pipe requirements

(a) Fill pipes that enter the top of a tank must have drop tubes installed and terminate within 6 inches (6", or 15 cm) of the bottom of the tank.
(b) Fill pipes should be installed or arranged so that vibration is minimized.
(c) Each fill pipe for liquid storage must be identified by a tag or other permanent marking to show the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding may also be used in addition to marking.

165:25-2-39. Spill and overfill protection

(a) Underground storage tanks must have spill and overfill protection on the tanks.
(b) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.
(c) The ball float vent valve overfill system must not be installed on tanks with a suction type system.
(d) Tight fill connections must be used on all deliveries made to underground storage tanks.
(e) Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.
(f) Except as provided in (g) of this Section, in order to prevent spilling and overfilling associated with product transfer to the underground storage tank system, the following prevention equipment must be used:
(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket or a drain system).
(2) Overfill prevention equipment that will:
(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or
(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.
(g) The spill and overfill prevention equipment specified in (f) of this Section is not required if:
(1) The underground storage tank system is filled by transfers of no more than 25 gallons at one time; or
(2) Alternative equipment is used that is determined by the Commission to be no less protective of human health and the environment than the equipment specified in (a) of this Section.
(h) A drop tube with overfill device is required on all tank systems installed after July 1, 2001, regardless of any other overfill device used. Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless documentation can be provided at the time of inspection for compliance that proves the underground storage tank system is equipped with a ball float overfill device.

165:25-2-40. Tank system testing

(a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.
(b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:
(1) The piping must be subjected to an air test of at least 50 psi.
(2) The test must have a duration time of not less than 60 minutes.
(3) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.
(4) As an alternative to the preceding methods in (1), (2,) and (3) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.
(c) Pressurized piping must be tested while connected to tanks, pumps and dispensing units and must be subjected to an air test of at least 50 psi.

(d) Tightness (also called precision) tests for tanks and piping must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation, and must be performed in accordance with the applicable requirements of this Chapter.

(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or

(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:

(A) The tank must be filled to at least 80 percent capacity.

(B) A certified automatic tank gauge capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank.

(3) The product line(s) must be hydrostatically tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater.

(4) Mechanical leak detector(s) must be tested in accordance with manufacturer's instructions; or

(5) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).

(e) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.

165:25-2-41. Installation drawing

As built drawings, showing the location(s) of tanks, piping, monitoring wells and dispensing units, must be prepared by the installer and submitted to the Commission with the tank registration form.

165:25-2-42. Certification of installation

(a) Owners of underground storage tank systems must ensure that the installer has been certified by the Commission in accordance with this Chapter.

(b) There must be a Commission-licensed UST Installer who has the authority to assure that UST systems are installed in accordance with this Chapter in supervisory control, present at the job site during UST systems installation.

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

(a) Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:

(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

(2) Underwriters Laboratories of Canada ULC-S603.1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;

(3) Steel Tank Institute Standard No. Sti-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;

(4) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;

(5) National Association of Corrosion Engineers Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(6) Underwriters Laboratories Inc., Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746, Part 1.

(b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications

Corrosion protection systems must be operated and maintained in accordance with manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that are routinely in contact with the ground.

165:25-2-53. Frequency and criteria of inspections and tests

Cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) All cathodic protection systems must be tested within 6 months of installation and/or repair, and at least every 3 years thereafter.

(2) Every 60 days impressed current cathodic protection systems must be inspected by the owner or operator (or owner's designated representative) to ensure that the equipment is working properly.

(3) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized organization, such as NACE RP-0285.

165:25-2-54. Underground storage tank piping materials

(a) All underground pressurized piping installed at new facilities must be as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank and dispenser sumps must be installed, and they must be monitored per 165:25-3-6.

(b) All new suction piping meeting the requirements of 165:25-3-6(2)(A) through (D) must be installed as follows:

(1) Nonmetallic;

(2) May be either single- or double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser sumps must be installed and monitored by a sensor, float or similar mechanical device at each sump.

(c) All new suction piping not meeting the requirements of 165:25-3-6(2)(A) through (D) must be double-walled and a sump must be installed at each dispenser and at the tank and must be monitored by a sensor, float or similar mechanical device at each sump.

(d) Existing facilities that are replacing metallic piping must upgraded pursuant to (a) or (b) of this Section. If the metallic line fails due to corrosion, the line must be immediately removed, and cannot be reused.

(e) Existing facilities that have metallic or single-walled nonmetallic piping and are removing, replacing, relocating or adding a fuel island must install dispenser sumps and monitor as pursuant 165:25-3-6. Any additions to the metallic piping must be nonmetallic single or double-walled piping.

(f) Existing facilities that are replacing dispensers where the fuel islands are not being removed, replaced, relocated, or added may add to the existing piping using the same piping material, and dispenser sumps do not have to be installed.

(g) Existing facilities that are replacing underground storage tanks may re-use single-walled nonmetallic piping. Tank sumps must be installed, and they must be monitored as pursuant 165:25-3-6.

(h) Existing facilities that are replacing underground storage tanks must replace all metallic piping per (a) or (b) of this section.

165:25-2-55. Underground storage tank internal lining requirements

(a) Underground storage tanks that have not yet met the 1998 upgrade requirements may not use tank lining as a means of corrosion protection.

(b) A lined steel tank that fails precision tightness testing may not be repaired and must be removed.

(c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(d) Standards that must be referenced during the periodic inspection of lined USTs:

(1) American Petroleum Institute (API) Publication 1631.

(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera, First Edition, 1999, Methods A and D.

(e) UST owners must obtain a certificate of performance (Interior Lining Inspection Form) from the inspection provider attesting that the UST meets the performance requirements for the UST and lining material. Any UST failing to meet the performance requirements must be repaired and upgraded with a cathodic protection system within six months of the lining repair, or be removed. Suitability of the tanks for upgrade by adding cathodic protection must be determined prior to application.

(f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.

PART 7. DISPENSERS

165:25-2-71. Dispensers

(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.

(b) Dispensing devices for Class I liquids must be listed.

(1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by the Commission.

(2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and must be made available to the Commission upon request.

(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

165:25-2-72. Dispenser hose

(a) Listed hose assemblies must be used to dispense fuel.

(1) Hose length at automotive service stations must not exceed 18 feet (18', or 5.5 m).

(2) Hose at retail facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings.

(3) Two lengths of hose must not be coupled together.

(b) Defective hoses must be removed from service.

(c) At least once each month the hose must be completely extended and inspected.

(1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.
(3) Hoses that show evidence of soft spots must be removed.

165:25-2-73. Nozzles

At any installation where the normal flow of product may be stopped other than by the hose nozzle valve e.g. at pre-pay stations, the system must include listed equipment with a feature that causes or requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser; or the hose nozzle valve must not be equipped with a latch-open device.

165:25-2-75. Required signs

Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:
(1) WARNING
(2) It is unlawful and dangerous to dispense gasoline into unapproved containers.
(3) No smoking.
(4) Stop motor.
(5) No filling of portable containers in or on a motor vehicle.
(6) Place container on ground before filling.
(7) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

165:25-2-76. Sources of ignition

(a) Smoking materials, including but not limited to matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.
(b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.
(c) The motors of all equipment being fueled must be shut off during the fueling operation.
(d) At least one fire extinguisher must be readily accessible in the pump area, as well as at the service bay(s), where applicable.

165:25-2-77. Electrical equipment

(a) All electrical work must be installed by a state or federally licensed electrical contractor.
(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.
(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.
(d) NFPA 30A regulations should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.
(e) Electrical wiring and electrical utilization equipment integral to the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.
(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for Class I Division 1 or 2 classified locations, set forth in NFPA 70, National Electrical Code.
(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.
(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.
(i) Electrical equipment that was installed in compliance with a state or national code in existence before July 15, 2002 will not be required to change unless the equipment is hazardous to people or property in the vicinity.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 1. RELEASE PROHIBITION AND DETECTION REQUIREMENTS

165:25-3-5.2. Tank system tightness testing with inventory control

When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks.
(1) **Tank tightness testing.** Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
(2) **Requirements for tank tightness testing.** If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, and performed by a certified tester.
(3) **Inventory control.**
(A) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(iv) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(v) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(B) Compliance with API 1621, where applicable, will be deemed compliance with this Section.

(4) **Manual tank gauging.** Manual tank gauging must be done within the following restrictions and must meet the following requirements:

(A) **Restrictions.** Manual tank gauging may be used as an approved method of release detection if:

(i) The tank has a nominal capacity of 1,000 gallons or less;

(ii) The tank has a nominal capacity of between 1,001 and 2,000 gallons and manual tank gauging is combined with periodic tank tightness testing as required by this Subchapter;

~~(iii) The tank is used on a farm and has a nominal capacity of up to 8,000 gallons~~.

(B) **Requirements.**

(i) Tank liquid level measurements are taken at the beginning and ending of the period appearing in Appendix ~~O~~Q, during which no liquid is added to or removed from the tank.

(ii) Level measurements are based on an average of 2 consecutive stick readings at both the beginning and ending of the period.

(iii) The equipment used is capable of measuring the product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(iv) A leak is suspected and subject to the release reporting requirements of Subchapter 3, Part 1 of this Chapter if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the table in Appendix ~~O~~Q.

~~(C) **Special requirements for farm tanks.** Owners of farm tanks with a maximum nominal capacity of 8,000 gallons may use manual tank gauging, the special requirements of which are listed in Subchapter 17 of this Chapter.~~

165:25-3-5.3. Testing or monitoring for vapors

~~Testing or monitoring for vapors within the backfill of the excavation zone carries the following requirements. Vapor monitoring wells may not be used as a method of leak detection on tanks on or after three years from the effective date of this Section.~~

~~(1) The materials used as backfill must be sufficiently porous (i.e., gravel, sand, crushed rock) to readily allow the diffusion of vapors from releases into the excavation zone. [See backfill requirements in 165:25-3-43(a)]~~

~~(2) The stored regulated substance or a tracer compound placed in the tank system must be sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.~~

~~(3) The measurement of vapors by the monitoring device must not be rendered inoperative by groundwater, precipitation, soil moisture or other known interference so that a release can go undetected for more than 30 days.~~

~~(4) The level of background contamination in the excavation area must not interfere with the method used to detect releases from the underground storage tank system.~~

(a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the monitoring wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.

(4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc., a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected.

(5) Volatility of the stored product and its compatibility with the monitoring device that will be used.

(b) Individuals performing this site assessment must be a Commission Licensed Remediation Consultant.

(c) The vapor monitoring wells must be installed within the tank excavation and/or piping trench backfill. In the tank excavation, wells must be spaced to cover a maximum 20-foot radius of influence. If a one-tank installation requires only one well, it should be installed on the downgradient side of the excavation. For multiple tank installations or where more than one well is installed, at least one of the wells should be placed on the downgradient side of the excavation.

(d) In piping trenches, vapor monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.

(e) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow an OCC-licensed UST Installer to install monitoring wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(f) In addition to 165:25-3-5.3(e), vapor monitoring wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled 0.01-inch well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations and one-foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.

(4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.

(g) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after June 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(h) All vapor monitoring wells must be checked by a licensed monitoring well technician.

~~(5)~~(i)The vapor ~~monitors~~ monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance or a tracer placed in the tank system above background levels.

~~(6) Monitor wells must be clearly marked and secured to avoid unauthorized access and tampering.~~

~~(7) In the UST excavation zone, the site must be assessed to ensure compliance with the requirements in paragraphs 1 through 4 of this Section, and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.~~

(~~8~~j) Vapor monitoring devices must be able to read in parts-per-million. If the device has a maximum recording level below 4,000 ppm, any well that causes the meter to reach its reading limit must be reported.

(~~9~~k) Monitoring well readings above 4,000 ppm for gasoline and above 1,500 ppm for diesel, or above 1,500 ppm for a tank pit containing both gasoline and diesel tanks, must be reported to ~~a~~ the Commission ~~hydrologist~~ by telephone at (405) 521-6575 or toll free at 1-888-621-5878 within 24 hours of the owner or operator or any of his or her employees knowing the reading.

(~~10~~l) An increase in vapor levels of 500 ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within 24 hours of the owner or operator or any of his or her employees ~~at the facility~~ knowing the second month's monitoring results.

(~~11~~ m) If a monitoring report under the circumstances ~~of either (9) or (10)~~ above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of monitoring results or release conditions was delayed.

165:25-3-5.4. Testing or monitoring for liquids on the groundwater

~~Testing or monitoring for liquids on the groundwater carries the following requirements:~~

~~(1) The regulated substance stored must be immiscible in water and have a specific gravity of less than 1.0.~~

~~(2) The groundwater must never be more than 20 feet (20') from the ground surface and the hydraulic conductivity of the soil between the underground storage tank system and the monitoring well or devices must not be less than 0.01 cm/sec (i.e, the soil should consist of gravels, course to medium sands, coarse silts, or other permeable materials).~~

~~(3) Monitoring wells must be sealed from the ground surface to the top of the filter pack.~~

~~(4) Monitoring wells or devices must intercept the excavation zone.~~

~~(5) All continuous monitoring devices or manual methods that are used must detect the presence of at least 1/8 inch (1/8") of free product on top of the groundwater in the monitor wells.~~

~~(6) Monitor wells must be clearly marked and secured to avoid unauthorized access and tampering.~~

~~(7) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and allow entry of regulated substance on the water table into the well under both high and low water conditions.~~

~~(8) Within and immediately below the UST system excavation zone, the site must be assessed to ensure compliance with the requirements in paragraphs 1 through 4 and 7 of this Section and establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.~~

(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow migration of product from a release to the monitoring wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases. If residual free product is discovered, it must be removed prior to initiating groundwater monitoring.

(4) The location and historical levels of groundwater at the site. Groundwater monitoring cannot be used if the water table is less than three feet below ground surface or more than 20 feet below ground surface.

(5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.

(6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.

(b) Individuals performing this site assessment must be Commission licensed remediation consultants.

(c) The groundwater monitoring wells must be installed in the tank excavation and/or piping trench backfill. In the tank excavation, wells must be spaced to cover a maximum 20-foot radius of influence. If a one-tank installation requires only one well, it must be installed on the downgradient side of the excavation. For multiple tank installations or where more than one well is installed, at least one of the wells must be placed on the downgradient side of the excavation.

(d) In piping trenches, groundwater monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.

(e) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a Commission licensed UST Installer to install monitoring wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(f) Groundwater monitoring wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled 0.01-inch well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations and one-foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.

(4) The well screen must terminate at least 18-inches below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral

triangle to identify the well as a monitoring well or site assessment observation well.

(g) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(~~9~~1) Any indication of free product floating on the water table must be reported to ~~a~~ the Commission ~~hydrologist~~ by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees ~~at the facility~~ discovering the product.

(~~10~~2) If a monitoring report under the circumstances of ~~(9)~~ (g) (1) above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of the existence of free product was delayed.

(h) All groundwater monitoring wells must be checked by a licensed monitoring well technician.

165:25-3-5.6. Automatic tank gauging systems

(a) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days, and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) ATGs that cannot detect a 0.1 gallon per hour leak rate monthly or perform inventory reconciliation are required to have monthly inventory reconciliation done in conjunction with them.

(c) Automatic tank gauging systems (ATG's) must be third party certified for the size of tanks and for the quantity of tanks that are manifolded together. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

165:25-3-5.7. Manual tank gauging

Any underground storage tank with a capacity of 550 gallons or less, or tanks with a capacity of 551 to 1,000 gallons and that are either 48- or 64-inches in diameter, may use manual tank gauging as their sole method of release detection for the tank. Underground storage tanks with a capacity of 551 to 1,000 gallons that are other than 48- or 64-inches in diameter, and tanks with a capacity of 1,001 to 2,000 gallons, may use manual tank gauging in combination with a periodic tank tightness test (every five years) for a period of 10 years from the date of installation or tank upgrade.

165:25-3-6. Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) **Pressurized piping.**

(A) Underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and in operation in accordance with this Chapter~~, or have sumps with a sensor, float or similar mechanical device at each sump~~.

(B) Installations ~~after the effective date of this Section~~ with automatic line leak detectors must also have at least one sump sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(C) Installations ~~after the effective date of this Section~~ must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground satellite pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years by a certified tester, or use a monthly monitoring method conducted in accordance with this Chapter. No release detection is required for suction piping designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure.

(B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(C) Only one check valve is included in each suction line.

(D) The check valve is located directly below and as close as is practical to the suction pump.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) **Automatic mechanical line leak detectors and annual line tightness testing.** Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability

of detection of 0.95 and a probability of false alarm of 0.05. A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter unless one of the following requirements are met

(B) **Sump sensors.**

(i) Sump sensors, floats or similar mechanical devices at each dispenser and tank sump may be used in lieu of ~~automatic~~ annual line ~~leak detectors~~ tightness testing. The sump sensors, floats or other mechanical devices used must be ~~able to detect a leak of 3 gallons per hour at 10 psi line pressure, and must be~~ tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(ii) Installations ~~after the effective date of this Section~~ with automatic line leak detectors must also have at least one sump sensor, float or similar mechanical device installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

~~(C) **Line tightness testing.** A line tightness test, either hydrostatic or electronic, must be done annually by a certified tester in accordance with this Chapter in addition to any other line leak detection method, unless the requirements of (B)(i) above or (D) below are met.~~

(C~~D~~) ~~**Alternative to line tightness testing**~~ **Electronic line leak detection.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(1) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(2) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(3) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is tested annually, and if necessary, calibrated in accordance with manufacturer's specifications.

(D) **Monthly vapor or groundwater monitoring.** Monthly vapor or groundwater monitoring may be used in lieu of an annual line tightness test only if the vapor or groundwater monitoring system is installed and monitored in accordance with 165:25-3-5.3 for vapor monitoring or 165:25-3-5.4 for groundwater monitoring.

(E) **Other methods applicable to tanks and lines.** Any of the acceptable methods for tanks listed in Subchapter 3 of this Chapter (vapor monitoring, groundwater monitoring, and interstitial monitoring for double-walled piping and tanks) may be used in lieu of annual line tightness testing if it is designed to detect a release from any portion of the underground piping that routinely contains regulated substances. ~~Vapor monitoring may not be used on or after three years from the effective date of this Section.~~

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the Commission's staff, in the exercise of common sense, specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from the Commission, using the following steps or another procedure approved by the Commission:

(1) **System test.** Owners and/or operators must conduct tests (according to the requirements for tightness testing in this Chapter) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(A) Owners and/or operators must repair, replace, or upgrade the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be ~~approximately 5 feet (5') from the~~ outside of the UST system in native soil or another location approved by the Commission. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, ~~TCLP~~ analysis for metals, semi-volatiles, and volatiles ~~will~~ may be required. ~~The~~ TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the Oklahoma Department of Environmental Quality for regulation. The selected method must be able

to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Levels of chemical constituent concentrations that ~~may~~ shall confirm a release at the direction of the Commission are:

(1) Benzene
- (A) Native Soils - 0.5 mg/kg
- (B) Groundwater - 0.005 mg/l

(2) Toluene
- (A) Native Soils - 40.0 mg/kg
- (B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene
- (A) Native Soils - 15.0 mg/kg
- (B) Groundwater - 0.7 mg/l

(4) Xylene
- (A) Native Soils - 200.0 mg/kg
- (B) Groundwater - 10.0 mg/l

(5) TPH
- (A) Native Soils - 50.0 mg/kg
- (B) Groundwater - 2.0 mg/l
- (C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the commission.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to the Commission summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which a remediation may be undertaken under the provisions of Chapter 29.

PART 5. SPILL AND OVERFILL PREVENTION REQUIREMENTS [REVOKED]

165:25-3-25. General spill and overfill prevention requirements [REVOKED]

~~(a) Underground storage tanks must have spill and overfill protection on the tanks.~~

~~(b) Tightfill connections must be used on all deliveries made to underground storage tanks.~~

~~(c) Overfill protection must not be tampered with. Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.~~

~~(d) Owners and operators of underground storage tank systems, as well as those who transport regulated substances to these systems, must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.~~

165:25-3-26. Spill and overfill prevention equipment [REVOKED]

~~(a) Except as provided in (b) of this Section, to prevent spilling and overfilling associated with product transfer to the underground storage tank system, the following spill and overfill prevention equipment must be used:~~

~~(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket or a drain system).~~

~~(2) Overfill prevention equipment that will:~~

~~(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or~~

~~(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.~~

~~(b) The spill and overfill prevention equipment specified in (a) of this Section is not required if:~~

~~(1) The underground storage tank system is filled by transfers of no more than 25 gallons at one time; or~~

~~(2) Alternative equipment is used that is determined by the Commission to be no less protective of human health and the environment than the equipment specified in (a) of this Section.~~

~~(c) New underground storage tank systems must be equipped with spill and overfill protection at the time they are put into operation, and existing underground storage tank systems must also be equipped with spill and overfill protection .~~

~~(d) A drop tube with overfill device is required on all tank systems installed after July 1, 2001, regardless of any other overfill device used. Tanks installed before July 1, 2001, must be upgraded to meet these standards by one year from that date, unless documentation can be provided at the time of inspection for compliance that proves the underground storage tank system is equipped with a ball float overfill device.~~

PART 7. COMPATIBILITY [REVOKED]

165:25-3-31. Compatibility [REVOKED]

~~Owners and operators of all underground storage tank systems must use an underground storage tank system that is made of or lined with materials that are compatible with the substance stored in the system. In addition, any material used as an impervious barrier as defined in this Chapter must also be compatible with the substance stored.~~

PART 9. ~~INSTALLATION OF UNDERGROUND STORAGE TANK SYSTEMS~~ LICENSING OF UNDERGROUND STORAGE TANK INSTALLERS

165:25-3-41. Compliance with nationally recognized code of practice and manufacturer's instructions [REVOKED]

~~(a) All new underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.~~

~~(b) Compliance with the standards listed in this Chapter must be deemed compliance with this Part.~~

165:25-3-42. Pre-installation [REVOKED]

~~(a) All installers of underground storage tank systems must perform an analysis of the installation site prior to the system's construction and installation. The analysis must include, as a minimum, the following:~~

~~(1) A determination of local soil conditions including corrosivity.~~

~~(2) The level of the water table in the area.~~

~~(3) Drainage conditions.~~

~~(4) The presence of any underground utility lines or conduits.~~

~~(b) Pre-approval by the Manager of Inspection and Compliance is required for new installation plans if vapor or groundwater monitoring wells will be the method used for leak detection.~~

165:25-3-43. Tank system installation [REVOKED]

~~(a) **Backfill material.**~~

~~(1) Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, noncorrosive porous material such as sand, crushed rock no bigger than 3/8" or pea gravel.~~

~~(2) In the case of fiberglass-reinforced plastic tanks, the backfill material used must be in accordance with the tank manufacturer's specifications.~~

~~(b) **Tank installation.**~~

~~(1) Following the required 24-hour notification of new tank installations, the applicable Fuel Specialist will obtain the construction schedule from the contractor. An on-site inspection may be required at the following critical junctures. The Fuel Specialist may observe and/or inspect:~~

~~(A) The air/soap test of tanks.~~

~~(B) The tankpit prior to the placement of tank(s).~~

~~(C) The backfilling of the lower quadrant of tank(s).~~

~~(D) The air/soap test and layout of piping prior to backfilling.~~

~~(E) The tightness test of tanks and piping, and leak detector tests prior to startup.~~

~~(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.~~

~~(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, adequate clearance must be provided to prevent contact between piping segments.~~

~~(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank, unless otherwise approved by the Commission.~~

~~(5) The owner and/or tank installer must continuously supervise backfilling operations to ensure that the proper procedures are followed.~~

~~(6) If a tank is installed in an area with a high water table, anchoring must be used to prevent tank flotation, or the tank must be installed according to manufacturer's specifications to eliminate flotation if the tank is empty.~~

~~(7) Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.~~

165:25-3-44. Tank system testing [REVOKED]

~~(a) Tightness (also called precision) tests for tanks and piping must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation, and must be performed in accordance with the applicable requirements of this Chapter.~~

~~(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or~~

~~(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:~~

~~(A) The tank must be filled to at least 80 percent capacity.~~

~~(B) A certified automatic tank gauge capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank.~~

~~(3) The product line(s) must be hydrostatically tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour.~~

~~(4) Mechanical leak detector(s) must be tested in accordance with manufacturer's instructions; or~~

~~(5) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).~~

~~(b) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.~~

~~(c) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:~~

~~(1) The test must be done at one and one-half times the working pressure, but not less than 50 psi.~~

~~(2) The test must have a duration of not less than 60 minutes.~~

~~(3) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.~~

~~(4) As an alternative to the preceding methods in (1), (2,) and (3) above, the piping must be subjected to a vacuum test while connected to tanks, pumps and dispensing units.~~

~~(d) Pressurized piping must be tested while connected to tanks, pumps and dispensing units.~~

~~(e) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.~~

165:25-3-46. Installation drawing [REVOKED]

~~As built drawings, showing the location(s) of tanks, piping, monitoring wells and dispensing units, must be prepared by the installer and submitted to the Commission with the tank registration form.~~

165:25-3-47. Certification of installation [REVOKED]

~~(a) Owners of underground storage tank systems must ensure that the installer has been certified by the Commission in accordance with this Chapter.~~

~~(b) There must be a Commission licensed UST Installer in supervisory control, present at the job site during UST systems installations, who has the authority to assure that UST systems are installed in accordance with this Chapter.~~

165:25-3-48. Licensing of Underground Storage Tank Installers [REVOKED]

~~(a) Any individual who applies to be licensed to install USTs must do the following, and certify that he or she will comply with on site requirements listed in this Section and elsewhere in this Chapter:~~

~~(1) Complete an application form prepared by the Commission.~~

~~(2) Provide proof sufficient to the Commission that the applicant installer has two (2) years' related work experience and show evidence that he or she has actively participated in the completion of three (3) UST handling activities, two (2) of which must be installations. The individual must also pass an examination provided by the Commission that is prepared, administered, and graded within its discretion.~~

~~(3) Pursuant to Subchapter 9 of this Chapter, Installers must be required to pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-1(g)(2).~~

~~(4) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.~~

~~(b) Failure to comply with this Chapter and the Oklahoma Underground Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.~~

~~(c) Continuing education is required to maintain a UST Installer or UST Remover license; this consists of eight hours of continuing education through a Commission accredited program every two years.~~

165:25-3-49. Underground storage tank installation [REVOKED]

~~(a) All owners and operators of Commission regulated underground tanks must ensure that the installer they employ has been licensed by the Commission in accordance with this Chapter.~~

~~(b) Tanks must be installed in accordance with this Chapter.~~

~~(c) A precision tightness test must be completed by a certified tester on tanks and lines before they are put into service and after all paving over the tanks and piping has been completed.~~

165:25-3-50. Licensing procedure for UST Installers

(a) Any individual who would like to become a licensed UST Installer must:

(1) Complete an application form prepared by the Commission.

(2) ~~Provide sufficient proof of two years' related work experience and that he or she has actively participated in the completion of three underground storage tank handling activities, two of which must be installations.~~ Provide sufficient proof of two years related work experience, with confirmed active participation in the completion of at least three installations. If applicant is a current UST installer license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) The individual must pass an examination administered by the Commission.

(4) Installers must pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks.

~~(6) To have a license renewed, an installer must have completed eight hours of continuing education in installation and removal through courses accredited by the Petroleum Storage Tank Division.~~

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Installer license; this consists of four hours of continuing education through a Commission-accredited program every two years.

~~(b)~~(d)The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Installer.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter and the Oklahoma Underground Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.

(~~7~~e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.

(~~e~~f) This Section in no way exempts the UST Installer from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(g) After the effective date of these rules, UST Installers are no longer allowed to remove underground storage tanks and will be required to obtain a separate UST Remover license before they can remove underground storage tanks.

165:25-3-51. Licensing procedure for UST Removers

(a) Any individual who would like to become a licensed UST Remover must:

(1) Complete an application form prepared by the Commission.

(2) Provide sufficient proof of two years related work experience, with confirmed active participation in the completion of at least three (3) removals. If applicant is a current UST remover license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) Pass an examination administered by the Commission.

(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Removers license; this consists of four hours of continuing education through a Commission approved program every two years.

(d)The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in removal work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Remover.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter and the Oklahoma Underground Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Remover license.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.

(f) This Section in no way exempts the UST Remover from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

165:25-3-52. Licensing procedure for monitoring well technician

(a) Monitoring of vapor and groundwater wells for the purpose of monthly release detection must be performed by an individual licensed by the OCC Petroleum Storage Tank Division (PSTD). An individual who applies to be licensed to perform monthly release detection of monitoring wells must:

(1) Complete an application form prepared by the Commission.

(2) Provide a copy of the manufacturer's instructions for the monitoring equipment that will be used and display

his/her competence in the use of the monitoring equipment to the PSTD. The use of new or different monitoring equipment will require the user to submit the manufacturer's instructions and display his/her competence in the use of the new or different equipment.

(3) Certify that they will comply with all Commission rules and requirements.

(4) Fees must be paid in accordance with 165:5.

(b) A license to monitor vapor and groundwater monitoring wells for the purpose of monthly release detection must be renewed every two years.

(c) To have a license renewed, the individual must have completed at least four (4) hours of continuing education in an area applicable to vapor monitoring and monitoring equipment. Hands-on training by the equipment manufacturer, and attested to by the manufacturer, is one example of satisfactory continuing education.

(d) Individuals who are monitoring vapor and groundwater monitor wells for monthly release detection purposes must report readings that exceed the levels in 165:25-3-5.3(j) and (k) to the facility owner and/or operator within 48 hours.

(e) Falsification of monitoring reports will result in the Commission being authorized to seek a suspension and/or revocation of the individual's license.

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS

165:25-3-55. Repairs to underground storage tank systems

(a) ~~Repairs to underground storage tanks must be performed by licensed UST Installers pursuant to this Chapter.~~ Repairs to underground storage tank systems must prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(b) ~~Repairs to a product dispensing unit will not be considered repairs to the storage tank system.~~ Repairs shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and any required license or certification to complete the work in accordance with provisions of this Chapter.

(c) ~~On tank and/or line repairs, a tightness test of the repaired structure, performed by a certified tester, is required prior to returning it to service.~~ Any repair shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(d) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system.

(e) Following completion of repairs, a tightness test of the repaired structure, performed by a certified tester, is required prior to returning it to service.

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-3-60. Tank removal and closure

(a) Owners of all underground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of underground storage tanks. If events require the owner to change the date of removal, the Division should be given 48 hours notice of the new date.

(b) An authorized agent of the Commission may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless the Petroleum Storage Tank Division grants a variance that allows the tanks to be closed in place by filling.

(d) All underground storage tanks must be removed by a licensed UST Remover.

(e) Any company that removes underground storage tank systems must have a licensed UST Remover on the job site during removal.

165:25-3-62. Temporary removal from service

(a) When an underground storage tank system is taken temporarily out of service, the owner or operator must:

(1) Continue the operation and maintenance of corrosion protection as required by this Chapter;

(2) Continue release detection as required by this Chapter; ~~and~~

(3) Comply with the requirements of this Chapter concerning release reporting and corrective action~~.~~ ; and

(4) Notify the Commission of a change in service on the prescribed form.

(b) Release detection is not required as long as the underground storage tank system is empty. For the purposes of this Subchapter, the underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than 1 inch (1") of residue~~, or 0.3 percent by weight of the total capacity of the underground storage tank system,~~ remains in the ~~system~~ tank.

165:25-3-64. Permanent closure

(a) All permanent tank closures must be ~~done~~ performed by ~~a licensed UST Installer or~~ a licensed UST Remover.

(b) All permanent tank closures must be ~~done~~ completed by removing the tank and lines from the ground, unless the Commission waives this requirement and allows the tank to be filled in place with inert material. Generally, waivers will be granted only in situations where redevelopment of the property is unlikely, superficial contamination would pose no threat to people or the environment and removal would place an undue hardship upon the owner or threaten an existing structure.

165:25-3-64.1. Underground storage tank removal

~~(a)~~ All underground storage tanks must be removed by a licensed UST Remover who shall be at the job site at all times during the removal.

~~(b) Licensed UST installers are also licensed UST removers.~~

~~(c) A separate Commission license qualifies its holders as licensed UST Removers.~~

165:25-3-65. Assessing the site at closure or change in service

(a) Before permanent closure or a change in service is completed, the owner must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site. The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner or the owner's representative to schedule the sampling 14 days in advance with the Commission and to advise the Commission at least 48 hours in advance of schedule changes may result in the Commission requiring a post-closure site assessment.

(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be ~~approximately 5 feet (5') from the outer edge~~ outside of the UST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.

(1) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX .

(2) Levels of contamination in native soils and groundwater that ~~may~~ shall require further action, at the direction of the commission, are:

(A) Benzene
- (i) Native Soils - 0.5 mg/kg
- (ii) Groundwater - 0.005 mg/l

(B) Toluene
- (i) Native Soils - 40.0 mg/kg
- (ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene
- (i) Native Soils - 15.0 mg/kg
- (ii) Groundwater - 0.7 mg/l

(D) Xylene
- (i) Native Soils - 200.0 mg/kg
- (ii) Groundwater - 10.0 mg/l

(E) TPH
- (i) Native Soils - 50.0 mg/kg
- (ii) Groundwater - 2.0 mg/l ~~(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.~~
- (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case a the direction of the commission.

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) Any sampling at closures must be under the supervision of a licensed Remediation Consultant.

(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.

165:25-3-66. Applicability to previously closed underground storage tank systems

When directed by the Commission, the owner of an underground storage tank system closed before ~~April 13, 1989~~ April 21, 1989 must assess the excavation zone and close the underground storage tank system in accordance with this Chapter. The Commission may direct the owner to assess the site or may assess the site itself if releases from the underground storage tank system may, in the judgment of the Commission, pose a current or potential threat to human health, safety or welfare or the environment.

PART 17. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS [REVOKED]

165:25-3-81. Compliance with corrosion protection requirements and manufacturer's specifications [REVOKED]

~~Corrosion protection systems must be operated and maintained in accordance with manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that are routinely in contact with the ground.~~

165:25-3-82. Frequency and criteria of inspections and tests [REVOKED]

~~Cathodic protection systems must be inspected for proper operation by a qualified corrosion technician in accordance with the following requirements:~~

~~(1) All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter .~~

~~(2) Every 60 days cathodic protection systems must be inspected to ensure that the equipment is working properly. The inspection may be done by a corrosion technician or by the owner or operator if he or she knows how to do it.~~

~~(3) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized organization, such as NACE RP 0285.~~

SUBCHAPTER 6. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-6-1. Application

(a) This Subchapter contains provisions that particularly apply to storage tank systems for aircraft fuel at airports. A storage tank system consists of an underground storage tank and the pipes, pumps and dispensers attached to it~~,~~. ~~and does not include aircraft~~ Aircraft fuel servicing vehicles are not included.

(b) This Subchapter governs airport operations only insofar as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.

(c) Oklahoma has two large national/international airports, almost fifty regional airports, forty district airports, almost forty community airports, and hundreds of private airports. The facilities needed, the staffing, the traffic and the safety requirements for these airports are quite different. Private airstrips are excluded from this Subchapter entirely, which still leaves a very diverse group, ranging from heavily used airports with many very large fuel tanks to those that have little traffic and minimal fuel service. This Subchapter tries to take these differences into consideration.

(d) Subchapters 1, 2 and 3 shall also apply in addition to this Subchapter.

(e) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation regardless of whether it is installing UST's for itself or for another company.

PART 5. DISPENSER REQUIREMENTS

165:25-6-15. Specific requirements for airport dispensers

(a) The valve ~~that controls~~ controlling the flow of fuel to an aircraft must have a deadman control. The deadman control device must be arranged to accommodate the operational requirements. The fuel flow control valve must be one of the following:

(1) The hydrant pit valve; or

(2) On the hose nozzle for overwing servicing.

(b) Deadman controls must be designed to preclude defeating their intended purpose.

(c) The deadman flow control in the nozzle may be used for overwing fueling.

(1) Notches or latches in the nozzle handle that could allow the valve to be locked open are prohibited.

(2) Each overwing servicing nozzle must have a cable with a plug or clip for bonding to the aircraft.

(3) Nozzles for underwing fueling must be designed to be attached securely to the aircraft adapter before the nozzle can be opened. It must not be possible to disengage the nozzle from the aircraft adapter until the nozzle is fully closed.

(d) Fuel servicing pump mechanisms must be designed and arranged so that failure or seizure does not cause rupture of the pump housing, a tank, or of any component containing fuel. Fuel pressure must be controlled within the stress limits of the hose and plumbing by means of an in-line pressure controller, a system pressure relief valve, or other suitable means. The working pressure of any system component must equal or exceed any pressure to which it could be subjected.

(e) Listed or approved dispensing devices must be used.

(f) Access to dispensing equipment must be controlled by means of mechanical or electronic devices designed to resist tampering and to prevent access or use by unauthorized persons.

(g) Dispensing devices must have a listed or approved emergency shutoff valve, incorporating a fusible link or other thermally actuated device designed to close automatically in case of fire.

(1) This valve must also incorporate a shear section that automatically shuts off the flow of fuel upon severe impact.

(2) This valve must be rigidly mounted at the base of the dispenser in accordance with the manufacturer's instructions.

(3) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.

165:25-6-17. Emergency controls

(a) Each fuel system must have means for quickly and completely shutting off the flow of fuel in an emergency. This requirement is in addition to the requirement for a deadman control of fuel flow.

(b) The emergency fuel shutoff system must include shutoff stations located outside of probable spill areas and near the route that normally is used to leave the spill area or to reach the fire extinguishers provided for the protection of the area.

SUBCHAPTER 8. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-8-1. Application

(a) This Subchapter contains provisions that particularly apply to the storage, handling and use of gasoline and diesel fuel at marinas.

(b) Subchapters 1, 2 and 3 shall also apply in addition to this Subchapter.

(c) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation of the UST and piping regardless of whether it is installing USTs for itself or for another company.

PART 3. PIPING REQUIREMENTS

165:25-8-5. Underground piping materials

(a) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded before the deadline date of July 15, 2005 as follows:

(1) Non-metallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser and piping transition sumps must be installed and monitored with sensors.

(b) Existing facilities that have metallic piping that fails due to corrosion or are replacing the piping system must upgrade all piping pursuant (a) above and come into full compliance with the rules of this Chapter and Subchapter immediately. If the metallic line fails due to corrosion, the line must be immediately removed, and cannot be reused.

165:25-8-7. Aboveground piping at marinas

~~(a) The design, fabrication, assembly, testing and inspection of onshore piping connected to piping on floating structures piping systems must be in accordance with NFPA 30, Flammable and Combustible Liquids Code.~~

~~(b) Where dispensing is from a floating structure, suitable lengths of oil resistant flexible hose may be used between the shore piping and the piping on the floating structure.~~

~~(c) Piping at all hinge locations must be connected with approved listed flexible connectors.~~

~~(d) All marina floating docks and pier installations must have double walled piping and dispenser sumps with monitoring sensors that automatically control the electricity to the pumping device.~~

~~(e) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock and anchored at the shore end of the piping.~~

All aboveground product piping at new facilities and all aboveground product piping at existing facilities before the deadline date of July 15, 2005 must be installed or upgraded as follows:

(1) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30, NFPA 30A, and the piping manufacturer's installation recommendations and instructions. Piping must be listed and approved by the manufacturer for aboveground installations.

(2) A water tight transition or piping sump must be buried and installed as close as practical to the shore line as a transition from underground piping to aboveground piping. A sufficient amount of concrete should be poured over the transition sump to keep it from floating if the sump is installed below the flood plain. There should be a normally closed explosion proof solenoid valve and pressure relief valve installed in each product line inside the transition sump. If a pressure system is used, all sensors should automatically control the electricity to both the solenoid valve and submerged pump. If a suction system is used, all sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(3) Piping at all hinge locations must be installed according to the double wall piping manufacturer recommendations. The dock or ramp piping must be designed and installed at least level but preferably with a slope between sumps in order to eliminate any air pockets in the piping and also to insure that any leakage into the interstice piping will drain into the sumps. Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the sump entry boots and primary pipe fittings.

(4) All marina floating docks and pier installations must have double-walled piping and either stainless steel or fiberglass clad steel sumps with monitoring sensors that automatically control the electricity to the pumping device and solenoid valves.

(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point shall be installed on each line serving the dock. The breakaway device shall be installed at the point that the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(6) All aboveground piping and system components must be protected from being damaged by fire, collision and abrasion.

(7) All flexible piping installed aboveground, on the dock or ramp shall be a metallic ducted flexible double wall system or an approved double wall piping system installed inside a metal conduit or chase.

(8) All piping installed above the water on the dock shall be installed inside a metal conduit or chase for the purpose of eliminating sagging in the piping thus assuring that any leak in the piping interstice will drain into the sumps.

165:25-8-8. Installation and monitoring requirements for piping

All piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All piping that conveys regulated substances under pressure must be equipped with an automatic mechanical or electronic line leak detector installed and in operation.

(B) Aboveground dock piping and all systems upgraded before the deadline date of July 15, 2005, must have double-walled piping and dispenser, piping or transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and submerged pump. The interstitial area of the piping must be open inside the sumps to allow

fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:25-8-7(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.

(2) **Suction piping.** Aboveground dock piping installed and all systems upgraded before the deadline date of July 15, 2005, must have double-walled piping and pump, piping and transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device at each sump and automatically control the electricity to both the solenoid valve and suction pump motor. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:25-8-7(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.

(3) **Methods of release detection for pressurized piping.** The method of release detection for pressurized piping must be done in accordance with the following requirements:

(A) **Automatic mechanical line leak detectors and annual line tightness testing.** Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through the piping may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. Automatic mechanical line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05. A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter in addition to any other line leak detection method; and

(B) **Sump sensors.** Sump sensors, floats or similar mechanical devices at each dispenser, piping and transition sump shall also be used in addition to automatic line leak detectors. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(C) **Alternative to automatic mechanical line leak detector and annual line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual line tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(4) **Methods of release detection for suction piping.** The method of release detection for suction piping must be done in accordance with the following requirement:

(A) **Sump sensors.** Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and suction pump motor. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

PART 5. DISPENSER REQUIREMENTS

165:25-8-13. Dispensers [REVOKED]

~~(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.~~

~~(b) Dispensing devices for Class I liquids must be listed.~~

~~(1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by the Commission.~~

~~(2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to the Commission upon request.~~

~~(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal nondispensing position.~~

~~(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing Class I liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose retrieving mechanism to the hose and the hose nozzle valve.~~

~~(e) All fuel dispensed must be properly filtered.~~

165:25-8-14. Dispenser hose

~~(a)~~ Listed hose assemblies must be used to dispense fuel.

~~(1) Hose length at marine service stations must not exceed 18 feet (18', or 5.5 m).~~ Where hose length exceeds 18 ft (5.5m), the hose shall be secured so as to protect it from

damage, such as a hose reel, and in no case shall the hose exceed 50 ft (15m) in length. Two or more hoses shall not be coupled together.

~~(2) Hose at marina facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings.~~

~~(b) Defective hoses must be removed from service.~~

~~(c) At least once each month the hose must be completely extended and inspected.~~

~~(1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined.~~

~~(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.~~

~~(3) Hoses that show evidence of soft spots must be removed.~~

PART 7. TANK FILLING PROCEDURES [REVOKED]

165:25-8-23. Tightfill connection requirements [REVOKED]

~~All tanks must be filled through a liquid tight connection.~~

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-8-36. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers that have a minimum capability of ~~40-B:C~~ 40:BC.

(b) A minimum of two extinguishers must be located at the fuel dock, and one or more must be located within 100 feet (100', or 30 m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) Where practical, there should be a frost-proof water hydrant with a minimum of five-eighths inch (5/8") diameter hose on the fuel dock. Piers that extend more than 500 feet (500', or 152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

165:25-8-37. Sources of ignition [REVOKED]

~~(a) Smoking materials, including matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.~~

~~(b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~

~~(c) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential.~~

SUBCHAPTER 10. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-10-1. Application [REVOKED]

~~This Subchapter contains provisions particularly applicable to the storage, handling and use of all grades of gasoline, kerosene and diesel fuel that are kept in underground storage tanks at service stations.~~

PART 3. DISPENSER REQUIREMENTS [REVOKED]

165:25-10-7. Dispensers [REVOKED]

~~(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.~~

~~(b) Dispensing devices for Class I liquids must be listed.~~

~~(1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by the Commission.~~

~~(2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and must be made available to the Commission upon request.~~

~~(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal nondispensing position.~~

~~(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose retrieving mechanism to the hose and the hose nozzle valve.~~

~~(e) All fuel dispensed must be properly filtered.~~

165:25-10-8. Dispenser hose [REVOKED]

~~(a) Listed hose assemblies must be used to dispense fuel.~~

~~(1) Hose length at automotive service stations must not exceed 18 feet (18', or 5.5 m).~~

~~(2) Hose at retail facilities must be checked daily for evidence of blistering, carcass saturation or separation,~~

~~cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings.~~

~~(b) Defective hoses must be removed from service.~~

~~(c) At least once each month the hose must be completely extended and inspected.~~

~~(1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined.~~

~~(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.~~

~~(3) Hoses that show evidence of soft spots must be removed.~~

165:25-10-9. Nozzles [REVOKED]

~~At any installation where the normal flow of product may be stopped other than by the hose nozzle valve such as at pre-pay stations, the system must include listed equipment with a feature that causes or requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser; or the hose nozzle valve must not be equipped with a latch-open device.~~

PART 5. TANK FILLING PROCEDURES [REVOKED]

165:25-10-10. Tightfill connection requirements [REVOKED]

~~All tanks must be filled through a liquid tight connection.~~

PART 7. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-10-16. Required signs [REVOKED]

~~(a) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~

~~(b) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:~~

~~(1) WARNING: It is unlawful and dangerous to dispense gasoline into unapproved containers.~~

~~(2) NO SMOKING.~~

~~(3) STOP MOTOR.~~

165:25-10-17. Sources of ignition [REVOKED]

~~(a) Smoking materials, including matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.~~

~~(b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~

~~(c) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential.~~

~~(d) At least one fire extinguisher must be readily accessible in the pump area, as well as at the service bay(s), where applicable.~~

SUBCHAPTER 12. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-12-1. Application [REVOKED]

~~This Subchapter applies to the storage, handling and use of gasoline and diesel fuel at fleet and commercial facilities.~~

PART 3. DISPENSER REQUIREMENTS [REVOKED]

165:25-12-7. Dispensers [REVOKED]

~~(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.~~

~~(b) Dispensing devices for Class I liquids must be listed. Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by the Commission.~~

~~(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal nondispensing position.~~

PART 5. TANK FILLING PROCEDURES [REVOKED]

165:25-12-13. Tightfill connection requirements [REVOKED]

~~All tanks must be filled through a liquid tight connection.~~

PART 7. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-12-19. Required signs [REVOKED]

~~(a) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~

~~(b) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:~~

~~WARNING~~

~~(1) WARNING: It is unlawful and dangerous to dispense gasoline into unapproved containers.~~
~~(2) NO SMOKING.~~
~~(3) STOP MOTOR.~~

165:25-12-20. Sources of ignition [REVOKED]

~~(a) Smoking materials, including matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.~~
~~(b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~
~~(c) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential.~~

SUBCHAPTER 14. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-14-1. Application

(a) This Subchapter applies to the storage, handling and use of gasoline, aviation fuel, diesel fuel and volatile blending materials used in motor fuel like kerosene and ethanol at bulk plant facilities. Bulk plants built after July 1, 2001 must comply with all provisions of this Chapter and Subchapter.
(b) Those bulk plants already in existence when this Subchapter was adopted vary in size, in the way they are built, in their local surroundings, in the customers they serve and in their role in the local economy. It is difficult to make good rules that can be fairly applied to all these older bulk plants. The goal in the application of this Subchapter to pre-existing bulk plants is to achieve the maximum safety that is practically possible at the least possible expense. If a safety or environmental threat does exist at a bulk plant, the owner will only be required to correct the specific problem and to do so in the most cost-effective way possible.
(c) Subchapters 1, 2 and 3 shall also apply in addition to this Subchapter.
(d) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation of the UST and piping regardless of whether it is installing UST's for itself or for another company.

PART 11. MISCELLANEOUS SAFETY PROVISIONS

165:25-14-34. Sources of ignition [REVOKED]

~~(a) Smoking materials, including matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.~~
~~(b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~
~~(c) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential.~~

SUBCHAPTER 16. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY BACKUP GENERATORS AT HOSPITALS, AND MUNICIPAL WATER AND SEWAGE TREATMENT PLANTS [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-16-1. Application [REVOKED]

~~This Subchapter applies to the storage, handling and use of gasoline and diesel fuel kept in underground storage tanks, for use in emergency backup generators.~~

PART 3. TANK FILLING PROCEDURES [REVOKED]

165:25-16-7. Tightfill connection requirements [REVOKED]

~~All tanks must be filled through a liquid tight connection.~~

PART 5. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-16-13. Sources of ignition [REVOKED]

~~(a) Smoking materials, including matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.~~
~~(b) Conspicuous and legible signs prohibiting smoking must be posted.~~
~~(c) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential.~~

SUBCHAPTER 17. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED ON FARMS [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-17-1. Application [REVOKED]

~~This section applies to farm tanks that are not used by the public or to serve the public. The primary emphasis of this section is the protection of farmers' safety and the environment from pollution due to leaking underground storage tanks. All requirements and recommendations of this section are in addition to the requirements listed for all tanks.~~

PART 3. STORAGE TANK SYSTEM REQUIREMENTS [REVOKED]

165:25-17-7. Storage tank location [REVOKED]

~~(a) To protect drinking water and the environment from pollution, storage tanks on farms should be placed as far away as possible and downgradient from any drinking water well. The law requires a minimum distance of 100 feet (100') between a storage tank and a water well, but more distance should be allowed wherever possible.~~

~~(b) When installing a new tank on a farm, current and previous land use should be considered. Old storage tanks or metal in the ground will increase the corrosion rate on a new tank, even if it is cathodically protected.~~

~~(c) Storage tanks should be installed as far away from the water table as possible. This will help ensure that by the time a leak is discovered, less damage will have been done, if any, to the human health, safety and welfare, and the environment, and specifically to the groundwater and any nearby water source.~~

~~(d) Petroleum storage tanks engineered for underground use should not be used aboveground. Underground tanks are engineered for structural support by the surrounding earth; when used aboveground they can easily change shape and eventually burst.~~

165:25-17-8. Storage tanks no longer in use [REVOKED]

~~(a) Farm storage tanks, when taken out of service storing petroleum products, have historically been used to store grain or water or to function as culverts. The Commission does not recommend these practices, as it is nearly impossible to clean an old tank well enough to ensure that petroleum will not pollute any water, grain or other substances with which it comes into contact.~~

~~(b) Storage tanks should be removed by a licensed UST Remover and disposed of in a landfill or at a scrap dealer. Storage tanks that remain in the ground will continue to corrode, and if they contain any gas or oil, those substances are likely to eventually pollute the groundwater.~~

165:25-17-9. Venting requirements [REVOKED]

~~Vent lines must be properly placed in order to allow fumes to escape upward and without hindrance. If vent fumes are trapped under eaves or other structures, a tractor or other igniting element could cause an explosion.~~

PART 5. LEAK DETECTION REQUIREMENTS [REVOKED]

165:25-17-15. Leak detection [REVOKED]

~~Every petroleum storage tank must have some method of leak detection. Without it, there is the constant risk of discovering a leak only after it becomes a major financial burden to the owner and an environmental problem for everyone. The Commission recommends, for reasons of ease and practicality, that farmers use manual tank gauging as their method of leak detection, but any approved method of leak detection may be used. Manual tank gauging costs no more than the tank gauge necessary to measure the contents of the tank, and must be performed on farm tanks only once a month. The Commission recommends the following modified system of manual tank gauging for farm tanks; this method may only be used on farm tanks up to 8,000 gallons.~~

~~(1) Tanks must be gauged once a month using an approved tank gauge graduated in 1/8 inch (1/8") increments.~~

~~(2) Tanks must be taken out of service every month for 48 hours to complete the gauging process. The farmer must stick the tank once, wait 48 hours and stick the tank again, and measure the difference in the two gauged amounts.~~

~~(3) A tank chart should be used to convert the number of inches of liquid in the tank into the number of gallons. Tank manufacturers usually provide charts for their tanks. If the tank is steel, a tank chart can be obtained from the Steel Tank Association by telephone at (708) 438-8265 (at the time of adoption of this Section).~~

~~(4) Every month, the result of the test will show a change in tank volume. This amount of change should be measured against the monthly test standard listed in Appendix O. If the standard is exceeded, a leak could be present, and the possible leak must be reported to a Commission hydrologist by telephone at (405) 521-6575.~~

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, WARNING AND FINE CITATIONS AND PENALTIES

PART 3. NOTICES OF VIOLATION AND WARNING AND FINE CITATIONS

165:25-18-10. Purpose of Notices of Violation, Warning Citations and Fine Citations

The purpose of this Section is to create a procedure that allows the Commission's Petroleum Storage Tank Division Fuel Specialists to issue Notices of Violation (NOVs); and for the Manager of Inspection and Compliance to issue citation(s) for any violation(s) found during Fuel Specialists' onsite inspections of storage tank systems and facilities that are not

corrected within the time limit given by the Fuel Specialist in the NOV. The issuance of a Notice of Violation or citation will allow petroleum storage tank owners and operators to quickly address and correct storage tank violation(s) without having to go to court at the Commission. ~~Notices of Violation and Warning and Fine Citations are designed to accomplish compliance and would be inappropriate where common sense finds compliance unnecessary, impossible or not desirable because someone has found a better way to accomplish the purpose of this Chapter.~~

165:25-18-11. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV) pursuant to Appendix S.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and act as a ~~notification~~ warning that ~~a Warning or Fine Citation will be issued or~~ further Commission enforcement action will occur if the violation is not corrected.

(2) There are some violations~~, if not corrected,~~ that are not eligible for a ~~Warning Citation~~ warning. For these violations, a Fine Citation will be issued to the tank owner or operator.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

~~(3) A date by which to request a hearing.~~

(3~~4~~) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(c) A Fuel Specialist will give the NOV(s) to the owner or operator of the storage tank facility, if he or she is at the facility. If the owner or operator is not present, managers at the storage tank facility can be given NOVs~~, but the Corporation Commission must also mail a copy of the notice, certified mail/return receipt requested, to the owner or operator at the last known address shown by Commission record~~.

(d) The Fuel Specialist will mail or fax a copy of all NOVs to any facility's corporate office at that company's request. The company must make a request in writing to the Manager of Inspection and Compliance of the Petroleum Storage Tank Division.

165:25-18-12. Re-inspection and Fine Citation

(a) ~~After~~ On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

(1) Refer the violation to the Commission's Inspection and Compliance Manager for enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard, it may be shut down pending a correction of the problem or a hearing on the issue.

165:25-18-13. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the Fine Citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of a fine within the 30-day timeframe will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she can have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

(2) The Commission will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.

(3) If found guilty at the hearing, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of $250.00.

(d) If a Fine Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in an additional fine to be set after notice and hearing in an amount as allowed by law.

(e) Failure of a tank owner or operator to appear at the hearing will result in additional enforcement ~~actions~~ action. ~~This action~~ These actions may include the addition of a larger fine and/or assessment of an administrative fee and/or having the violation sent to the Office of General Counsel for legal proceedings.

(f) An appeal from the evidentiary hearing must be to the Commission en banc in accordance with OAC165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

APPENDIX R. MANUAL TANK GAUGING GUIDE FOR FARM TANKS [REVOKED]

NOMINAL TANK CAPACITY	MONTHLY STANDARD (TOLERATED CHANGE IN MEASURED TANK VOLUME)
1,100 – 2,000 gallons	13 gallons
2,001 – 3,000 gallons	20 gallons
3,001 – 4,000 gallons	27 gallons
4,001 – 5,000 gallons	34 gallons
5,001 – 6,000 gallons	41 gallons
6,001 – 7,000 gallons	48 gallons
7,001 – 8,000 gallons	55 gallons

APPENDIX S. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:25-1-42, 165:25-1-51, and 165:25-3-62	Failure to register tanks within 30 days of bringing the system into place, or failure to amend registration to reflect changes	$500
165:25-1-64	Failure to pay UST permit fees prior to due date	Not > 50% of fee
165:25-2-39.1	Tank owner/operator accepting delivery into UST that does not have spill protection	$1,000
165:25-2-39.1	Tank owner/operator accepting delivery into UST that does have overfill protection or a required corrosion protection system	$1,000
Notification Requirements		
	Failure to identify all storage tanks on notification form after third request, including a letter advising tank owner of the penalty	$1,000
	Failure to provide installation information on notification form after third request, including a letter advising tank owner of the penalty	$1,000
	Failure to notify the OCC prior to UST closure may result in the PSTD requiring a site check	
Required Reports		
165:25-1-55	Failure to submit tank closure report within 45 days	$250
165:29	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	$250
	Second offense and thereafter for same case or tracking number	$500

Rule	Violation	Fine Amount
General Leak Detection Requirements		
165:25-3-7	Failure to notify Commission of indicated release	$250
165:25-3-5 and 165:25-3-5.1	Failure to provide adequate release or leak detection for storage tank system (first offense)	$250
	Second Offense	$500
	Third Offense	$1,000
	Failure to monitor tank(s) for releases as required	$250
165:25-3-5 and 165:25-3-6	Failure to use approved release or leak monitoring method for piping	$250
165:25-3-5.3 165:25-3-5.4	Failure to use a licensed technician for monitoring vapor or groundwater wells.	$500
165:25-1-53	Failure to maintain records of release or leak detection monitoring	$250
	Failure to maintain results of a sampling, testing, or monitoring as required	$250
	Failure to retain records of calibration, maintenance, and repair of release or leak detection equipment	$250
165:25-3-6	Failure to install or inspect leak detection on pressure piping	$250
Spill & Overfill Control		
165:25-3-7 and 165:25-3-8	Failure to report a spill (over 25 gallons)	$100
	Failure to investigate a spill (over 25 gallons)	$100
	Failure to investigate an overfill spill	$100
	Failure to clean up a spill	$500
	Failure to clean up an overfill spill	$500
Operation/Maintenance of Corrosion Protection		
165:25-2-51	Failure to properly operate and maintain corrosion protection system (first offense)	$150
	Second Offense	$500
	Third Offense	$1,000
165:25-2-51, 165:25-2-52 and 165:25-2-53	Failure to properly test corrosion protection system	$250
	Failure to maintain records of cathodic protection inspections or testing	$250

Rule	Violation	Fine Amount
165:25-2-53	Failure to use a qualified cathodic protection tester to inspect corrosion protection system at least once every three years (first offense)	$500
	Second Offense	$1,000
Release Investigation & Confirmation		
165:25-3-1	Failure to conduct tightness test(s) to investigate suspected leak(s)	$250
Temporary Closure		
165:25-3-62 and 165:25-3-63	Failure to operate and maintain corrosion protection in a temporarily closed storage tank system	$500
	Failure to operate and maintain release or leak detection as required in a temporarily closed storage tank system	$250
	Failure to cap and secure all storage tank-related equipment for temporary closure	$250
Permanent Closure		
165:25-1-55 and 165:25-3-65	Failure to measure for the presence of a release before a permanent closure	$500
	Failure to maintain proper closure records	$250
165:25-3-60	Failure to use licensed UST Remover	$500
Repairs Allowed		
165:25-2-31, 165:25-2-39.4 and 165:25-3-55	Failure to use licensed UST Installer or repair person for installation or repair	$500
	Second offense or thereafter by owner (per owner, not per facility)	$1000
165:25-2-53	Failure to test storage tank system cathodic protection system within 6 months of repair	$250
165:25-3-55	Failure to perform tightness test on tank system after installation or repair	$300
165:25-1-54	Failure to maintain repair records for operating life of storage tank	$250

Rule	Violation	Fine Amount
Other		
165:15-19-1	Misrepresentation of octane level per location	
	Second Offense within a year	$1000
	Third Offense –Closure & Hearing	$5000
165:25-2-34	Failure to follow standard codes for installation	$500
165:25-18-1	Failure to provide records upon request	$100
	Second offense or thereafter by owner (per owner, not per facility)	$500
Administrative Penalty	Any owner or operator of a storage tank who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to an administrative penalty in an amount as allowed by law.	

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TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #04-1007]

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RULES:
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165:26-1-2. Definitions [AMENDED]
Part 3. Scope Of Rules
165:26-1-21. Overview Of Applicability [AMENDED]
165:26-1-22. Exclusions [AMENDED]
165:26-1-25. Local Jurisdiction [NEW]
Part 4. Administrative Provisions
165:26-1-28. Variances [AMENDED]
165:26-1-29. Notices [AMENDED]
165:26-1-30.2. Consultation Of Petroleum Storage Tank Division [NEW]
165:26-1-30.3. Licensing Procedure For Aboveground Storage Tank Installers [NEW]
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165:26-6-89. Sources Of Ignition [REVOKED]
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165:26-8-2. Timeframes For Registration And Compliance With Rules [AMENDED]
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165:26-8-5. Consultation Of Petroleum Storage Tank Division [REVOKED]
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165:26-8-45. Vaults [REVOKED]
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165:26-8-51. Vent Piping Size [REVOKED]
165:26-8-52. Vent Piping Height [REVOKED]
Part 15. Dispenser Requirements
165:26-8-60. Dispensers [REVOKED]
165:26-8-61. Dispenser Hose
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165:26-8-70. Tank Filling Operation [REVOKED]
165:26-8-72. Tightfill Connection Requirements [REVOKED]
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165:26-8-85. Fencing [REVOKED]
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165:26-8-89. Sources Of Ignition [REVOKED]
165:26-8-90. Monitoring Requirements [REVOKED]
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165:26-8-95. Inventory Records [REVOKED]
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165:26-10-2. Timeframes For Registration And Compliance With Rules [AMENDED]
165:26-10-3. Codes And Standards [REVOKED]
165:26-10-4. Local Jurisdiction [REVOKED]
165:26-10-5. Consultation Of Petroleum Storage Tank Division [REVOKED]
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165:26-10-9. Approved Tanks, Tank Design [REVOKED]
165:26-10-10. Maximum Capacity For Tanks [AMENDED]
165:26-10-11. Emergency Pressure Release [REVOKED]
165:26-10-12. Aboveground Storage Tank Spacing [REVOKED]
165:26-10-14. Distance To Be Kept Around Tanks [REVOKED]
165:26-10-15. Requirements On Fill Pipes [REVOKED]
165:26-10-16. Collision Barriers [REVOKED]
165:26-10-17. Spill And Overfill Prevention [REVOKED]
165:26-10-18. Corrosion Protection [REVOKED]
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165:26-10-25. Double-Walled Tanks [REVOKED]
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165:26-10-35. Piping Protection [REVOKED]
165:26-10-36. Piping And Gravity Flow [REVOKED]
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165:26-10-51. Vent Piping Size [REVOKED]
165:26-10-52. Vent Piping Height [REVOKED]
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165:26-10-60. Dispensers [REVOKED]
165:26-10-61. Dispenser Hose [REVOKED]
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165:26-10-70. Tank Filling Operation [REVOKED]
165:26-10-72. Tightfill Connection Requirements [REVOKED]
Part 21. Miscellaneous Safety Provisions [REVOKED]
165:26-10-85. Fencing [REVOKED]
165:26-10-86. Required Signs [REVOKED]
165:26-10-89. Sources Of Ignition [REVOKED]
165:26-10-90. Monitoring Requirements [REVOKED]
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165:26-10-95. Inventory Records [REVOKED]
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165:26-12-2. Timeframes For Registration And Compliance With Rules [AMENDED]
165:26-12-3. Codes And Standards [REVOKED]
165:26-12-4. Local Jurisdiction [REVOKED]
165:26-12-5. Consultation Of Petroleum Storage Tank Division [REVOKED]
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165:26-12-9. Approved Tanks, Tank Design [REVOKED]
165:26-12-10. Maximum Capacity For Tanks [AMENDED]
165:26-12-11. Emergency Pressure Release [REVOKED]
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165:26-12-14. Tank~~D~~distance ~~To Be Kept Around Tanks~~Requirements [AMENDED]
165:26-12-15. Requirements On Fill Pipes [REVOKED]
165:26-12-16. Collision Barriers [REVOKED]
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165:26-12-25. Double-Walled Tanks [REVOKED]
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165:26-12-30. Aboveground Storage Tank Piping Materials [REVOKED]
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165:26-12-35. Piping Protection [REVOKED]
165:26-12-36. Piping And Gravity Flow [REVOKED]
165:26-12-37. Valves On Piping [REVOKED]
165:26-12-38. External Piping Protection [REVOKED]
165:26-12-39. Underground Piping Materials [REVOKED]
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165:26-12-51. Vent Piping Size [REVOKED]
165:26-12-52. Vent Piping Height [REVOKED]
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165:26-12-60. Dispensers [REVOKED]
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165:26-12-70. Tank Filling Operation [REVOKED]
165:26-12-72. Tightfill Connection Requirements [REVOKED]
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165:26-12-85. Fencing [REVOKED]
165:26-12-86. Required Signs [REVOKED]
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165:26-14-2. Timeframes For Registration And Compliance With Rules [AMENDED] 165:26-14-3. Codes And Standards [REVOKED]
165:26-14-4. Local Jurisdiction [REVOKED]
165:26-14-5. Consultation Of Petroleum Storage Tank Division [REVOKED]
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165:26-14-10. Maximum Capacity For Tanks [AMENDED]
165:26-14-11. Emergency Pressure Release [REVOKED]
165:26-14-12. Aboveground Storage Tank Spacing [REVOKED]
165:26-14-14. Distance To Be Kept Around Tanks [REVOKED]
165:26-14-15. Requirements On Fill Pipes [REVOKED]
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165:26-14-18. Corrosion Protection [REVOKED]
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165:26-14-25. Double-Walled Tanks [REVOKED]
165:26-14-26. Secondary Containment [REVOKED]
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165:26-14-30. Aboveground Storage Tank Piping Materials [REVOKED]
165:26-14-31. Electrical Equipment [REVOKED]
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165:26-14-35. Piping Protection [REVOKED]
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165:26-14-38. External Piping Protection [REVOKED]
165:26-14-39. Underground Piping Materials [REVOKED]
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165:26-14-51. Vent Piping Size [REVOKED]
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165:26-14-89. Sources Of Ignition [REVOKED]
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165:26-14-95. Inventory Records [REVOKED]
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165:26-16-3. Codes And Standards [REVOKED]
165:26-16-4. Local Jurisdiction [REVOKED]
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165:26-16-9. Approved Tanks, Tank Design [REVOKED]
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165:26-16-12. Aboveground Storage Tank Spacing [REVOKED]
165:26-16-14. Distance To Be Kept Around Tanks [REVOKED]
165:26-16-15. Requirements On Fill Pipes [REVOKED]
165:26-16-16. Collision Barriers [REVOKED]
165:26-16-17. Spill And Overfill Prevention [REVOKED]
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165:26-16-25. Double-Walled Tanks [REVOKED]
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165:26-16-30. Aboveground Storage Tank Piping Materials [REVOKED]
165:26-16-31. Electrical Equipment [REVOKED]
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165:26-16-35. Piping Protection [REVOKED]
165:26-16-36. Piping And Gravity Flow [REVOKED]
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165:26-16-51. Vent Piping Size [REVOKED]
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Part 17. Tank Filling Procedures [REVOKED]
165:26-16-70. Tank Filling Operation [REVOKED]
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165:26-16-85. Fencing [REVOKED]
165:26-16-89. Sources Of Ignition [REVOKED]
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Appendix G. Warning And Fine Citations Table [NEW]
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Appendix J. Table Establishing Permeability Rates For Secondary Containment [NEW]

AUTHORITY:
Oklahoma Corporation Commission
17 O.S. (Supp. 1998) § 301 *et seq.*
75 O.S. (Supp. 1998) § 250 *et seq.*

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None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
OAC 165:26-1-2 the following amendments were made, date changed to 1989; "Change in service" example language removed; "EPA" clarified as the Environmental Protection Agency; "farm" is clarified by adding "tanks" and deleting "private airstrips"; "pier" is a new definition of dock, floating dock, or wharf; "protected tank" is a new definition of a primary tank with additional fire or damage protection; "release" is a new definition added for clarification as determined from written comments received; "Public Utility" has been amended to include telecommunications.

OAC 165:26-1-21 is amended to include the latest edition fire codes reference.

OAC 165:26-1-22 is amended to specify tanks used by public utilities for generating power is for public use.

OAC 165:26-1-25 is a new rule allowing for local ordinances that regulate Aboveground Storage Tanks ("AST"), provided ordinances are not in conflict with Commission regulations.

OAC 165:26-1-28 is an amendment that prohibits AST variances if in conflict with leak detection standards.

OAC 165:26-1-29 amends the Commission's mailing address.

OAC 165:26-1-30.2 is a new rule allowing access to PSTD for tank planning.

OAC 165:26-1-30.3 is a new rule re-established from OAC 165:26-3-54.

OAC 165:26-1-30.4 is a new rule establishing fees for AST owners and Installers to comport with existing practices.

OAC 165:26-1-31 is amended to reflect the codes or standards being incorporated by reference regardless where they appear throughout Chapter 26, and updates publication dates.

OAC 165:26-1-41 is amended to designate use of required Commission forms and availability of these forms on the Commission website.

OAC 165:26-1-42 is amended to include a registration form, and pre-installation notice to the Commission.

OAC 165:26-1-44 is amended to require licensed AST Installer supervision during tank removal.

OAC 165:26-1-47 is amended to correct grammar.

OAC 165:26-2-1 is a new rule re-established from OAC 165:26-6-9. In addition, fuel dispensing is prohibited from gravity flow, and all tank openings must be above maximum liquid level.

OAC 165:26-2-2 is a new rule re-established from OAC 165:26-6-11.

OAC 165:26-2-3 is a new rule re-established from OAC 165:26-6-12.

OAC 165:26-2-4 is a new rule re-established from OAC 165:26-6-14.

OAC 165:26-2-5 is a new rule re-established from OAC 165:26-6-15.

OAC 165:26-2-6 is a new rule that provides guidance for vent pipe placement and vapor dispersion.

OAC 165:26-2-7 is a new rule re-established from OAC 165:26-6-16.

OAC 165:26-2-31 is a new rule re-established from OAC 165:26-6-25.

OAC 165:26-2-32 is a new rule re-established from OAC 165:26-6-26.

OAC 165:26-2-51 is a new rule re-established from OAC 165:26-6-35.

OAC 165:26-2-52 is a new rule re-established from OAC 165:26-6-36.

OAC 165:26-2-53 is a new rule re-established from OAC 165:26-6-37.

OAC 165:26-2-54 is a new rule that establishes certain criteria standards to be met for AST piping.

OAC 165:26-2-55 is a new rule re-established from OAC 165:26-6-39.

OAC 165:26-2-56 is a new rule that differentiates the means of AST piping and methods of release detection for pressurized piping, and requires sump sensors and electronic line leak detection parameters.

OAC 165:26-2-57 is a new rule that allows alternative release detection methods when conclusive information is provided that substantiates the practicality of the method.

OAC 165:26-2-71 is a new rule re-established from a variety of former rules that condense multiple rules of the same subject matter into one rule.

OAC 165:26-2-91 is a new rule re-established from a variety of former rules that condense multiple rules of the same subject matter into one rule. Re-established from OAC 165:26-6-60.

OAC 165:26-2-92 is a new rule re-established from a variety of former rules that condense multiple rules of the same subject matter into one rule.

OAC 165:26-2-93 is a new rule re-established from a variety of former rules that condense multiple rules of the same subject matter into one rule.

OAC 165:26-2-111 is a new rule re-established from OAC 165:26-6-70.

OAC 165:26-2-131 is a new rule re-established from OAC 165:26-6-85.

OAC 165:26-2-132 is a new rule re-established from OAC 165:26-6-86.

OAC 165:26-2-133 is a new rule re-established from OAC 165:26-6-89.

OAC 165:26-2-134 is a new rule re-established from OAC 165:26-6-90.

OAC 165:26-2-151 is a new rule re-established from OAC 165:26-6-31.

OAC 165:26-2-171 is a new rule re-established from OAC 165:26-3-53.

OAC 165:26-2-172 is a new rule re-established from OAC 165:26-3-31.

OAC 165:26-2-191 is a new rule re-established from OAC 165:26-3-55.

OAC 165:26-2-211 is a new rule re-established from OAC 165:26-3-61.

OAC 165:26-2-212 is a new rule re-established from OAC 165:26-3-62.

OAC 165:26-2-213 is a new rule re-established from OAC 165:26-3-63.

OAC 165:26-2-214 is a new rule re-established from OAC 165:26-3-63.1.

OAC 165:26-2-215 is a new rule re-established from OAC 165:26-3-64.

OAC 165:26-3-11 is amended to reflect the need to retain leak detection records, and allows the AST owner/operator to forward the records electronically.

OAC 165:26-3-13 amends dates, rule references and sampling criteria.

OAC 165:26-3-14 is amended to reflect current industry practice in keeping cathodic protection or monitoring well records.

OAC 165:26-3-17 is a new rule detailing line tightness test failure reporting requirements and the information to be reported.

OAC 165:26-3-18 is a new rule that requires daily inventory and reconciliation of fuel dispensed/fuel inventory.

OAC 165:26-3-21 is amended to specify the different types of acceptable overfill protection.

OAC 165:26-3-22 is amended to provide a federal regulation reference for those required to have this plan.

OAC 165:26-3-31 is revoked and re-established as OAC 165:26-2-172.

OAC 165:26-3-53 is revoked and re-established as OAC 165:26-2-171.

OAC 165:26-3-54 is revoked and re-established as OAC 165:26-1-30.3.

OAC 165:26-3-55 is revoked and re-established as OAC 165:26-2-191.

OAC 165:26-3-61 is revoked and re-established as OAC 165:26-2-211.

OAC 165:26-3-62 is revoked and re-established as OAC 165:26-2-212.

OAC 165:26-3-63 is revoked and re-established as OAC 165:26-2-213.
OAC 165:26-3-63.1 is revoked and re-established as OAC 165:26-2-214.
OAC 165:26-3-64 is revoked and re-established as OAC 165:26-2-215.
OAC 165:26-3-80 is a new rule enumerating cathodic protection standards to follow when installing and maintaining cathodic protection.
OAC 165:26-3-81 is amended to specify methods of corrosion protection and requirements of corrosion expert or engineer to design the system.
OAC 165:26-3-82 is amended to require a qualified cathodic protection tester performing tests.
OAC 165:26-3-171 is a new rule that is established to test systems, do site assessment, and levels of contamination that will trigger a confirmed release.
OAC 165:26-3-191 is a new rule that details step-by-step, the requirements of an owner/operator from first phone call to investigation what the reporting party should do and the levels of contamination that trigger a confirmed release.
OAC 165:26-4-6 is amended to include health, safety and environment as concerns.
OAC 165:26-4-10 is amended to vest citation authority in the manager of inspection and compliance.
OAC 165:26-4-15 is amended to reflect change in designation for fuel specialists.
OAC 165:26-4-16 is amended to substitute "fuel specialist" for "fuel inspector" and "notice of violation" for "warning of citation."
OAC 165:26-4-17 is amended to correct title from "fuel inspector" to "fuel specialist."
OAC 165:26-6-1 is amended to include previous subchapters (1, 2, 3, 4) as applicable to this subchapter.
OAC 165:26-6-2 is amended to strike obsolete date and conform Commission implementation date to that of federal regulations.
OAC 165:26-6-4 is revoked.
OAC 165:26-6-5 is revoked.
OAC 165:26-6-9 is revoked and re-established as OAC 165:26-2-1.
OAC 165:26-6-10 is amended to acknowledge local ordinances may be more restrictive than the Commission.
OAC 165:26-6-11 is revoked and re-established as OAC 165:26-2-2.
OAC 165:26-6-12 is revoked.
OAC 165:26-6-14 is amended to reflect existing tanks can be no closer than 100' to a runway, and new tanks no closer than 200' to a runway.
OAC 165:26-6-15 is revoked.
OAC 165:26-6-16 is revoked.
OAC 165:26-6-17 is revoked.
OAC 165:26-6-18 is revoked.
OAC 165:26-6-25 is revoked.
OAC 165:26-6-26 is revoked.
OAC 165:26-6-30 is revoked.
OAC 165:26-6-31 is revoked.
OAC 165:26-6-35 is revoked.
OAC 165:26-6-36 is revoked.
OAC 165:26-6-37 is revoked.
OAC 165:26-6-38 is revoked.
OAC 165:26-6-39 is revoked.
OAC 165:26-6-40 is amended to strike obsolete language that is not up to current standards.
OAC 165:26-6-45 is revoked.
OAC 165:26-6-50 is revoked.
OAC 165:26-6-51 is revoked.
OAC 165:26-6-52 is revoked.
OAC 165:26-6-60 is revoked.
OAC 165:26-6-61 is amended to reflect a requirement to replace damaged hose, all couplings, and all replacements pressure tested thereafter.
OAC 165:26-6-70 is revoked.
OAC 165:26-6-72 is revoked.
OAC 165:26-6-85 is revoked.
OAC 165:26-6-89 is revoked.
OAC 165:26-6-90 is revoked.
OAC 165:26-6-95 is revoked.
OAC 165:26-6-96 is revoked.
OAC 165:26-7-12 is revoked.
OAC 165:26-7-13 is revoked.
OAC 165:26-7-14 is revoked.
OAC 165:26-7-15 is revoked.
OAC 165:26-8-1 is amended to include subchapters (1, 2, 3, 4) as applicable to this subchapter.
OAC 165:26-8-2 is amended to strike obsolete date and conform Commission implementation date to that of federal regulations.
OAC 165:26-8-3 is revoked.
OAC 165:26-8-4 is revoked.
OAC 165:26-8-5 is revoked.
OAC 165:26-8-9 is revoked.
OAC 165:26-8-10 is amended to acknowledge local regulation of marinas may be more stringent than Commission rules.
OAC 165:26-8-11 is revoked.
OAC 165:26-8-12 is revoked.
OAC 165:26-8-13 is amended to require new ASTs at marinas be above flood level.
OAC 165:26-8-14 is revoked.
OAC 165:26-8-15 is revoked.
OAC 165:26-8-16 is revoked.
OAC 165:26-8-17 is revoked.
OAC 165:26-8-18 is revoked.
OAC 165:26-8-25 is revoked.
OAC 165:26-8-26 is revoked.
OAC 165:26-8-30 is revoked.
OAC 165:26-8-31 is revoked.
OAC 165:26-8-35 is revoked.
OAC 165:26-8-36 is revoked.
OAC 165:26-8-37 is revoked.
OAC 165:26-8-38 is revoked.
OAC 165:26-8-39 is revoked.
OAC 165:26-8-40 is amended to reflect aboveground piping at marinas must meet the national fire code, and installed to manufacturer's specifications. The amendment also specifies the type of pipe to be used in different marina settings.
OAC 165:26-8-41 is a new rule to address the different piping utilized at marinas and the requirements for each, including leak detection and sump sensors.
OAC 165:26-8-45 is revoked.
OAC 165:26-8-51 is revoked.
OAC 165:26-8-52 is revoked.
OAC 165:26-8-60 is revoked.
OAC 165:26-8-61 is amended to protect external marina hoses and prohibits coupled hoses.
OAC 165:26-8-70 is revoked.
OAC 165:26-8-72 is revoked.
OAC 165:26-8-85 is revoked.
OAC 165:26-8-88 is amended for grammatical correction.
OAC 165:26-8-89 is revoked.
OAC 165:26-8-90 is revoked.
OAC 165:26-8-95 is revoked.
OAC 165:26-8-96 is revoked.
OAC 165:26-10-1 is amended to include subchapters (1, 2, 3, 4) as applicable to this subchapter.
OAC 165:26-10-2 is amended to strike obsolete date and conform Commission implementation date to that of federal regulations.
OAC 165:26-10-3 is revoked.
OAC 165:26-10-4 is revoked.
OAC 165:26-10-5 is revoked.
OAC 165:26-10-9 is revoked.
OAC 165:26-10-10 is amended to reflect that local authorities may have more stringent rules than the Commission.
OAC 165:26-10-11 is revoked.
OAC 165:26-10-12 is revoked.
OAC 165:26-10-14 is revoked.
OAC 165:26-10-15 is revoked.
OAC 165:26-10-16 is revoked.
OAC 165:26-10-17 is revoked.
OAC 165:26-10-18 is revoked.
OAC 165:26-10-25 is revoked.
OAC 165:26-10-26 is revoked.
OAC 165:26-10-30 is revoked.
OAC 165:26-10-31 is revoked.
OAC 165:26-10-35 is revoked.
OAC 165:26-10-36 is revoked.
OAC 165:26-10-37 is revoked.
OAC 165:26-10-38 is revoked.
OAC 165:26-10-39 is revoked.
OAC 165:26-10-45 is revoked.

OAC 165:26-10-51 is revoked.
OAC 165:26-10-52 is revoked.
OAC 165:26-10-60 is revoked.
OAC 165:26-10-61 is revoked.
OAC 165:26-10-62 is revoked.
OAC 165:26-10-70 is revoked.
OAC 165:26-10-72 is revoked.
OAC 165:26-10-85 is revoked.
OAC 165:26-10-86 is revoked.
OAC 165:26-10-89 is revoked.
OAC 165:26-10-90 is revoked.
OAC 165:26-10-95 is revoked.
OAC 165:26-10-96 is revoked.
OAC 165:26-12-1 is amended to reflect application of subchapters (1, 2, 3, 4) to this subchapter.
OAC 165:26-12-2 is amended to strike obsolete date and conform Commission implementation date to that of federal regulations.
OAC 165:26-12-3 is revoked.
OAC 165:26-12-4 is revoked.
OAC 165:26-12-5 is revoked.
OAC 165:26-12-9 is revoked.
OAC 165:26-12-10 is amended to reflect local jurisdictions may be more stringent than the Commission.
OAC 165:26-12-11 is revoked.
OAC 165:26-12-12 is revoked.
OAC 165:26-12-14 is revoked.
OAC 165:26-12-15 is revoked.
OAC 165:26-12-16 is revoked.
OAC 165:26-12-17 is revoked.
OAC 165:26-12-18 is revoked.
OAC 165:26-12-25 is revoked.
OAC 165:26-12-26 is revoked.
OAC 165:26-12-30 is revoked.
OAC 165:26-12-31 is revoked.
OAC 165:26-12-35 is revoked.
OAC 165:26-12-36 is revoked.
OAC 165:26-12-37 is revoked.
OAC 165:26-12-38 is revoked.
OAC 165:26-12-39 is revoked.
OAC 165:26-12-45 is revoked.
OAC 165:26-12-51 is revoked.
OAC 165:26-12-52 is revoked.
OAC 165:26-12-60 is revoked.
OAC 165:26-12-70 is revoked.
OAC 165:26-12-72 is revoked.
OAC 165:26-12-85 is revoked.
OAC 165:26-12-86 is revoked.
OAC 165:26-12-89 is revoked.
OAC 165:26-12-90 is revoked.
OAC 165:26-12-95 is revoked.
OAC 165:26-12-96 is revoked.
OAC 165:26-14-1 is amended to reflect application of subchapters (1, 2, 3, 4) to this subchapter.
OAC 165:26-14-2 is amended to reflect removal of obsolete date and conform Commission implementation date to that of federal regulations.
OAC 165:26-14-3 is revoked.
OAC 165:26-14-4 is revoked.
OAC 165:26-14-5 is revoked.
OAC 165:26-14-9 is revoked.
OAC 165:26-14-10 is amended to reflect local jurisdictions may have more stringent rules than the Commission.
OAC 165:26-14-11 is revoked.
OAC 165:26-14-12 is revoked.
OAC 165:26-14-14 is revoked.
OAC 165:26-14-15 is revoked.
OAC 165:26-14-17 is revoked.
OAC 165:26-14-18 is revoked.
OAC 165:26-14-25 is revoked.
OAC 165:26-14-26 is revoked.
OAC 165:26-14-30 is revoked.
OAC 165:26-14-31 is revoked.
OAC 165:26-14-35 is revoked.
OAC 165:26-14-36 is revoked.
OAC 165:26-14-37 is revoked.
OAC 165:26-14-38 is revoked.
OAC 165:26-14-39 is revoked.
OAC 165:26-14-45 is revoked.
OAC 165:26-14-51 is revoked.
OAC 165:26-14-52 is revoked.
OAC 165:26-14-60 is amended to delete establishments which fuel their own vehicles.
OAC 165:26-14-85 is revoked.
OAC 165:26-14-89 is revoked.
OAC 165:26-14-90 is revoked.
OAC 165:26-14-95 is revoked.
OAC 165:26-14-96 is revoked.
OAC 165:26-16-1 is amended to reflect application of subchapters (1, 2, 3, 4) to this subchapter.
OAC 165:26-16-2 is amended to reflect removal of obsolete date and conform Commission implementation date to that of federal regulations.
OAC 165:26-16-3 is revoked.
OAC 165:26-16-4 is revoked.
OAC 165:26-16-5 is revoked.
OAC 165:26-16-9 is revoked.
OAC 165:26-16-11 is revoked.
OAC 165:26-16-12 is revoked.
OAC 165:26-16-14 is revoked.
OAC 165:26-16-15 is revoked.
OAC 165:26-16-16 is revoked.
OAC 165:26-16-17 is revoked.
OAC 165:26-16-18 is revoked.
OAC 165:26-16-25 is revoked.
OAC 165:26-16-26 is revoked.
OAC 165:26-16-30 is revoked.
OAC 165:26-16-31 is revoked.
OAC 165:26-16-35 is revoked.
OAC 165:26-16-36 is revoked.
OAC 165:26-16-37 is revoked.
OAC 165:26-16-38 is revoked.
OAC 165:26-16-39 is revoked.
OAC 165:26-16-45 is revoked.
OAC 165:26-16-51 is revoked.
OAC 165:26-16-52 is revoked.
OAC 165:26-16-70 is revoked.
OAC 165:26-16-72 is revoked.
OAC 165:26-16-85 is revoked.
OAC 165:26-16-89 is revoked.
OAC 165:26-16-90 is revoked.
OAC 165:26-16-96 is revoked.
OAC 165:26-18-1 is a new rule that sets forth the financial responsibility of all entities that operate ASTs, subject to statutory exclusions.
OAC 165:26-18-3 is a new rule that provides direction to AST owner/operators of the different mechanisms available to establish financial responsibility.
Appendix G-Warning and Fine Citations Table, is amended to reflect a fine for not using a licensed AST Installer for tank removal.
Appendix J-Table Establishing Permeability Rates For Secondary Containment, is amended to reclassify regulated substances.

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DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA CORPORATION COMMISSION'S COURT CLERK'S OFFICE AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):.

Subchapter 1 adds new definitions and revises existing definitions for clarity. New rules were added to this Subchapter to establish fees for aboveground storage tank ("AST") owners and Installers to comport with existing practices and fee schedules. An addition to the rules allows tank owners access to Petroleum Storage Tank Division ("PSTD") for tank planning purposes. An addition requires the presence of a licensed AST Installer to supervise tank removal. Codes and standards have been amended to reflect the codes incorporated by reference throughout Chapter 26, and updates

publication dates. Current fire codes reference is included to Chapter 26. A new rule allows local jurisdictions to regulate ASTs not in conflict with Commission regulations. AST variances have been amended to prohibit variances in conflict with leak detection standards. Licensing of AST Installers is a new rule re-established from another Subchapter. Commission notice prior to installation of new tank systems will now be required, including use of proper Commission forms. In addition to the aforementioned changes certain grammatical changes have been made.

Subchapter 2 is a newly created Subchapter intended to streamline rules under this Chapter and eliminate redundant language. Multiple rules of the same subject matter from a variety of Subchapters have been condensed and consolidated into single rules. In addition, most rules have been moved unchanged. New rules realigned from other Subchapters which have been revised include provisions for: approved tank design prohibiting use of gravity flow fuel dispensing, and requiring all tank openings be above maximum liquid level; use of a licensed AST Installer, tightness testing, further requirements and testing measures for AST installations; addressing AST systems that must be compatible with substances stored; requiring a licensed AST Installer to do repairs other than routine maintenance and small repairs; requiring owner/operators of ASTs who place ASTs out of service or remove them, do so in compliance with Commission rules and with Commission notification; upon closure owners/operators to empty tanks, remove piping, perform site assessment, use licensed AST Installers and sample soil/groundwater for various contaminants; sets forth levels of contamination that will trigger a confirmed release; requires AST owners/operators to perform site assessments; sets forth requirements for returning an AST to service. The Subchapter also provides guidance for vent piping placement and vapor dispersion. The Subchapter provides for certain AST piping material criteria. Additionally, the rule adds requirements for sump sensors and electronic line leak detection parameters. Lastly, a new rule permits alternative release detection methods when data substantiates its practical use.

Subchapter 3 has been changed to reflect leak detection records retention, and allows the AST owner/operator to forward the records electronically. It also amends dates, rule references and sampling criteria record requirements. In addition, the Subchapter reflects current industry practice in keeping cathodic protection or monitoring well records. An addition provides requirements for detailing line tightness test failure reporting requirements and the information to be reported. Another addition requires daily inventory and reconciliation of fuel dispensed/fuel inventory. New requirements for general spill and overfill prevention specify the different types of acceptable overfill protection. It also provides for reference to federal regulation pertaining to spill prevention control and countermeasure plan. Another addition to the Subchapter provides standards when installing and maintaining cathodic protection. Additionally, subsections detailing corrosion protection and release detection methods, requirements of corrosion expert or engineer to design the system, and requiring a qualified tester performing cathodic protection tests. Revisions include requirements to test systems, site assessments, and action levels of contamination that will confirm a release. Release reporting was added to provide step-by-step details, including requirement of an owner/operator from first phone call to investigation, and the levels of contamination that trigger a confirmed release. Several rules under this Subchapter have been revoked and have been moved to newly created Subchapter 2 or other Subchapters of this Chapter to streamline rules and eliminate redundancy.

Subchapter 4 is revised to include health, safety and environment as rebuttabal presumptions to exceptions and variances. The Subchapter is also amended to vest citation authority in the manager of inspection and compliance, and to reflect a change in designation for fuel specialists. The Subchapter substitutes "fuel specialist" for "fuel inspector" and "notice of violation" for "warning of citation."

Subchapter 6 is revised to provide for the applicability of Subchapters 1, 2, 3, and 4 to this Subchapter as a result of rule streamlining. Obsolete rules have been revoked and obsolete language stricken. Rules revoked are realigned from this Subchapter to newly created Subchapter 2. This Subchapter pertains to ASTs at airports and is amended to strike obsolete dates and conform Commission implementation date and registration to that of federal regulations. A new rule will allow local jurisdictions to regulate ASTs provided local ordinances do not conflict with Commission regulations. It also requires existing tanks be no closer than 100= to a runway, and new tanks no closer than 200= to a runway. Dispenser hoses requirements provide for replacement of damaged hose, all couplings, and require that all replacements are pressure tested thereafter.

Subchapter 7 eliminates redundant or obsolete language that has been realigned to newly created Subchapter 2.

Subchapter 8 is revised to provide for the applicability of Subchapters 1, 2, 3, and 4 to this Subchapter as a result of rule consolidation. Obsolete rules have been revoked and obsolete language stricken. Rules revoked are realigned to newly created Subchapter 2. The Subchapter pertains to ASTs at marinas and is amended to strike obsolete dates and conform Commission implementation date and registration to that of federal regulations. Maximum tank capacity is revised to acknowledge local regulation of marinas may be more stringent than Commission rules. Aboveground piping requirements at marinas must meet the national fire code, and installed to manufacturer's specifications. Also the rule specifies the type of pipe to be used in different marina settings. An addition addresses the different piping utilized at marinas and the requirements for installation and monitoring requirements, including leak detection and sump sensors. The section detailing dispenser hoses is revised to protect external marina hoses and prohibits coupled hoses. Other amendments to this Subchapter make grammatical changes or corrections.

Subchapter 10 is revised to provide for the applicability of Subchapters 1, 2, 3, and 4 to this Subchapter as a result of rule consolidation. Obsolete rules have been revoked and obsolete language stricken. Rules revoked are realigned from this Subchapter to newly created Subchapter 2. The Subchapter pertains to ASTs at retail facilities and is amended to strike obsolete date and conform Commission implementation date and registration to that of federal regulations. The Subchapter allows local ordinances to be more stringent than Commission rules.

Subchapter 12 is revised to provide for the applicability of Subchapters 1, 2, 3, and 4 to this Subchapter as a result of rule consolidation. Obsolete rules have been revoked and obsolete language stricken. Rules revoked are realigned to newly created Subchapter 2. The Subchapter pertains to ASTs for fleet or commercial facilities and is amended to strike obsolete date and conform Commission implementation date and registration to that of federal regulations. The Subchapter allows local ordinances to be more stringent than Commission rules.

Subchapter 14 is revised to provide for the applicability of Subchapters 1, 2, 3, and 4 to this Subchapter as a result of rule consolidation. Obsolete rules have been revoked and obsolete language stricken. Rules revoked are realigned to newly created Subchapter 2. The Subchapter pertains to ASTs for bulk plant facilities and is amended to strike obsolete dates and conform Commission implementation date and registration to that of federal regulations. The Subchapter allows local ordinances to be more stringent than Commission rules. It eliminates facilities from regulations that fuel their own vehicles.

Subchapter 16 is revised to provide for the applicability of Subchapters 1, 2, 3, and 4 to this Subchapter as a result of rule consolidation. Obsolete rules have been revoked and obsolete language stricken. Rules revoked are realigned to newly created Subchapter 2. The Subchapter pertains to ASTs for emergency generators and is amended to strike obsolete date and conform Commission implementation date and registration to that of federal regulations.

Subchapter 18 sets forth the financial responsibility of all entities that operate ASTs, subject to statutory exclusions, and provides direction to AST owner/operators of the different mechanisms available to establish financial responsibility.

Appendices G and J are amended to reflect a fine for not using a licensed AST Installer for tank removal and to reclassify regulated substances.

[OAR Docket #04-1007; filed 5-21-04]

TITLE 165. CORPORATION COMMISSION
CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #04-1064]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

165:35-1-2. Definitions [AMENDED]

Subchapter 31. Affiliate Transactions and Financial Transactions of Utilities and Affiliates [NEW]

165:35-31-1. Purpose, scope and application of Subchapter [NEW]

165:35-31-2. Determination of confidential information [NEW]

165:35-31-3. Exemption for corporate and shared services [NEW]

165:35-31-4. Request for Information [NEW]
165:35-31-5. [RESERVED]
165:35-31-6. [RESERVED]
165:35-31-7. [RESERVED]
165:35-31-8. [RESERVED]
165:35-31-9. [RESERVED]
165:35-31-10. [RESERVED]
165:35-31-11. [RESERVED]
165:35-31-12. [RESERVED]
165:35-31-13. [RESERVED]
165:35-31-14. [RESERVED]
165:35-31-15. [RESERVED]
165:35-31-16. [RESERVED]
165:35-31-17. [RESERVED]
165:35-31-18. [RESERVED]
165:35-31-19. Standards for transactions between utilities and affiliate(s) [NEW]
165:35-31-20. Sales of services, products, or assets between regulated and unregulated affiliates [NEW]
165:35-31-21. [RESERVED]
165:35-31-22. Financial transactions by utilities or their affiliate(s) [NEW]
165:35-31-23. [RESERVED]
165:35-31-24. [RESERVED]
165:35-31-25. Remedies and enforcement for violation of the standards of conduct [NEW]
165:35-31-26. [RESERVED]
165:35-31-27. [RESERVED]

AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution

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May 26, 2004
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July 1, 2004

SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
OAC 165:35-1-2 is changed adding definitions for "affiliate;" "Corporate Support Services" or "Shared Services;" and "Subsidize" as well as amending the "electric service" definition.

A new Subchapter of rules have been created at OAC 165:35-31, regarding the transactions between an electric utility and its affiliates.

OAC 165:35-31-1 is added to state the purpose, scope and application of the Affiliate Subchapter. Additional changes included the striking of the word "cross" in front of the word "subsidization" and the striking of the word "acquiring," replacing it with "being subjected to."

OAC 165:35-31-2 is added to prescribe the rules for determinations of confidential information. An additional change was made to assure the Office of the Oklahoma Attorney General access to any information claimed by a party to be confidential in nature.

OAC 165:35-31-3 is added to provide a potential exemption from the OCC asymmetrical pricing standard where the utility can prove that it meets the criteria established in the OCC rules.

OAC 165:35-31-4 is added delineating information that will be required by the Commission for submission under this Subchapter. Additional changes were made to allow for records to be submitted in addition to work papers, as well as for "such other information that the Commission shall request."

OAC 165:35-31-5 through OAC 165:35-31-18 are reserved.

OAC 165:35-31-19 is added to delineate standards of conduct between utilities and affiliates, including but not limited to: a "physical operational" exception for preferential treatment where system functioning may require such preferential treatment; and clarification regarding distinguishing between common corporate or parent holding and affiliate entities. An additional change was made to accommodate for technological differences for sharing information in real time. Unlike the gas markets, there are no electric market bulletins under which the electric companies can share information in real time. Thus, an electric company that seeks to share certain information with its affiliate, must simultaneously publicly disclose (where possible) this information - or as near to the event as possible. Subsection (13) was also rewritten for clarity.

OAC 165:35-31-20 is added to delineate the sales of services, products, or assets between regulated and unregulated affiliates (and includes inter alia: asymmetrical pricing, contemporaneous record keeping requirements, asset transfer valuations, sales of jurisdictional products or services, joint purchases, and tying prohibitions). Additional changes were made in (c) and (d) wherein the words "Commission authorized" were added before the words "competitive bidding," thereby assuring Commission consultation where a utility seeks exemption from asymmetrical pricing due to competitive bidding; also in (c) and (d) the word "are" was struck and replaced with "shall be" and the words "pursuant to" were added before "competitive bidding;" and in (d) "jurisdictional" was struck in front of the word "products" as such products relate to sales of products from an affiliate to a utility and the word "state" was added before the word "statute" in order to denote that electric utility service in Oklahoma is deemed a service by statute - not a product.

OAC 165:35-31-21 is reserved.

OAC 165:35-31-22 is added to delineate rules for financial transactions by utilities or their affiliate(s), includes the requirement for separate books/records and information requirements for financial transactions between utilities and their affiliates, and also delineates credit, financing and investment limitations as well as financing cost limitations between the entities - except on a case-by-case basis.

OAC 165:35-31-23 and OAC 165:35-31-24 are reserved.

OAC 165:35-31-25 is added to delineate remedies and enforcement for violations of the standards of conduct for affiliate transaction.

OAC 165:35-31-26 and OAC 165:35-31-27 are reserved.

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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

165:35-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest

or ownership of five percent (5%) or more creates a presumption of control.

"ANSI" means the American National Standards Institute.

"Commission" means the Oklahoma Corporation Commission.

"Company submeter" means a KWH measuring device provided by the utility located on line beyond the point of delivery of electrical service providing service to another consumer. Usage from these meters are deducted from the meter at point of delivery.

"Complaint" means an expression of dissatisfaction regarding the utility's billings, service procedures, or employee conduct which requests or requires some remedial or corrective action be taken by the utility. Complaints may be made by the consumer or other interested party. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

"Consumer" means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision of the United States, or the State of Oklahoma receiving electric service of any nature from a utility.

"Corporate Support Services" or "Shared Services" are human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among an electric utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

"Customer submeter" means a KWH measuring device provided by the customer and located on line beyond the point of delivery of electrical service.

"Disconnection" means electric service has been discontinued by consumer request or by the utility.

"Electric consuming facility" means anything that utilizes electric energy from a central station source.

"Electric plant" means facilities and equipment owned or operated by a utility, including but not limited to generating stations, substations, transformers, towers, poles, conductors, transportation equipment, conduits, meters, motors, real estate, buildings, and dams.

"Electric service" means the supply of electricity ~~for ultimate consumption~~.

"Electricity" means electric power and energy produced, transmitted, distributed, or furnished by a utility.

"FERC" means the Federal Energy Regulatory Commission.

"Legal holiday(s)" means those days declared to be legal holidays by the Chief Executive of the State of Oklahoma.

"Meter" means any device or devices used to measure or register electric power and energy.

"Meter shop" means a shop used for the inspection, testing, and repair of meters.

"Municipality" means an incorporated city or town in the State of Oklahoma.

"Planned interruption" means electric service has been suspended by the utility.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where electric service is furnished to a consumer.

"Records" means documentation maintained by the utility either in electronic or paper form.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer, or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"RUS" means the Rural Utilities Service.

"Special contract" means a written agreement between a utility and a consumer providing for furnishing electric service on terms different from those prescribed in approved tariffs.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising for disposition.

"Subsidize" means to furnish financial support by the utility to the affiliate.

"Tariff" shall include every rate schedule, or provision thereof, and all terms, conditions, rules, and regulations for furnishing electric service.

"Unplanned or emergency interruption" means service has been suspended due to circumstances beyond the control of the utility.

"Utility" means any person, firm, partnership, or corporation furnishing electric service to the public in Oklahoma and subject to the regulatory jurisdiction of the Commission.

SUBCHAPTER 31. AFFILIATE TRANSACTIONS AND FINANCIAL TRANSACTIONS OF UTILITIES AND AFFILIATES

165:35-31-1. Purpose, scope and application of Subchapter

(a) The affiliate transactions and financial transactions (such as stock, bond, derivatives, and any financing instrument issuance) rules are promulgated to establish enforcement, reporting and monitoring provisions of utilities as to these transactions.

(b) The intention of this Subchapter includes [but is not limited to]:

(1) The establishment of standards for transactions between utilities and their affiliates for purposes of determining fair, just and reasonable rates and charges;

(2) The prevention of subsidization of an affiliate by a utility;

(3) The support of fair and clear cost allocations; and

(4) The protection of the customers of a utility from being subjected to any unreasonable financial obligation or costs of an affiliate.

165:35-31-2. Determination of confidential information

(a) If a utility that seeks to provide electric utility services is required by this Subchapter to submit information to the Commission that is alleged to be confidential, a motion for a protective order concerning said confidential information may be filed requesting a determination be made by the Commission to protect said information pursuant to 51 O.S. § 24A.22.

(b) After a determination regarding approval of any protective order by the Commission, the Public Utility Division and the Attorney General's Office may, at its option, review the information claimed to be confidential at a mutually agreed upon location.

(c) In the absence of a protective order, all information considered by the Commission in establishing utility tariffs and in determining compliance with the rules of this Subchapter shall not be maintained in confidence by the Commission.

165:35-31-3. Exemption for corporate and shared services

Corporate and support services are exempt from asymmetrical pricing, to the extent that the affiliate information requirements in Chapter 70 and 165:35-31-4 are satisfied.

165:35-31-4. Request for Information

Required Information. Upon request by the Commission, affiliate information shall be provided pursuant to this Subchapter and shall contain records and work papers which provide, at a minimum, the following information and such other information that the Commission shall request:

(1) Consolidated Companies and Subsidiaries Balance Sheet.

(2) Income Statements.

(3) Cost Allocation Basis, if applicable.

(4) Affiliate/Subsidiary General Data: Narrative(s) providing:

(A) The date of establishment of each affiliate and/or subsidiary;

(B) A statement of each affiliate and/or subsidiary's core businesses;

(C) The utility company resources used in establishment of each affiliate and/or subsidiary; and

(D) The utility company resources currently being used by each affiliate and/or subsidiary, either directly or indirectly.

(5) Affiliate/Subsidiary Contracts: Copies of any and all contracts with affiliates and/or subsidiaries.

(6) Assets Sold/Transferred to Affiliates/Subsidiaries: A listing, by asset category and net book value, of assets sold or transferred to any affiliate and/or subsidiary since the utility's last rate case.

(7) Services/Products from Affiliates/Subsidiaries: A listing and description of the services and/or products (and related costs) provided by each affiliated and/or subsidiary company to the utility for the required period.

(8) Services/Products to Affiliates/Subsidiaries: A listing of any significant utility company facilities and/or resources, whether plant, other assets or personnel that were used during the required period, by each affiliate and/or subsidiary. The cost of the resources shall be indicated.

(9) Cost of Debt or Financing: A listing of debt instruments bearing any cost of financing transactions, in part or in full, or any debt, equity, trading activity, or derivative which has a direct or indirect financial or cost impact upon the utility.

165:35-31-5. [RESERVED]

165:35-31-6. [RESERVED]

165:35-31-7. [RESERVED]

165:35-31-8. [RESERVED]

165:35-31-9. [RESERVED]

165:35-31-10. [RESERVED]

165:35-31-11. [RESERVED]

165:35-31-12. [RESERVED]

165:35-31-13. [RESERVED]

165:35-31-14. [RESERVED]

165:35-31-15. [RESERVED]

165:35-31-16. [RESERVED]

165:35-31-17. [RESERVED]

165:35-31-18. [RESERVED]

165:35-31-19. Standards for transactions between utilities and affiliate(s)

Electric utilities must conduct their business to conform to the following standards:

(1) Electric utilities must apply any tariff provision in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

(2) Electric utilities must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

(3) Except as necessary for physical operational reasons, electric utilities may not, through a tariff provision or otherwise, give their affiliates or knowingly give customers of their affiliates preference over other utility customers in matters relating to any service offered including, but not limited to: generation, transmission, distribution and ancillary services, scheduling, balancing, or curtailment policy.

(4) Unless such disclosure is made public simultaneously or as near to the event as possible, electric utilities shall not disclose to their affiliates any information which they receive from, a non-affiliated customer, a potential customer, any agent of such customer, or potential customer, or other entity seeking to supply electricity to a customer or potential customer.

(5) An electric utility's operating employees and the operating employees of its affiliate must function independently of each other and shall be employed by separate corporate entities.

(6) Electric utilities and their affiliates shall keep separate books of accounts and records.

(7) Electric utilities shall establish a complaint procedure. In the event the electric utility and the complainant are unable to resolve a complaint, the complainant may address the complaint to the Commission.

(8) With respect to any transaction or agreement relating in any way to electric generation, transmission, distribution and ancillary services, an electric utility shall conduct all such transactions with any of its affiliates on an arm's length basis.

(9) The Commission shall resolve affiliate transaction disputes or abuses on a case-by-case basis. Any aggrieved party may file a complaint with the Commission alleging the particulars giving rise to the alleged dispute or abuse. The Commission shall consider at a minimum, the following issues when hearing a complaint:

(A) Whether or not the information or data furnished to the affiliate was generally available to other market participants.

(B) Whether or not the electric utility conducted business in such a manner that actual or expected expenses were shifted from the non-regulated subsidiary to the regulated entity.

(C) Whether or not the electric utility conducted business in such a manner that actual or expected revenues were shifted from the regulated entity to the non-regulated entity.

(D) Whether or not the regulated entity offered terms, condition or rates for the provision of electric services to the affiliate that it refused to provide to other customers or whether such resulted in the affiliate having an unfair advantage.

(10) Electric utilities must process all similar requests for electric services in the same manner and within the same period of time.

(11) Electric utilities shall not provide leads to their affiliates and shall refrain from giving any appearance that the electric utility speaks on behalf of its affiliate(s). Nor shall the affiliate trade upon, promote or advertise its affiliation or suggest that it receives preferential treatment as a result of its affiliation. The use of a common corporate or parent holding company name shall not be a violation of this provision so long as the regulated utility and the affiliate entities can be distinguished.

(12) Electric utilities, except for billing and collection services and customer service, or by order of the Commission, shall not share their customer list or related customer information with affiliates unless the information is simultaneously shared with non-affiliate entities.

(13) The electric utility shall not communicate with any third party that any advantage in the provision of electric services may accrue to such third party as a result of that third party's dealings with the electric utility's affiliate.

165:35-31-20. Sales of services, products, or assets between regulated and unregulated affiliates

(a) **Transactions between a utility and its affiliates** A utility shall not subsidize the business activities of any affiliate with revenues from a regulated service. A utility cannot recover more than its reasonable fair share of the fully allocated costs for any transaction or shared services.

(b) **Contemporaneous record requirement.** A utility shall maintain a contemporaneous written record of all individual transactions with a value equal to or over one million dollars with its affiliates, excluding those involving shared services or corporate support services and those transactions governed by tariffs or special contracts. Such records, which shall include at a minimum, the date of the transaction, name of affiliate(s) involved, name of a utility employee knowledgeable about the transaction, and a detailed description of the transaction with appropriate support documentation for review purposes, shall be maintained by the utility for three years.

(c) **Transfers of assets.** Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract, or as otherwise ordered by the Commission; cost recovery for property transferred from a utility to its affiliate shall be priced at the "higher of cost or fair market value." Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; asset valuation and transfers of property transferred from an affiliate to its utility shall be priced at the "lower of cost or fair market value." No matter the origin of the transaction, all transfers between a utility and an affiliate will be individually scrutinized by the Commission on a case-by-case basis.

(d) **Sale of products or services.** Except as otherwise required by federal or state statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of products and services provided from the affiliate to the utility shall be priced at the "lower of cost or fair market value." Except as otherwise required by federal statute or regulation, or

pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of jurisdictional products and services provided from the utility to the affiliate shall be priced at the "higher of cost or fair market value."

(e) **Joint purchases.** A utility may make a joint purchase with its affiliates of goods and services involving goods and/or services necessary for utility operations. The utility must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility's and the affiliate's allocations of such purchases.

(f) **Tying arrangements prohibited.** Unless otherwise allowed by the Commission through a rule, order or tariff, a utility shall not condition the provision of any product, service, pricing benefit, waivers or alternative terms or conditions upon the purchase of any other good or service from the utility's affiliate.

165:35-31-21. [RESERVED]

165:35-31-22. Financial transactions by utilities or their affiliate(s)

(a) **Financial transactions.** Financial transactions include, but are not limited to, stock, bond, derivatives, and any financing instrument issuance as well any debt, equity, derivative or related transaction.

(b) **Separate books and records.** A utility shall keep separate books of accounts and records from its affiliates. The Commission may review records relating to any transaction between a utility and an affiliate to ensure compliance with this Subchapter including the records of both the utility and the affiliate relating to any transaction.

(1) In accordance with generally accepted accounting principles, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(2) A utility shall prepare non-GAAP financial statements that are not consolidated with those of its affiliates.

(3) A utility shall have a cost allocation manual or upon Commission request, be able to provide its cost allocation methodology in written form with supporting documentation. Such records shall reflect the transaction and the allocated costs, with supporting documentation, to justify the valuation.

(c) **Limited credit, investment or financing support by a utility.** A utility may share credit, investment, or financing arrangements with its affiliates if it complies with paragraphs (1) and (2) of this Subsection.

(1) The utility shall implement adequate safeguards precluding employees of an affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create opportunities for subsidization of affiliates.

(2) Where an affiliate obtains credit under any arrangement that would include a pledge of any assets in the rate base of the utility or a pledge of cash necessary for utility operations the transactions shall be reviewed by the Commission on a case-by-case basis.

(d) **Cost of financing transactions of any affiliate.** The cost of any financial transactions, in part or in full, or any debt, equity, trading activity, or derivative, of any parent company, holding company or any affiliate, which has a direct or indirect financial or cost impact upon the utility shall be reviewed by the Commission on a case-by-case basis.

165:35-31-23. [RESERVED]

165:35-31-24. [RESERVED]

165:35-31-25. Remedies and enforcement for violation of the standards of conduct

(a) A complaint may be brought to the Commission at any time. The Commission encourages informal resolutions. Whenever a controversy does exist in connection with the interpretation of this Subchapter, the applicability of the requirements set forth herein, or any right or duty imposed thereby; the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

(b) Each violation of this Subchapter shall be considered to be a separate occurrence.

(c) If the Commission determines, after investigation and an evidentiary hearing, that the electric utility has violated these affiliate rules, the Commission may assess a fine against the utility for contempt as set forth in 17 O.S. § 1 *et seq.* and may order such further action as may be fair, just and reasonable under the circumstances of the proceeding.

(d) The Commission may act upon any violation of these standards including but not limited to the following:

(1) Prospective limitation or restriction of the amount, percentage or value of cost recovery for transactions entered into between a utility and an affiliate;

(2) Denial of recovery of costs, all or in part, for business transactions between the utility and the affiliate; or

(3) Application of any other remedy available to the Commission, including financial penalties.

(e) **No immunity from state law.** Nothing in this subchapter shall relieve any utility from any duty prescribed by the laws of the State of Oklahoma.

165:35-31-26. [RESERVED]

165:35-31-27. [RESERVED]

[OAR Docket #04-1064; filed 5-26-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #04-1063]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:35-1-5. Sale or disposal of jurisdictional facilities by utility [AMENDED]
Subchapter 23. Service Requirements
165:35-23-8. Request for service [NEW]
Subchapter 25. ~~Operation Maintenance and Records~~Operations Requirements For Utilities
Part 1. Operation Maintenance and Records [NEW]
165:35-25-4. Daily record of generating plants [AMENDED]
Part 3. Reliability of Service and Reliability Program [NEW]
165:35-25-12. Adoption of Standards [NEW]
165:35-25-13. Definitions [NEW]
165:35-25-14. Reliability program [NEW]
165:35-25-15. Vegetation management plan [NEW]
165:35-25-16. Notification for vegetation management activities [NEW]
165:35-25-17. [RESERVED]
165:35-25-18. Performance levels [NEW]
165:35-25-19. Individual circuit reliability [NEW]
165:35-25-20. Annual reliability report [NEW]
Part 5. Utility Scorecard [NEW]
165:35-25-24. Utility performance scorecard [NEW]
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ANALYSIS:
OAC 165:35-23-8 was added, deleting the use of "residential, commercial and industrial" categories to "users of less than 500 KVA with and without line extensions/facilities construction" and "industrial users of 500 KVA or greater with new or upgraded facilities." Response goals were set at least 95% of the time (unless the customer and electric utility have otherwise agreed in writing, to a longer term *or* a delay occurs beyond the reasonable control of the electric utility).

OAC 165:35-25-12 was added, stating the Commission's adoption of the definitions found in the most current edition of the *IEEE's Std. 1366, IEEE Guide for Electric Power Distribution Reliability Indices*. Due to this change OAC 165:35-25-13 was reduced in terms of the numbers of definitions stated due to the adoption of the IEEE standards stated previously.

OAC 165:35-25-14 was added, adding factors for the use of which would help to limit the duration and frequency of service interruptions.

OAC 165:35-25-15 was added regarding tree trimming and vegetation management.

OAC 165:35-25-16 was added concerning customer notification of tree trimming. A potential exception was added to these notification procedures stating that the utility shall make a reasonable attempt to contact the landowner, customer or tenant in rural areas, if known, a reasonable time prior to beginning work on the property.

OAC 165:35-25-18 was added regarding performance levels. The "25%" improvement marker was replaced with a process under which, historical data would be used as a benchmark from which to build for the future. MAIFI was added as a measure, but only as technologically available, and the CAIDI measure was struck.

OAC 165:35-25-19 was added dealing with individual circuit reliability was renumbered at. The requirement for analysis of the top "worst" performing circuits was set to "5%" in order to promote a more realistic and achievable goal.

OAC 165:35-25-20 was added pertaining to annual reporting requirements. The annual reporting date is proposed each year to March 1st, starting March 1, 2005.

OAC 165:35-25-24 was added creating a score card and scoring system under which the utilities and the Commission can monitor the safety and reliability of each utility.
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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

165:35-1-5. Sale or disposal of Jurisdictional facilities by utility

(a) Except upon order of the Commission made upon application, notice and hearing, no utility shall discontinue or abandon any segment of its jurisdictional distribution system or sell, transfer, or dispose to another any portion of its jurisdictional plant or property then constituting an integrated operating system, or major fractional part thereof, unless the following criteria are satisfied:

(1) The Commission shall determine the functional division of utility property. If the function of the property intended to be sold by a utility will remain a utility function after the sale as determined by the Commission, the Commission retains jurisdictional; ~~and,~~

(2) Unless otherwise ordered by the Commission, after notice and hearing, no property shall be sold which may have a detrimental impact on rates or service levels of customers, shippers or producers~~.~~;

(3) This Section shall not apply to discontinuance of service pursuant to OAC 165:35-21, nor to routine retirement or replacement of plant or equipment~~.~~; and

(4) Any portion of a utility's plant or operating system which has previously been included in the rate base of such utility will remain as part of such utility's jurisdictional plant or operating system, unless otherwise ordered by the Commission.

(b) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating

system, the seller/transferor shall provide to the buyer or transferee all documents, from the previous two (2) calendar years, required by the Commission to be maintained, and customer deposit records required to be maintained pursuant to OAC 165:35-19-1.

(c) The buyer/transferee shall be required to maintain the records set forth in this Section for a period of two (2) years from the time of the date of the sale or transfer.

(d) Prior to approval of the sale or transfer, the seller/transferor shall be required to have all annual reports, monthly fuel filings and monthly reports current.

(e) The application for sale or transfer shall indicate whether the utility has any outstanding fines from the Commission, whether the utility has any outstanding Public Utility fee assessment, or whether the utility has any outstanding deficiencies which have been identified by the Public Utility Division or Consumer Services Division of the Commission.

(f) This Subchapter shall not prohibit sale or exchange of individual items of equipment not affecting the service or area of service.

SUBCHAPTER 23. SERVICE REQUIREMENTS

165:35-23-8. Request for service

Every electric utility shall initiate service to each qualified applicant for service within its service area in accordance with this Section.

(1) Applications for new electric service under 500 kVA of connected demand not requiring line extensions or construction of new facilities shall be filled by the end of the fifth (5th) business day after the applicant has met the credit requirements and complied with all applicable state and municipal regulations. This requirement must be met at least ninety-five percent (95%) of the time, weather permitting, and after the customer's location is ready for service.

(2) Applications for new or upgraded electric service under 500 kVA of connected demand requiring construction of new facilities shall be filled by the end of the ninetieth (90th) business day, or within a time period agreed to by the customer and the electric utility, after the applicant has met the credit requirements, has made satisfactory payment arrangements for construction charges, and has complied with all applicable state and municipal regulations. This requirement must be met at least ninety-five percent (95%) of the time, weather permitting, and after the customer's location is ready for service.

(3) Applications for new or upgraded industrial electrical service over 500 kVA of connected demand requiring construction shall be completed within 180 calendar days, or within a time period agreed to by the customer and the electric utility, if the applicant has met the credit requirements, has made satisfactory payment arrangements for construction charges, and has complied with all applicable state and municipal regulations. This requirement must be met ninety-five percent (95%) of the time, weather permitting, and after the customer's location is ready for service.

(4) For customers with less than 500 kVA of connected demand, if facilities must be constructed, then the electric utility shall contact the customer within ten (10) business days of receipt of the application. The electric utility shall provide a cost estimate and estimated completion date within sixty (60) calendar days of receipt of the application and all necessary information being provided by the customer.

(5) For customers with over 500 kVA of connected demand, if facilities must be constructed, then the electric utility shall contact and meet with the customer within ten (10) working days of receipt of the application. The utility shall include customer representatives in the planning for the construction and assessment of the work during the actual construction, unless the customer affirmatively indicates no desire to be so involved. The electric utility shall provide a cost estimate and estimated completion date within ninety (90) days of receipt of the application and all necessary information being provided by the customer.

(6) Unless the delay is beyond the reasonable control of the electric utility, where no construction is required for requests from customers with under 500 kVA of connected demand, a delay of more than ten (10) business days and where construction is required for requests from customers under and over 500 kVA of connected demand a delay of more than 180 calendar days, shall constitute failure to serve unless the customer and electric utility have otherwise agreed in writing, to a longer term.

SUBCHAPTER 25. ~~OPERATION MAINTENANCE AND RECORDS~~ OPERATIONS REQUIREMENTS FOR UTILITIES

PART 1. OPERATION MAINTENANCE AND RECORDS

165:35-25-4. Daily record of generating plants

Each utility shall keep a daily record of the operation of each of its generating plants showing the energy generated, station use, net output of plant, length of time each unit is in operation, and cause and reason for any unexpected plant shutdown. A utility having only generating plants of 5000 KW or less is exempt ~~form~~ from this Section.

PART 3. RELIABILITY OF SERVICE AND RELIABILITY PROGRAM

165:35-25-12. Adoption of Standards

For the purposes of this Subchapter, the Commission adopts the most current edition of the IEEE's Std. 1366, *IEEE Guide for Electric Power Distribution Reliability Indices.*

165:35-25-13. Definitions

In addition to the definitions set forth in IEEE's Std. 1366, *IEEE Guide for Electric Power Distribution Reliability Indices*, the following words and terms, when used in this Part, shall have the following meaning:

"Major event" means a catastrophic event that exceeds the design limits of the electric power system, such as an extreme storm, tornado or earthquake. These events shall include situations where there is a loss of service to 10% or more of the customers in a region, and where full restoration of all affected customers requires more than 24 hours from the beginning of the event.

165:35-25-14. Reliability program

(a) Each utility, to the maximum extent practicable, shall design and maintain a program to limit the frequency and duration of electric service interruptions and to maintain acceptable electric service reliability levels and to sustain that reliability over time. This program must address all the factors that impact the reliability of the distribution system, including, but not limited to:

(1) The age, distribution, and location of equipment on each circuit;

(2) The number, density, and location of customers on each circuit;

(3) The location and density of trees on the system;

(4) Annual vegetation management plan; and

(5) The impacts on distribution system reliability of animals, wind, storms, ice, and automobile accidents.

(b) The program shall include inspection, maintenance, repair and replacement standards that ensure timely and efficient service restoration as well as preventive and emergency maintenance. In establishing such standards it is imperative that the utility locate sufficient personnel, equipment, repair materials, and supplies strategically throughout its service territory in order to fully and adequately meet the reliability standards established herein.

(c) The program shall give special emphasis to the improvement of the worst-performing circuits in each region of the utility's service territory.

165:35-25-15. Vegetation management plan

(a) Vegetation management means all activities associated with the trimming, removal, or control of plant material in the proximity of energized electric utility conductors and equipment.

(b) As part of its Reliability program, each utility shall prepare an annual vegetation management plan and submit this plan to the Commission for review prior to implementation. This plan shall be an integrated part of the utility's Reliability program and shall include, but not be limited to:

(1) Definitions of activities;

(2) Calendar of activities;

(3) Implementation plan;

(4) Criteria to assess results of the vegetation management plan; and

(5) The name and contact information of a company representative who is knowledgeable about the plan, its implementation and potential results.

(c) Each utility shall, at a minimum, perform vegetation management on a 4-year cycle, unless needed otherwise or unless otherwise ordered by the Commission. The utility may request an exemption from this requirement by submitting an alternative(s) to the 4-year cycle to the Commission in its annual vegetation management plan for review and hearing.

(d) Each utility shall track and record all vegetation management costs for easy identification upon Commission review.

165:35-25-16. Notification for vegetation management activities

When trimming trees and trimming or removing other vegetation in electric line right-of-way maintenance in urban areas, the utility shall make a reasonable attempt to contact the landowner, customer, or tenant at a minimum of twenty-four (24) hours prior to beginning work on the property. In rural areas the utility shall make a reasonable attempt to contact the landowner, customer or tenant, if known, a reasonable time prior to beginning work on the property. This contact may take the form of a written notice delivered to the landowner's, customer's, or tenant's residence; a telephone call to the landowner, customer, or tenant; or an in-person contact. Reasonable effort shall be made by the utility to accommodate a landowner's, customer's, or tenant's desire to be present when work is done on his or her property. Vegetation management related to emergency repairs is exempt from this notification requirement.

165:35-25-17. RESERVED

165:35-25-18. Performance levels

(a) **Utility's responsibility and indices used.** It shall be the utility's responsibility to maintain and compile the data necessary to compute SAIDI and SAIFI (and to the maximum extent practicable, MAIFI). These indices shall be computed by the utility for each reporting year, or any sub-period thereof, as requested by the Commission. The data maintained and compiled for the computation of the indices shall conform strictly to their respective definitions as set forth in this Part. The indices shall be computed for the utility's entire service territory, for each region, and for each distribution circuit. Computation of the indices shall not include interruptions that have resulted from operating conditions that are beyond the utility's control (such as a major event, as that term is defined and used under this subchapter). Each utility shall maintain the raw interruption and duration date as well as the computation of the indices for each reporting year, for a period of not less than three years after the annual report filing deadline. The utility shall maintain all data necessary to compute SAIDI and SAIFI (and to the maximum extent practicable, MAIFI), for all major events but is not required to make such computations except as requested by the Commission.

(b) **Minimum performance level.** Upon receipt of the utility's annual report, the Commission will compare the indices

computed for the utility's service territory to the minimum performance level. The minimum performance level shall represent the lower threshold of adequate service below which further review, analysis, and corrective action may be required. The minimum performance levels shall be reached when the SAIDI and SAIFI values of each electric utility's service are equal to or better than the minimum performance levels for these indices. The base performance level for SAIDI and SAIFI for the period January 2005 through December 2009, shall be established through engineering and economic studies of historical performance and system operations prepared by each utility, in consultation with PUD Staff, and submitted as part of each utility's reliability report submitted March 1, 2005. This base performance level shall be recomputed by each utility every fifth (5th) year and submitted to the Commission in the next year's reliability report. After notice and hearing, the Commission may modify the minimum performance level of any utility. The minimum performance level for a utility with less than 100,000 customers shall be adjusted to account for variances in the rural nature or other special characteristics of their distribution system. The adjusted minimum performance level for a utility with less than 100,000 customers shall be determined by multiplying the annual minimum performance level by the ratio of miles of line per customer plus 1 for the reporting year. It will be the responsibility of the utility to determine the adjusted minimum performance level using this formula for each reporting year. The utility's average number of customers for the prior reporting year shall determine the standards to be applied to the current reporting year.

(c) **Objective performance level.** The objective performance level shall represent a fully adequate level of service that each utility should strive to achieve and maintain. It shall be reached when the SAIDI and SAIFI values of each utility's service territory are for the year is within the bandwidth established based on the data gathered pursuant to the process described in 165:35-25-18(b).

(d) **Commission Review.** In its review of a utility's cost of service and rate of return, the Commission may consider, in general rates cases, the utility's reliability reporting and levels for SAIDI, SAIFI, CAIDI, and MAIFI.

(e) **Limitations to technology.** Utilities that do not have the technological capability to maintain and compile all such data, shall maintain and compile such data that it has available and utilizes to define and identify system reliability levels as well as outline progress towards attainment of additional technologies.

165:35-25-19. Individual circuit reliability

Each utility shall maintain a program for identifying and analyzing its worst performing circuits during the course of each reporting year. The program shall include, but should not be limited to, an analysis of the top 5% worst performing circuits for the entire utility and for each of the utility's operating regions, if the utility is divided into regions, and the actions taken to improve their performance. The worst performing circuits shall be identified and ranked using the SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for each circuit, and in any other manner chosen by the utility. The details and results of the ranking and program to improve the performance of these circuits shall be submitted as part of the annual reliability report described in 165:35-25-20.

165:35-25-20. Annual reliability report

(a) **Date.** Each utility shall submit an annual reliability report to the Commission by March 1st of each year, beginning March 1, 2005.

(b) **Annual reliability report requirements.** The annual reliability report shall include the following:

(1) A description of all vegetation management it performed for the previous calendar year and the vegetation management it plans to perform for the current year.

(2) SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for the entire service territory and displayed in tabular form.

(3) SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for each of the utility's regions and displayed in tabular form.

(4) A detailed report for each major event that is not included in the calculation of the reliability indices. The major event report shall include the interruption cause or causes, date, regional location, percentages of customers without service in that region as a result of the event, the time or time frame in which service was lost to 10% or more of that region, the time the last customer's service was restored in that region, and any other details that the utility or the Commission believes will further justify the exclusion of the event from the calculations.

(5) A description of the program the utility has in place for analyzing and improving worst performing circuits and a summary of the results of the program for the reporting year.

(6) A description and map identifying the utility's service regions or operations divisions. Documentation and illustration of any changes in region boundaries as defined by the utility, and justification for such changes.

(7) For each utility with less than 100,000 customers, show the data used to calculate as well as the calculation of the rural adjusted minimum performance level.

(c) **Commission reservations.** The Commission reserves the right to request additional data if necessary.

(d) **Limitations to technology.** Utilities that do not have the technological capability to maintain and compile all such data, shall maintain and compile such data that it has available and utilizes to define and identify system reliability levels as well as outline progress towards attainment of additional technologies.

PART 5. UTILITY SCORECARD

165:35-25-24. Utility performance scorecard

(a) Using the data submitted pursuant to 165:35-25-20, the Commission shall annually prepare a scorecard for each utility covering the following areas:

(1) SAIFI;

(2) SAIDI;

(3) MAIFI (to the extent that this measure is utilized);

(4) Vegetation management; and

(5) Worst performing circuits.

(b) The scorecard shall be prepared such that the performance of utilities of differing sizes and number of customers can be directly compared.

(c) The Commission's utility performance scorecards will be published annually not later than May 1st.

[OAR Docket #04-1063; filed 5-26-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #04-1062]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:45-1-2. Definitions [AMENDED]
Subchapter 11. Customer Service
Part 1. Initiation of Service
165:45-11-4. Consumer information [AMENDED]
Subchapter 17. Competitive Bidding ~~of~~and Affiliate Transaction Rules for the provision of Natural Gas Services of Gas Supply, Gathering, Transmission and Storage of Natural Gas Utilities Upstream of the Citygate
165:45-17-2. Scope of Subchapter [NEW]
165:45-17-3. Application of Subchapter [AMENDED]
165:45-17-6. Exemption for corporate and shared services [NEW]
165:45-17-23. Standards of conduct between utilities and affiliate(s) [AMENDED]
165:45-17-24. Sales of services, products, assets between regulated and unregulated affiliates [NEW]
165:45-17-24.1. Financial transactions by utilities or their affiliate(s) [NEW]
165:45-17-27. Remedies and enforcement for ~~Violation~~violation of the standards of conduct [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
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None
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None
ANALYSIS:
OAC 165:45-1-2 is changed adding a definition for "Corporate Support Services" or "Shared Services" and "Subsidize."

OAC 165:45-11-4 is corrected for scrivener errors in the punctuation of a current rule. Subchapter 17 (OAC 165:45-17) of the current gas rules are amended, dealing with affiliate transactions between a gas utility and its affiliates.

OAC 165:45-17-2 is added to delineate the scope and intent of this Subchapter. Additional changes included the striking of the word "cross" in front of the word "subsidization" and the striking of the word "acquiring," replacing it with "being subjected to."

OAC 165:45-17-3(c) is amended to provide that to the extent any entity seeks to provide natural gas services, the Commission shall impose reasonable standards of conduct for the utility and its affiliate(s) to establish and preserve a fair process.

OAC 165:45-17-3(d) is added delineating information that will be required by the Commission for submission under this Subchapter. Additional changes were made to allow for records to be submitted in addition to work papers, as well as for "such other information that the Commission shall request."

OAC 165:45-17-6 is added to provide a potential exemption from the OCC asymmetrical pricing requirement standard where the utility can prove that it meets the criteria established in the OCC rules.

OAC 165:45-17-23(a)(3) is amended to add a "physical operational" exception for preferential treatment where system functioning may require such preferential treatment.

OAC 165:45-17-23(a)(4) regarding discounts, fee waivers and rebates is struck in its entirety, with all subsequent subsections of this section renumbered accordingly.

OAC 165:45-17-23(a)(6) regarding conditioning or tying of interstate pipeline capacity is struck in its entirety with all subsequent subsections of this section renumbered accordingly.

OAC 165:45-17-23(a)(7) struck limiting language.

OAC 165:45-17-23(a)(8) struck limiting language.

OAC 165:45-17-23(a)(11) is amended to clarify that the use of a common corporate or parent holding company name shall not be a violation of the Commission's promotional policies so long as the affiliated entities can be distinguished.

OAC 165:45-17-23(a)(12) regarding sharing of customer information with upstream affiliates is struck in its entirety and replaced with language that allows information sharing for the limited purposes of billing, collection and customer services.

OAC 165:45-17-23(a)(13) struck limiting language regarding third parties.

OAC 165:45-17-23(b) is struck in it entirety and moved to the remedies section under OAC 165:45-17-27.

OAC 165:45-17-24 is added to delineate arms length requirements, contemporaneous record keeping requirements, asset transfer valuations, sales of jurisdictional products or services, joint purchases, and tying prohibitions. Additional changes were made in (c) and (d) wherein the words "Commission authorized" were added before the words "competitive bidding," thereby assuring Commission consultation where a utility seeks exemption from asymmetrical pricing due to competitive bidding; also in (c) and (d) the word "are" was struck and replaced with "shall be" and the words "pursuant to" were added before "competitive bidding;" and in (d) "jurisdictional" was struck in front of the word "products" as such products relate to sales of products from an affiliate to a utility and the word "state" was added before the word "statute."

OAC 165:45-17-24.1 is added to delineate separate books/records and information requirements for financial transactions between utilities/their affiliates and also delineates credit, financing and investment limitations, as well as financing cost limitations between the entities - except on a case-by-case basis.

OAC 165:45-17-27 is amended to clarify, through additional language, violations and remedies that are applicable to the standards of conduct for both affiliate transactions and competitive bidding.
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

165:45-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct ~~a direction of~~ the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"Aggregation point" means any Commission approved interconnection point of more than one citygate at which gas can be aggregated for the purposes of supplying reliable and least cost natural gas services for more than one city or municipality.

"ANSI" means the American National Standards Institute, Inc.

"Attorney General" means the Oklahoma Attorney General.

"Business day" means Monday through Friday, excluding all legal holidays which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Citygate" means the interconnection point between the local distribution facilities which are located downstream of such interconnection point and the transmission lines and/or other facilities located upstream of such interconnection point at a point in time to be determined by the Commission during the unbundling plan hearing, or as otherwise ordered by the Commission.

"Citygate gas service(s)" means any one or more of the services of natural gas supply, gathering, storage or transmission of natural gas upstream of the citygate or other delivery point acquired by a gas utility at the citygate or other delivery point pursuant to the competitive bidding procedures in Subchapter 17 of this Chapter in order to provide natural gas service to end-users on its local distribution facilities.

"Competitive bid" means a response provided based on a public competitive bidding process.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means an oral or written communication by an interested party requesting an investigation or corrective action regarding the provision of natural gas services.

"Consumer" means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of natural gas service. Any reference to a "customer" or "end-user" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporate Support Services" or "Shared Services" are human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a gas utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

"Corporation Commission" means the Oklahoma Corporation Commission.

"Distribution main" means a distribution line that serves as a common source of supply to service lines.

"Distribution system" means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station which receives natural gas from a transmission system, gathering line, or other natural gas supply source for service to one or more consumers.

"Distribution" or "Distribution service" means the downstream transportation of natural gas services from the citygate to end-users through a utility's local distribution facilities unbundled from all citygate gas services, but generally bundled with any one or more of the services of billing, metering, customer service and similar services.

"Downstream (or "merchant" or "retail") service" means any one or more of the citygate(s) service(s) of natural gas supply, gathering, storage or transmission of natural gas marketed downstream by an entity at the retail or merchant level to end-users rather than through the competitive bidding process pursuant to Subchapter 17 of this Chapter, and which entity uses the local distribution facilities of a utility, rather than bypass for ultimate delivery of such downstream or merchant or retail service to the end-user.

"End-user" means any consumer receiving natural gas service of any nature.

"FERC" means the Federal Energy Regulatory Commission.

"Gas" means manufactured gas, natural gas, other hydrocarbon gas, or any mixture of gases produced, transmitted, distributed or furnished by a utility unless otherwise specifically designated.

"Gas supply source" means gas from the wellhead, any type of storage, processing plant, or other provider of gas.

"Gathering line" means a pipeline that transports gas from a production facility within a gathering system.

"Gathering system" means a pipeline system bringing gas from the wellhead to an aggregation point~~,~~ or transmission line or other gas handling facility.

"Gas utility" means natural gas utility as defined in this Chapter.

"Independent producer" means, for purposes of this Chapter only, any person who produces natural gas and is not engaged in marketing natural gas except for its own account or for other working interest owners in operated wells or who derives a majority of his or her oil or natural gas related income from working interests.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of natural gas services.

"Intrastate pipeline" means a common carrier transmission pipeline as defined in 52 O.S. § 24 and as applied in this Chapter.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Local distribution company" means the utility distributing natural gas, delivered to its citygate from a transmission pipeline or gathering system, to residential, commercial and industrial end-users over a local geographic area.

"Local distribution facilities" means facilities whose function is the local distribution of natural gas to residential, commercial and industrial consumers and which facilities are characterized by a system of pipes, meters, stations, valves and other equipment for distributing natural gas among consumers within a particular local community or in smaller diameter lines at lower pressures in contrast to movement in larger diameter lines at higher pressures characteristic of transmission, unless otherwise ordered by the Commission.

"Meter" means any device that measures the quantity of gas transferred from one party to another.

"Meter shop" means a shop used for the inspection, testing and repair of meters.

"Municipality" means an incorporated city or town in the State of Oklahoma.

"Natural gas services" means any of the services in the natural gas industry, including, but not limited to, local distribution, transmission, gathering, storage, and gas supply, and as specified in Subchapter 17 of this Chapter.

"Natural gas utility" means a natural gas utility as defined in 17 O.S. § 151 *et seq*., and that includes all utility affiliate assets which the Commission has determined to be included in ratebase.

"P.s.i.a." means pounds per square inch absolute.

"Pipe" means any tubing used in the gathering, transmission or distribution of gas which meets the specifications of the U.S. Department of Transportation (U.S.D.O.T.).

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where gas service is furnished to a consumer.

"Prudency review" means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"Public competitive bidding process" means a gas utility process to solicit from all entities offers to provide natural gas services upstream of the citygate as provided in Subchapter 17 of this Chapter.

"Regulator" means a device used to reduce the gas pressure.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Request for bid" means a gas utility's request for proposals to provide natural gas services at a Commission approved gas utility's designated citygate or aggregation point.

"Service line" means a line that branches off a distribution main or distribution line in order to transport gas from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

"Shipper" means any person, firm or corporation engaged in the intrastate or interstate transmission of natural gas for third parties.

"Special contract" means a written Commission-approved agreement between a utility and a consumer for the provision of gas service on terms and conditions which are different from those authorized by a tariff.

"Storage" means an underground natural or man-made facility used to store natural gas for extended periods of time.

"Stranded costs" mean those prudent and verifiable costs and investments incurred by a natural gas utility, which were "used and useful" to meet the needs of its end-users, including but not limited to, its upstream capacity and supply commitments that cannot be avoided or mitigated or recovered from end-users under an existing tariff which have been caused as a result of the restructuring of the natural gas industry which were incurred prior to ~~February 18, 1997~~February 19, 1997, the date of issuance of Commission Order No. 409563, which closed the Notice of Inquiry, Cause No. PUD 960000133, and which ordered the promulgation of rules to restructure the natural gas service industry, such date being the date the gas utilities were placed on notice of the Commission's intent to restructure natural gas utility service(s). Prior to or during the utilities' stranded cost hearing, this date may be modified by order of the Commission, after notice and hearing. Stranded costs may include prudent and verifiable transition costs.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme or plan of advertising.

"Subsidize" means to furnish financial support by the utility to the affiliate.

"Tariff" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing gas service filed with the Commission and approved by the Director of the Public Utility Division.

"Therm" means 100,000 British thermal units of heat.

"Transition costs" mean those prudent and verifiable costs and investments incurred by a public gas utility after February 18, 1997, in implementing the Commission's gas utility restructuring rules and to restructure its facilities, contracts and operation. Such costs as determined by the Commission may include education for the public related to the natural gas industry restructuring.

"Transmission or transmission service" means the upstream transportation of natural gas through pipelines and/or other facilities from a well-head, gathering line or other receipt

point to a local distribution facilities or an end-user located on the transmission pipeline.

"Transmission pipeline" means a pipeline, either a gas utility owned transmission line or an intrastate pipeline, other than a gathering system that transports gas from a gathering system, interstate pipeline or storage facility to a citygate, aggregation point, storage facility or other delivery point.

"Unbundling" means the identification and separation of natural gas services and/or products and the associated costs to provide each such service and/or product which have been part of the "bundled" complement of services provided by a public gas utility.

"Unbundling plan" means a public utility's proposal(s) to separate its previously bundled services offered upstream of the citygate and to price these services individually.

"Uniform System of Accounts (USOA)" means the system of accounts as currently prescribed the Federal Energy Regulatory Commission (FERC), those accounting systems as published by the National Association of Regulatory Utility Commissioners (NARUC) or other accounting methods approved by the Commission.

"Upstream of the Citygate" means all natural gas services provided at the gas utility's citygate or other point of delivery to local distribution facilities which are necessary to serve end-users.

"Upstream related entity" means an affiliate of a gas utility or that portion of a gas utility which provides citygate gas services.

"U.S.D.O.T." means the United States Department of Transportation.

"Utility" a natural gas utility as defined in this Chapter.

SUBCHAPTER 11. CUSTOMER SERVICE

PART 1. INITIATION OF SERVICE

165:45-11-4. Consumer information

(a) Each utility shall:

(1) Maintain maps, plans or records of its transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective consumers and others entitled to the information as to the services available in any locality; and,

(2) Annually, transmit to each of its nonresidential consumers a statement that the rate tariff on which they are served is available upon request. Additionally, the consumer shall be advised that the utility company, upon request, will review the consumer's applicable rate tariff to determine if the consumer is receiving the rate tariff that is best suited to the consumer.

(b) The utility shall advise its residential consumers through its consumer mailing, no less than once a year, of the Commission rules regarding the following:

(1) Disconnection information which states the rights listed in the "Disconnect Notice," as outlined in OAC 165:45-11-16 *et. seq*.

(2) Commission-approved deferred payment plans;

(3) Twenty (20) day government and/or private financial aid assistance deferral;

(4) Life Threatening Certificate and consumer responsibilities;

(5) Elderly/Consumers with Disabilities Notification;

(6) Average Monthly payment plans;

(7) The address and telephone number of the Commission's Consumer Services Division; ~~and,~~

(8) The limitations for disconnection, including days or periods of time when service shall not be disconnected as outlined below in OAC 165:45-11-14(c)~~.~~; and

(9) The availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:45-11-12.

(c) The mailing required by paragraph (b) of this Section, shall occur during the months of September and/or October of each year.

(d) The utility shall provide the location of pay agents upon the consumer's request.

(e) The utilities are strongly encouraged to have bilingual customer service personnel available to assist non-English speaking consumers regarding disconnection and related matters.

SUBCHAPTER 17. COMPETITIVE BIDDING ~~OF~~ AND AFFILIATE TRANSACTION RULES FOR THE PROVISION OF NATURAL GAS SERVICES OF GAS SUPPLY, GATHERING, TRANSMISSION AND STORAGE OF NATURAL GAS UTILITIES UPSTREAM OF THE CITYGATE

165:45-17-2. Scope of Subchapter

(a) The competitive bidding, affiliate transactions and financial transactions rules (such as stock, bond, derivatives, and any financing instrument issuance) are promulgated to establish enforcement, reporting and monitoring provisions of utilities regarding these transactions.

(b) The intention of this Subchapter includes [but is not limited to]:

(1) The establishment of standards for transactions between utilities and their affiliates for purposes of determining fair, just and reasonable rates and charges;

(2) The prevention of subsidization of an affiliate by a utility;

(3) The support of fair and clear cost allocations; and

(4) The protection of customers of a utility from being subjected to any unreasonable financial obligations or costs of an affiliate.

165:45-17-3. Application of Subchapter

(a) This Subchapter is applicable to all natural gas utilities operating within the State of Oklahoma.

(b) All services rendered by natural gas utilities shall remain subject to Commission rate regulation pursuant to this Subchapter until or unless the Commission, after notice and

hearing, makes an affirmative determination that rate regulation as to a customer, citygate, or aggregation point of natural gas service at a particular location is no longer required and further makes a finding that effective competition exists upstream of each citygate for each individual service. Accordingly, there shall be no presumption of effective competition upstream of any citygate for any service prior to a Commission order reflecting the same.

(c) To the extent that any entity seeks to competitively bid to provide the natural gas services of gas supply, gathering, transmission and storage to natural gas utilities upstream of the citygate, the Commission shall impose reasonable standards of conduct to establish and preserve a fair competitive bid process.

(d) **Required Information.** Upon request by the Commission, affiliate information shall be provided pursuant to this Subchapter and shall contain records and work papers which provide, at a minimum, the following information and such other information that the Commission shall request:

(1) Consolidated Companies and Subsidiaries Balance Sheet.

(2) Income Statements.

(3) Cost Allocation Basis, if applicable.

(4) Affiliate/Subsidiary General Data: Narrative(s) providing:

(A) The date of establishment of each affiliate and/or subsidiary;

(B) A statement of each affiliate and/or subsidiary's core businesses;

(C) The utility company resources used in establishment of each affiliate and/or subsidiary; and

(D) The utility company resources currently being used by each affiliate and/or subsidiary, either directly or indirectly.

(5) Affiliate/Subsidiary Contracts: Copies of any and all contracts with affiliates and/or subsidiaries.

(6) Assets Sold/Transferred to Affiliates/Subsidiaries: A listing, by asset category and net book value, of assets sold or transferred to any affiliate and/or subsidiary since the utility's last rate case.

(7) Services/Products from Affiliates/Subsidiaries: A listing and description of the services and/or products (and related costs) provided by each affiliated and/or subsidiary company to the utility for the required period.

(8) Services/Products to Affiliates/Subsidiaries: A listing of any significant utility company facilities and/or resources, whether plant, other assets or personnel that were used during the required period, by each affiliate and/or subsidiary. The cost of the resources shall be indicated.

(9) Cost of Debt or Financing: A listing of debt instruments bearing any cost of financing transactions, in part or in full, or any debt, equity, trading activity, or derivative which has a direct or indirect financial or cost impact upon the utility.

165:45-17-6. Exemption for corporate and shared services

Corporate and support services are exempt from asymmetrical pricing, to the extent that the affiliate information requirements in Chapter 70 and 165:45-17-3 (d) are satisfied.

165:45-17-23. Standards of conduct between utilities and affiliate(s)

~~(a)~~ Natural gas utilities upstream of the citygate, including those utilities which have customers subject to pipeline tariff agreements downstream of the citygate or aggregation point, must conduct their business to conform to the following standards:

(1) Natural gas utilities must apply any tariff provision in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

(2) Natural gas utilities must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

(3) Except as necessary for physical operational reasons, ~~Natural~~natural gas utilities may not, through a tariff provision or otherwise, give their affiliates or knowingly give customers of their affiliates preference over ~~non-affiliated gas suppliers,~~ shippers or other utility customers in matters relating to any service offered to shippers including, but not limited to~~,~~: scheduling, balancing, metering, storage, standby service or curtailment policy.

~~(4) If a natural gas utility offers its affiliate, or a customer of its affiliate, a discount, rebate or fee waiver for any service offered to shippers, it must contemporaneously offer the same discount, rebate or fee waiver to all similarly situated non-affiliated shippers or customers and must file with the Commission procedures that will enable the Commission to determine how the natural gas utility is complying with this standard.~~

(~~5~~4) Unless such disclosure is simultaneously made public, natural gas utilities shall not disclose to their affiliates any information which they receive from, a non-affiliated customer, shipper or supplier, a potential customer, shipper or supplier, any agent of such customer, or potential customer, or shipper, or supplier, or a marketer or other entity seeking to supply gas to a customer or potential customer.

~~(6) Natural gas utilities shall not disclose, condition or tie their agreements to release interstate pipeline capacity to any agreement by a gas supplier, customer or other third party relating to any service in which their marketing affiliates are involved.~~

(~~7~~5) ~~To the maximum extent practicable, a~~ A natural gas utility's operating employees and the operating employees of its marketing affiliate must function independently of each other, and shall be employed by separate corporate entities~~, and reside in separate offices~~ to the maximum extent practicable.

(~~8~~6) Natural gas utilities and their ~~marketing~~ affiliates shall keep separate books of accounts and records.

(~~9~~7) Natural gas utilities shall establish a complaint procedure. In the event the natural gas utility and the complainant are unable to resolve a complaint, the complainant may address the complaint to the Commission.

~~(10)~~(8)With respect to any transaction or agreement relating in any way to gas sales, supply, transmission, storage, distribution or marketing, a natural gas utility shall conduct all such transactions with any of its affiliates on an arm's length basis.

~~(11)~~(9)The Commission shall resolve affiliate transaction disputes or abuses on a case-by-case basis. Any aggrieved party may file a complaint with the Commission alleging the particulars giving rise to the alleged dispute or abuse. The Commission shall consider at a minimum the following issues when hearing a complaint:

(A) Whether or not the information or data furnished to the affiliate was generally available to other market participants.

(B) Whether or not the natural gas utility conducted business in such a manner that actual or expected expenses were shifted from the non-regulated subsidiary to the regulated entity.

(C) Whether or not the natural gas utility conducted business in such a manner that actual or expected revenues were shifted from the regulated entity to the non-regulated entity.

(D) Whether or not the regulated entity offered terms, condition or rates for the provision of natural gas services to the affiliate that it refused to ~~offer~~ provide to ~~providers of natural gas services~~ other customers or whether such ~~offer~~ provision resulted in the affiliate having an unfair advantage.

(~~12~~10) Natural gas utilities must process all similar requests for natural gas services in the same manner and within the same period of time.

(~~13~~11) Natural gas utilities shall not provide leads to upstream ~~marketing~~ affiliates and shall refrain from giving any appearance that the natural gas utility speaks on behalf of its affiliate(s). Nor shall the affiliate trade upon, promote or advertise its affiliation or suggest that it receives preferential treatment as a result of its affiliation. The use of a common corporate or parent holding company name shall not be a violation of this provision so long as the regulated utility and the affiliate entities can be distinguished.

(~~14~~12) ~~Utilities, except upon order of the Commission, shall not share their customer list or related customer information with upstream affiliates.~~ Natural gas utilities, except for billing and collection services and customer service, or by order of the Commission, shall not share their customer list or related customer information with affiliates unless the information is simultaneously shared with non-affiliate entities.

~~(15)~~(13)The natural gas utility shall not communicate with any ~~supplier,~~ third party ~~or industrial or commercial customer~~ that any advantage may accrue to such ~~supplier,~~ third party ~~or industrial or commercial customer~~ in the use of the natural gas utility's upstream services as a result of that ~~supplier,~~ third party ~~or industrial or commercial customer~~ dealing with the upstream ~~marketing~~ natural gas utility's affiliates unless the information is simultaneously shared with non-affiliated entities.

~~(b) If the Commission determines, after investigation and an evidentiary hearing, that the natural gas utility engaged in transactions with any affiliate wherein the affiliate obtained an unfair competitive advantage with respect to any non-affiliated entity in the marketplace, the Commission shall assess a fine against the utility for contempt and may order such further action as set forth in OAC 165:45-1-6 as may be fair, just and reasonable under the circumstances of the proceeding.~~

165:45-17-24. Sales of services, products, assets between regulated and unregulated affiliates

(a) **Transactions between a utility and its affiliates.** A utility shall not cross-subsidize the business activities of any affiliate with revenues from a regulated service. A utility cannot recover more than its reasonable fair share of the fully allocated costs for any transaction or shared services.

(b) **Contemporaneous record requirement.** A utility shall maintain a contemporaneous written record of all individual transactions with a value equal to or over one million dollars with its affiliates, excluding those involving shared services or corporate support services, those transactions governed by tariffs or special contracts and daily scheduling of gas supply. Such records, which shall include at a minimum, the date of the transaction, name of affiliate(s) involved, name of a utility employee knowledgeable about the transaction, and a detailed description of the transaction with appropriate support documentation for review purposes, shall be maintained by the utility for three years.

(c) **Transfers of assets.** Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract, or as otherwise ordered by the Commission; cost recovery for property transferred from a utility to its affiliate shall be priced at the "higher of cost or fair market value." Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; asset valuation and transfers of property transferred from an affiliate to its utility shall be priced at the "lower of cost or fair market value." No matter the origin of the transaction, all transfers between a utility and an affiliate will be individually scrutinized by the Commission on a case-by-case basis.

(d) **Sale of products or services.** Except as otherwise required by federal or state statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of products and services provided from the affiliate to the utility shall be priced at the "lower of cost or fair market value." Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of jurisdictional products and services provided from the utility to the affiliate shall be priced at the "higher of cost or fair market value."

(e) **Joint purchases.** A utility may make a joint purchase with its affiliates of goods and services involving goods and/or services necessary for utility operations. The utility must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility's and the affiliate's allocations of such purchases.

(f) **Tying arrangements prohibited.** Unless otherwise allowed by the Commission through a rule, order or tariff, a utility shall not condition the provision of any product, service, pricing benefit, waivers or alternative terms or conditions upon the purchase of any other good or service from the utility's affiliate.

165:45-17-24.1. Financial transactions by utilities or their affiliate(s)

(a) **Financial transactions.** Financial transactions include, but are not limited to, stock, bond, derivatives, and any financing instrument issuance as well any debt, equity, derivative or related transaction.

(b) **Separate books and records.** A utility shall keep separate books of accounts and records from its affiliates. The Commission may review records relating to any transaction between a utility and an affiliate to ensure compliance with this Subchapter including the records of both the utility and the affiliate relating to that transaction.

(1) In accordance with generally accepted accounting principles, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(2) A utility shall prepare non-GAAP financial statements that are not consolidated with those of its affiliates.

(3) A utility shall have a cost allocation manual or upon Commission request, be able to provide its cost allocation methodology in written form with supporting documentation. Such records shall reflect the transaction and the allocated costs, with supporting documentation, to justify the valuation.

(c) **Limited credit, investment or financing support by a utility.** A utility may share credit, investment, or financing arrangements with its affiliates if it complies with paragraphs (1) and (2) of this Subsection.

(1) The utility shall implement adequate safeguards precluding employees of an affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create opportunities for subsidization of affiliates.

(2) Where an affiliate obtains credit under any arrangement that would include a pledge of any assets in the rate base of the utility or a pledge of cash necessary for utility operations the transactions shall be reviewed by the Commission on a case-by-case basis.

(d) **Cost of financing transactions of any affiliate.** The cost of any financial transactions, in part or in full, or any debt, equity, trading activity, or derivative, of any parent company, holding company or any affiliate, which has a direct or indirect financial or cost impact upon the utility shall be reviewed by the Commission on a case-by-case basis.

165:45-17-27. Remedies and enforcement for ~~Violation~~violation of the standards of conduct

(a) Pursuant to OAC 165:45-17-29 below, a complaint may be brought to the Commission at any time. The Commission encourages informal resolutions. Whenever a controversy does exist in connection with the interpretation of this Subchapter, the applicability of the requirements set forth herein, or any right or duty imposed thereby; the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

(b) Each ~~transaction in~~ violation of ~~OAC 165:45-17-23 and/or OAC 165:45-17-25~~ this Subchapter shall be considered to be a separate occurrence.

(c) If the Commission determines, after investigation and an evidentiary hearing, that the natural gas utility has violated these affiliate rules, the Commission may assess a fine against the utility as set forth in OAC 165:45-1-6; for contempt and may order such further action as may be fair, just and reasonable under the circumstances of the proceeding.

(~~b~~d) The Commission may act upon any violation of ~~the~~ these standards ~~of conduct~~ including but not limited to the following:

~~(1) Termination of any transaction that violates these regulations;~~

(~~2~~1) Prospective limitation or restriction of the amount, percentage or value of transactions entered into between a utility and any entity that seeks to competitively bid to supply the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate;

(~~3~~2) ~~Prohibition of the utility's competitive bidder affiliate(s) from participation in further~~ Denial of recovery of costs - all or in part - for business transactions between ~~with~~ the utility and the affiliate; or

(~~4~~3) Application of any other remedy available to the Commission, including financial penalties.

(e) **No immunity from state law.** Nothing in this subchapter shall relieve any utility from any duty prescribed by the laws of the State of Oklahoma.

[OAR Docket #04-1062; filed 5-26-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #04-1061]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
165:55-1-4. Definitions [AMENDED]
Subchapter 3. Certificates, Reports, and Records
Part 1. Certificates of Convenience and Necessity
165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
Subchapter 5. Rates and Tariffs

Part 3. Approval and Notice Requirements
165:55-5-10. Tariff approval and revisions to tariffs [AMENDED]
165:55-5-10.1. Competitive services [AMENDED]
165:55-5-11. Type of notices [AMENDED]
Part 7. Miscellaneous Tariff Requirements
165:55-5-34. Data and information on proposed tariff revisions [AMENDED]
Subchapter 9. Customer Billing and Deposits
Part 1. Billing and Payment Requirements
165:55-9-3. Due date and penalty [AMENDED]
Subchapter 13. Operating and Maintenance Requirements
Part 3. Service Standards
165:55-13-12. Extension of facilities [AMENDED]
Subchapter 19. Unlawful Practices
Part 1. Slamming
165:55-19-1.7. Preferred carrier freezes [AMENDED]
Subchapter 23. Wireless Eligible Telecommunications Carrier [NEW]
Part 1. General Provisions [NEW]
165:55-23-1. Requirements [NEW]
165:55-23-2. [RESERVED]
165:55-23-3. Records to be provided to the Commission [NEW]
165:55-23-4. [RESERVED]
165:55-23-5. Emergency service reporting requirements [NEW]
165:55-23-6. [RESERVED]
165:55-23-7. Content of bills [NEW]
165:55-23-8. [RESERVED]
165:55-23-9. Billing disputes [NEW]
165:55-23-10. [RESERVED]
165:55-23-11. Minimum service standards [NEW]
165:55-23-12. [RESERVED]
165:55-23-13. Extension of facilities [NEW]
165:55-23-14. [RESERVED]
165:55-23-15. Lifeline program [NEW]
165:55-23-16. [RESERVED]
165:55-23-17. Link-up program [NEW]
165:55-23-18. [RESERVED]
165:55-23-19. Responsibility for adequate and safe service [NEW]
165:55-23-20. [RESERVED]
165:55-23-21. Emergencies [NEW]
165:55-23-22. [RESERVED]
165:55-23-23. Response to customer complaint inquiries [NEW]
Part 3. Transmission Objections [NEW]
165:55-23-50. Service standards; sufficient operating and maintenance force [NEW]
165:55-23-51. [RESERVED]
165:55-23-52. Records of trouble reports [NEW]
165:55-23-53. [RESERVED]
165:55-23-54. Notice of service interruptions [NEW]
165:55-23-55. [RESERVED]
165:55-23-56. Restoration of service plan [NEW]
165:55-23-57. [RESERVED]
165:55-23-58. Customer choice [NEW]
Appendix A. Telecommunications Complaint Report Form [REVOKED]
Appendix A. Telecommunications Complaint Report Form [NEW]
Appendix C. Wireless ETC Customer Complaint Codes [NEW]

AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution

DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
OAC 165:55-1-4 initially proposed to add definitions for: commercial building, developer, multi-dwelling residence, single-family residence, real estate development, and initial universal service line facility. As a result of the hearing, five of the proposed definitions were deleted from consideration and the definition of Supported Services was proposed and adopted. In OAC 165:55-3-1 language is adopted to streamline the Commission's procedure for gathering information. Applicants seeking to expand service offerings under an existing Certificate of Convenience and Necessity ("CCN") will be permitted to rely on previously submitted information or updated information. Applicants will submit a written affirmation that such previously submitted information is true. Applicants may move for a determination that certain publication requirements have been met. This change would not apply to an applicant seeking to expand its service territory.

In OAC 165:55-3-1 language is adopted that removes an existing requirement that applicants for a CCN mail notice of the application to other certificated telecommunication service providers ("TSP") in a particular service area. This change adds a requirement that applicants provide an electronic copy of the notice to the Director of the Public Utility Division ("Director") for publication on the Commission's website.

In OAC 165:55-5-10 language is adopted that makes a determination that interexchange services provided by interexchange carriers ("IXC") are competitive. Interexchange tariff revisions will become effective without Commission order. Depending on the interexchange service, tariff revisions will be effective on the same day revised tariff sheets are delivered to the Director, thirty (30) days later, or some date specified in the revised tariff sheets. This change removes existing language that permits the Commission to suspend interexchange tariff revisions pursuant to OAC 165:55-5-13. The adoption of this language also resulted in adoption of the deletion of references to OAC 165:55-5-10.1(a) from the rule.

In OAC 165:55-5-10 language was adopted to provide for a shorter time period for an amended application for tariff revisions to become effective.

OAC 165:55-5-10.1 was amended to delete the services of IXCs from the process for determining that services are competitive. This change is consistent with the changes proposed to OAC 165:55-5-13.

OAC 165:55-5-10.5 and OAC 165:55-5-10.6 were proposed new rules regarding winback and retention offerings which would have provided specific penalties that may be assessed by a TSP or IXC against an end-user for the customer's cancellation or termination of a term contract, respectfully. The Commission did not adopt either of these rules.

In OAC 165:55-5-11 new language was adopted to require that restrictions on "non-voice" minutes be identified in the provider's tariff and that end-users be notified in writing of the restriction. New subsection (f) provides language specifying what information must be included in the written notice directed to end-users from the TSP. New section (g) indicates that failure to properly provide notice may result in suspension of the tariff revision or new service offering.

In OAC 165:55-5-34 language was adopted to require that TSPs deliver to the Commission's Public Utility Division and Office of the Attorney General a copy of the notice to end-users which places restrictions on "non-voice" minutes.

In OAC 165:55-9-3 language was adopted to define the maximum late payment charge that a TSP may assess against an end-user for an unpaid balance. The maximum late payment charge specified is 1.5% of the unpaid balance, unless otherwise approved.

In OAC 165:55-13-12 and OAC 165:55-13-12.1 language was proposed to deal with carrier of last resort ("COLR") issues. This proposed language was later deleted. The new language adopted in OAC 165:55-13-12 allows for the COLR, if denied access to a premise or property, to make a request for a waiver of the rules if the costs associated with the fulfillment of the COLR obligations are deemed excessive by the COLR.

In OAC 165:55-19-1.7 language was adopted to specify that Incumbent Local Exchange Companies ("ILEC") are prohibited from placing a preferred

carrier freeze on local exchange service and they must remove certain electronic markers placed on end-user accounts by September 1, 2004.

OAC 165:55, SUBCHAPTER 23. WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER SERVICE STANDARDS is a new subchapter. Language was adopted that sets forth standards to be followed by wireless providers who are granted status as an Eligible Telecommunications Carrier ("ETC"). These standards list service requirements for the wireless carriers and identify their responsibilities to their federal or state subsidized customers. Further, this new Subchapter will allow for these provisions to be consistently enforced for all wireless ETCs.

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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

165:55-1-4. Definitions

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

"Access line" means the facility provided and maintained by a telecommunications service provider which permits access to and/or from the public switched network.

"Access service" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"Applicant for telecommunications service" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

"Authorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Base rate area" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"Basic local service" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"Billing agent" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"Billing and collection service" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or **"Channel"** means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or **"Customer class"** means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

"Commission" means the Oklahoma Corporation Commission.

"Competitive Local Exchange Carrier" ("competitive LEC") means, with respect to an area or exchange(s), a telecommunications service provider that is certificated by the Commission to provide local exchange services in such area or exchange(s) within the State of Oklahoma after July 1, 1995.

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

"Competitively neutral" means not advantaging or favoring one person over another.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives

regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible telecommunications carrier" ("ETC") means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29 and 47 U.S.C. §§ 254 and 214(e).

"End-user" means the customer to whom a telephone number is assigned.

"Enhanced service" means a service that is delivered over communications transmission facilities that: (1) change the content, format, code or protocol of transmitted information; (2) provide the customer new or restructured information; or (3) involve end-user interaction with information stored in a computer.

"Exchange" means a geographic area established by an incumbent LEC as filed with and/or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs. It may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

"Executing carrier" means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"Facilities" means all the plant and equipment of a telecommunications service provider including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Five Year Period" means the initial five (5) year period, commencing the date of an ILEC's notification of its election into the Oklahoma Plan.

"Incumbent Local Exchange Company" ("incumbent LEC") means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Oklahoma on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"ILEC" means an Incumbent Local Exchange Company.

"Individual Case Basis" ("ICB") means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"Interexchange telecommunications carrier" ("IXC") means any person, firm, partnership, corporation, or other entity, except incumbent LECs, resellers, or OSPs engaged in furnishing regulated interexchange telecommunications services under the jurisdiction of the Commission.

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's

telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company.

"Local Exchange Service" means a switched and/or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. §251), as amended, the Federal Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

"Near reservation" means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner of Indian Affairs upon recommendation of the local Indian Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner of Indian Affairs shall designate each area and publish the designations in the Federal Register.

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing tariff, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any services offered from FCC tariffs such as interstate service offerings, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services not contained in tariffs approved by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

"Oklahoma Plan" means an alternative regulation plan which conforms to Part 11 of Subchapter 5 of this Chapter.

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

"Rates" means all tariffed charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Reservation" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established

pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end-user. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Supported Services" means services identified in 47 CFR part 54, OAC 165:55-13-10 or OAC 165:59, as amended from time to time, for which a wireless ETC receives support from the federal USF, OUSF or OLF, or as otherwise may be ordered by the Commission.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company, L.P. d/b/a SBC Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications" means the transmission, between or among points specified by the user of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications carrier or Company" means a telecommunications service provider ("TSP") or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" ("TSP") means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or **"Company"** means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Transitional commitments" means the commitments made by an ILEC in the State of Oklahoma pursuant to Part 9 or Part 11 of Subchapter 5 of this Chapter.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" ("UNE") means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

"Wire Center" means a geographic area normally served by a central office.

"Zone" means a service territory described as such by an incumbent LEC.

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

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

(a) **Requirement for Certificate of Convenience and Necessity.** No telecommunications service provider or IXC shall furnish telecommunications service to any end-user in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Application for Certificate of Convenience and Necessity.** An application for a certificate to provide service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and eight (8) copies of the application for Certificates of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(c) **Application requirements for Certificate of Convenience and Necessity.** Every telecommunications service provider or IXC making application to the Commission for a Certificate of Convenience and Necessity to provide telecommunications services in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma. An application for a Certificate of Convenience and Necessity shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant.

(1) The application shall contain the following information:

(A) The complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. (1991) § 1140, corporate or other headquarters street address and names/addresses of principal or corporate officers of the entity proposing to sell telecommunications service to the public in the State of Oklahoma. The telephone number and, if applicable, the toll-free number will also be included.

(B) If different from those provided pursuant to subparagraph (1)(A) of this Section, the names and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(C) A written affirmation, signed before a Notary Public by someone with authority to bind the corporation or entity, containing the following statements:

(i) That the information contained in the application is true and correct;

(ii) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission;

(iii) That for each area or exchange(s) an applicant proposes to serve, the applicant agrees to offer the provisioning of service to all end-users within that area or exchange(s) on a nondiscriminatory basis;

(iv) That the applicant understands the Commission's contempt authority;

(v) That the applicant will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the applicant will comply with the provisions of 165:55-13-10.1 and will include a statement to this effect in its tariffs;

(vii) That the applicant either provides only data service, or that prior to commencing to provide local exchange service the applicant will comply with the requirements of 17 O.S. § 131 and will collect and disburse the 9-1-1 fee as required by 63 O.S. § 2814. Such affirmation should also include a statement that applicant will provide proof to the Commission of such compliance within 30 days following Applicant's initial provisioning of local service;

(viii) That the applicant understands that before it ceases, discontinues, or curtails operations and/or service, it must file with the Commission and provide each affected customer, in the manner required by the Commission, notice of the intended action, and must also provide notice to any 911 Database Management Service Provider, pursuant to OAC 165:55-15-5;

(ix) A statement that the applicant is not currently under investigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation, if that is the case;

(x) A statement that the applicant has not been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation or any consumer protection law or regulation, if that is the case; and

(xi) If either of the statements required in (ix) and (x) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(2) The attachments to the application shall include the following:

(A) Copies of the applicable Articles of Incorporation, and/or partnership agreement, and/or Joint Venture agreement and, where they exist, by-laws of

the applicant for a Certificate of Convenience and Necessity and any entity owning a whole or controlling interest in the applicant for a Certificate of Convenience and Necessity.

(B) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma.

(C) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name utilized by the telecommunications service provider or IXC, i.e. a "d/b/a".

(D) Proof that the third-party surety bond, surety bond or letter of credit required in subsection (f) of this Section has been obtained, if applicable.

(E) Documentation indicating the applicant's organizational structure and ownership such as:

(i) For corporations, partnerships and/or joint ventures, the applicant's stockholders annual reports and SEC 10Ks for the last three (3) years, if applicable, or, if the company is not publicly traded, its financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(ii) A sole proprietor shall provide financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(F) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(G) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(H) The name, address and toll-free telephone number that an end-user may contact concerning repairs and maintenance, complaints, billing questions, refunds and any other customer service-related inquiries.

(I) The contact name, address and telephone number of the individual with overall responsibility for repairs and maintenance, complaints, billing questions, refunds, and any other customer service-related inquiries. This will be the principal contact for the Commission's Consumer Services Division regarding complaints involving the telecommunications service provider.

(J) The contact name, address and telephone number of the principal contact to be utilized by the Commission's Public Utility Division regarding any questions which are not related to customer service.

(K) A list of all other states, if any, where:

(i) The applicant is authorized to operate;

(ii) Authorization to operate is pending;

(iii) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,

(iv) Authorization has been revoked, with a certified copy of the revocation document attached.

(L) A complete set of proposed initial tariffs which include the terms and conditions of service and all rates and charges for each service classification in a format consistent with Subchapter 5 of this Chapter or a statement that the applicant will file tariffs pursuant to OAC 165:55-3-3.

(M) A description of the applicant's proposed service territory.

(N) A description of the deposit, if the applicant intends to collect deposits, and disconnection rules to be applied to end-users by the applicant, all of which shall conform to Subchapters 9 and 11 of this Chapter.

(O) A statement setting forth the accounting system to be utilized by the applicant (the FCC-approved Uniform System of Accounts or another accounting system) and a Chart of Accounts.

(P) A listing of the complete name(s), including any trade name(s), corporate or primary headquarters street address(es) and names/addresses of principal officers of any affiliates and/or subsidiaries providing telecommunications and/or other services to the entity making the application proposing to sell the requested telecommunications service to the public in the State of Oklahoma, unless otherwise ordered by the Commission.

(Q) A copy of the applicant's proposed complaints report form which is consistent with OAC 165:55-3-23. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix A and Appendix B, respectively, to this Chapter.

(R) A copy of the applicant's proposed letter of authorization to be used by the telecommunications service provider to obtain written authorization from an end-user to switch telecommunications service providers or a copy of the text of the proposed script of the verification, which must be approved by the Director of the Public Utility Division, consistent with OAC 165:55-19-1.

(S) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) The final contract(s), if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such contract(s) become available. Protective relief may be sought pursuant to 51 O.S.§ 24A.22.

(d) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:55-3-1(c) and 165:55-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an application shall be filed pursuant to OAC 165:55-17-3.

~~(d) Notice requirements.~~ (e) **Notice requirements of CCN applications.** Applicants for a Certificate of Convenience and Necessity shall provide Notice of the Application to be given by mail or personal service to the Attorney General of the State of Oklahoma.~~and to any telecommunications service provider possessing a Certificate of Convenience and Necessity applicable to the area sought to be served by the applicant.~~ In addition, at the time the Application is filed, the Applicant shall provide an electronic copy of Notice of the Application, to the Director of the Public Utility Division for posting on the OCC website. The Director of the Public Utility Division will then place the Notice on the OCC website within five (5) business days.

(~~e~~f) **Approval requirement.** The Commission shall approve or deny such application within one hundred twenty (120) days of the date the application is filed. No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing.

(~~f~~g) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To insure the protection of the applicant's end-users, the applicant, that intends to collect deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars ($1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

(~~g~~h) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

SUBCHAPTER 5. RATES AND TARIFFS

PART 3. APPROVAL AND NOTICE REQUIREMENTS

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

(a) Unless provided otherwise in this Chapter or provided by the laws of the State of Oklahoma, no tariff, or amendment thereto, which would change rates and charges for any regulated non-competitive service, or establish new rates for regulated non-competitive service not previously offered, shall be effective, except by order of the Commission after such notice and hearing, if any, as directed by the Commission.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) The interexchange services provided by IXCs are determined to be competitive. Revisions to the ~~noncompetitive~~terms and conditions of interexchange service(s) tariffs of IXCs shall become effective, without Commission order~~,~~ thirty (30) days ~~after the date of filing said revisions, unless the Commission orders suspension of said tariff revisions pursuant to OAC 165:55-5-13~~after the IXC provider has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division. With the exception of local directory assistance and local operator services, revisions to interLATA and intraLATA directory assistance and operator services of IXCs and telecommunications service providers shall become effective, without Commission order, on the date specified on the revised tariff sheets, after the IXC or telecommunications service provider has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division. The effective date shall be no

earlier than ~~the date~~ thirty (30) days after the revised tariff pages are delivered to the Public Utility Division.

(2) Revisions to the price components of competitive service(s), as such service(s) are determined competitive by the Commission ~~pursuant to OAC 165:55-5-10.1(a),~~ shall become effective after three (3) copies of the revised tariff pages have been provided to the Director of the Public Utility Division. The effective date of the tariff revision shall be stated on the face of the revised tariff page(s), which may be dated no earlier than the date provided to the Director of the Public Utility Division.

(3) Revisions to tariffs for any competitive service, which contain a combination of price and nonprice components shall become effective pursuant to OAC 165:55-5-10.1(f).

(4) Decreases to the tariff rates of a telecommunication service provider, other than for basic local exchange service, switched access service or toll, shall become effective, without Commission order, thirty (30) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(5) Revisions to the toll service tariffs of telecommunications service providers shall become effective, without Commission order, thirty (30) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(6) The filing of new service offering(s) of telecommunications service providers shall become effective, without Commission order, forty-five (45) days after the date of filing said new service offering(s), unless the Commission orders suspension of said tariff(s) pursuant to OAC 165:55-5-13.

(7) Increases to the noncompetitive tariff rates of telecommunications service providers, other than for basic local exchange service, switched access service, or toll service, shall become effective, without Commission order, sixty (60) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revision(s) pursuant to OAC 165:55-5-13.

(8) Any revision or addition to noncompetitive nonprice terms and conditions of a telecommunications service provider shall become effective, without Commission order sixty (60) days after the date of filing such new or revised terms and conditions, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(9) Any tariffed service, utilizing ICB pricing, or amendment thereto, shall become effective without Commission order according to the terms of the agreement with the customer and/or the provider's tariffs.

(10) New service offerings, by companies whose services have been deemed competitive by the Commission ~~pursuant to OAC 165:55-5-10.1(a),~~ shall become effective after three (3) copies of the tariff page(s) have been provided to the Director of the Public Utility Division. The effective date of the tariff revision shall be stated on the face of the revised tariff page(s) and may be dated no earlier than the date provided to the Director of the Public Utility Division.

(c) When tariff revisions within the same application of a telecommunications service provider or IXC would become effective within different time frames pursuant to multiple paragraphs of subsection (b) of this Section, such tariff revisions shall become effective without Commission order pursuant to the time frame set forth in the paragraph with the longer time frame, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(d) If a tariff revision of a telecommunications service provider would become effective without Commission order pursuant to subsection (b) of this Section, but the telecommunications service provider fails to cite the specific authority for the revision by subsection and paragraph, the tariff revision shall become effective without Commission order, sixty (60) days after the date of filing said tariff revisions, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(e) The Public Utility Division may issue data requests for additional relevant information during its review of the requested revision(s).

(f) No proposed or revised tariff of a telecommunications service provider relating to basic local exchange service or switched access service shall become effective without Commission order.

(g) ~~The filing of an amended application shall restart the time periods set forth in this Section.~~If an amended application is filed, the tariff revisions set forth in the amended application shall become effective without Commission order, unless suspended pursuant to OAC 154:55-5-13, on the later of the following dates: 1) the date that the tariff revisions would have become effective if not amended, or 2) the seventeenth (17th) day after the date the amended application was filed.

(h) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(i) In reviewing a proposed or revised tariff, the Commission will protect against anti-competitive behavior and the abuse of monopoly power by rejecting proposed rate changes or proposed terms and conditions that result in predatory, anti-competitive or discriminatory pricing and provisioning or which would result in the subsidization of competitive service(s) with revenues from noncompetitive services. In reviewing rate increases and/or decreases, the Commission will consider the following factors, at a minimum:

(1) The incremental cost of the service;

(2) The potential impact on competition;

(3) The potential impact on end-users generally; and,

(4) Such other factors as the Commission may determine, after notice and hearing.

(j) Unless otherwise ordered by the Commission, all proposed rates must cover the long run incremental cost of the service, including imputation where ordered by the Commission.

(k) For purposes of this Section, the Commission shall allow an ILEC or CLEC that serves less than seventy-five thousand (75,000) access lines as of July 1, 1997, at the option of the

company, to adopt the cost studies approved by the Commission for an ILEC or CLEC that serves seventy-five thousand (75,000) or more access lines or to adopt the surrogate cost studies approved by the FCC.

(l) Nothing in these rules is intended to modify, affect or nullify the responsibilities of the Commission or providers of telecommunications services as required by state or federal antitrust laws or the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

(m) Not later than fifteen (15) days after either an order approving the tariff revisions issued, or after the tariff(s) become effective without suspension, an original and two (2) copies of the approved tariff, which conforms to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(n) In order to facilitate timely review in tariff revisions causes, pursuant to OAC 165:55-5-10(b), each telecommunication service provider and IXC shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time.

(o) Failure to comply with subsection (m) of this Section may result in the filing of a Motion to Cease and Desist regarding the offering(s) of the revised tariff.

(p) Unless operating under the requirements of an alternative regulatory plan established by a Commission order pursuant to OAC 165:55-5-50, any telecommunications service provider may increase, decrease or otherwise modify any or all of its rates, charges, or terms and conditions of service for existing optional local exchange services and new optional local exchange services by submitting its tariffs to the Director of the Public Utility Division. Tariffs for new optional local exchange services shall be effective the day following the day such tariffs are submitted to the Director. Changes to tariffs for existing optional local exchange services shall be deemed approved ten (10) business days following the day such tariffs are submitted to the Director, unless suspended by Commission order.

165:55-5-10.1. Competitive services

(a) ~~An IXC or~~A telecommunications service provider may file an application to have the Commission determine that a regulated telecommunications service, other than local directory assistance or operator services is subject to effective competition and is therefore competitive for the applicant and/or the applicant class.

(b) In determining whether a service is competitive, factors the Commission will consider include, but are not limited to:

(1) The number and size of alternative providers of comparable services;

(2) The extent to which comparable services are available from alternative providers in the relevant market;

(3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates and terms and conditions;

(4) Public interest considerations; and,

(5) Other indicators of market power with respect to a service, which may include market share, growth in market share and whether the alternative provider(s) of comparable services are affiliated with the ~~IXC or~~ telecommunications service provider.

(c) In considering these and other factors, the Commission is not required to give equal weight to each factor in subsection (b) of this Section, but has discretion to give more weight to a particular factor or factors, based on the evidence.

(d) As part of its order determining a service to be competitive, the Commission may require the passage of a transitional period, not to exceed two (2) years. During such transitional period, proposed tariff changes of all providers shall be deemed lawful and effective thirty (30) days after filing, unless the Commission suspends the proposed tariff change before the end of the 30-day period. If suspended, the provisions of OAC 165:55-5-13 shall apply.

(e) Following any transitional period ordered by the Commission pursuant to subsection (d) the rates charged by ~~an IXC, or~~ a TSP for a service determined to be competitive shall become effective on the date specified on the revised tariff sheets, after the provider has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division. The effective date shall be no earlier than the date the revised tariff pages are delivered to the Director of the Public Utility Division.

(f) Following any transitional period, ordered by the Commission pursuant to subsection (d), the terms and conditions under which competitive services are offered shall be submitted to the Director of the Public Utility Division and made available for public inspection. Changes in terms and conditions, and any combination of price and non-price components, shall be submitted at least thirty (30) days prior to when such changes shall be implemented by the provider.

(g) Notwithstanding the provisions of this Section, the Commission may, at any time, revoke the competitive designation of a service, after notice and hearing, if the Commission determines that the service is no longer a competitive service. If the competitive designation of a service is revoked by the Commission, changes in the rates of the service or services affected shall be regulated pursuant to the provisions of OAC 165:55-5-10.

(h) Any revised tariff for a service which has been determined to be competitive by the Commission, pursuant to this Section, shall identify the cause and order number making such designation of competitiveness.

165:55-5-11. Type of notices

(a) **Notice.** Except with respect to tariffs filed pursuant to OAC 165:55-5-10(b) or where the Commission, by order, directs otherwise, any notice of hearing on an application for approval or amendment of rates or charges for service shall be published once a week for two consecutive weeks in a newspaper(s) of general circulation within the territory served by the telecommunications service provider.

(b) **Notice in special cases.** The Commission may approve, by order, a tariff for an experimental or new service offering upon such notice, or without notice, and with or without hearing as the Commission may direct. However, no notice of hearing shall be required for tariff revisions that become effective without suspension pursuant to OAC 165:55-5-10(b).

(c) **Notice of tariff revisions and new service offerings by IXCs and telecommunications service providers.** IXCs and telecommunications service providers shall serve proposed tariff revisions on the Office of the Attorney General and other providers as follows:

(1) IXCs, at the time of their filing with the Commission, shall serve their proposed tariffs and tariff revisions on each IXC authorized to provide interexchange service in the State of Oklahoma and on each telecommunications service provider which has previously requested in writing to receive such filings.

(2) Telecommunications service providers, at the time of their filing with the Commission, shall serve proposed tariff revisions pursuant to OAC 165:55-5-10 on each IXC authorized to provide interexchange service in the State of Oklahoma and telecommunications service provider which has previously requested in writing to receive such filings.

(3) Any written request required by this Section shall be made directly to the IXC or telecommunications service provider.

(4) An applicant may require reimbursement of the postage and nonlabor-related cost of copying from the party(ies) requesting information pursuant to this subsection. However, under no circumstances shall reimbursement be required from the Attorney General.

(d) **End-user notice prior to rate increase for noncompetitive services.** At least twenty (20) days prior to implementing any increased rate of a noncompetitive service to an end-user, each IXC and telecommunications service provider must provide notice to affected end-users of the increase. Said notice shall be provided by any of the following:

(1) Prominent display on the end-user's bill;

(2) Direct mailing;

(3) Prominent display on an insert in the end-user's bill; or,

(4) Any other method of notice approved by the Director of the Public Utility Division.

(e) **End-user notice of rate increase for competitive services.** Prior to or concurrent with the effective date of any increased rate to an end-user, for a service determined to be competitive, each telecommunications service provider or IXC, shall provide notice to the affected end-users of the rate increase. The notice shall be provided by any of the following:

(1) Prominent display on the end-user's bill;

(2) Direct mailing;

(3) Prominent display on an insert in the end-user's bill; or,

(4) Any other method approved by the Director of the Public Utility Division.

(f) **End-user notice of service offering restrictions/limitations.** Any restrictions/limitations imposed for "non-voice" minutes of user beyond a maximum identified in the provider's tariff and approved by the OCC, shall be noticed under the following conditions:

(1) Written notice of the restriction/limitation and clear and concise explanation of when the penalty is imposed will be given to the end-user(s) prior to or concurrent with the initial bill for the service offering which contains the restriction/limitation. The notice will advise the end-users of the exact restriction/limitation and the penalty assessed.

(2) The notice shall be provided by any of the following:

(A) Prominent display on the end-user's bill;

(B) Direct mailing;

(C) Fulfillment and/or welcome packages;

(D) Prominent display on an insert in the end-user's bill; or

(E) Any other method approved by the Director of the Public Utility Division.

(g) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

PART 7. MISCELLANEOUS TARIFF REQUIREMENTS

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

(a) Except as otherwise provided for in OAC 165:55-5-35, concurrent with the filing of proposed tariff revisions for noncompetitive and new services, as provided in OAC 165:55-5-10(b) and 165:55-5-10.1(d), with the exception of OAC 165:55-5-10(b)(9), each IXC and telecommunications service provider shall deliver to the Public Utility Division Staff and Office of the Attorney General:

(1) A copy of the Notice required by OAC 165:55-5-11(d) that will be sent to the end-users affected by any increased rate or Notice required by OAC 165:55-5-11(f) that will be sent to the end-users affected by the restriction/limitation(s);

(2) A customer impact study which shows the number of Oklahoma customers affected, and the dollar and percentage impacts of the proposed change(s) on Oklahoma customers' rates;

(3) The total revenue impact in Oklahoma of the proposed change(s);

(4) If the Oklahoma-specific information required by paragraphs (2) and (3) of this subsection is unavailable, a statement that so states; and

(5) The rationale for the proposed tariffs.

(b) Consistent with OAC 165:55-5-20(a), a copy of the existing tariff page(s) with the requested change(s) denoted shall be filed with the application, and shall be included in the copy sent to the Attorney General, but need not be included with copies of the tariff revision sent to the service list.

(c) The information addressed in paragraphs (2), (3) and (4) in subsection (a) of this Section will be accepted, but not required to be provided, from IXCs.

(d) In addition to the foregoing information and concurrent with the filing of a proposed rate increase or proposed new service offering, unless provided on-line and available for public viewing, the telecommunications service provider shall deliver to the Public Utility Division Staff a comparison of the proposed tariff and the tariffs of the applicant in effect in Arkansas, Kansas, Missouri and Texas, to the extent the provider operates in such states. The telecommunications service provider shall provide the URL, section, and page number where the tariffs may be viewed, if available on the Internet website.

(e) The Public Utility Division may issue data requests for additional relevant information during its review of the requested revision(s). Each telecommunication service provider and IXC shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time.

(f) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:55-9-3. Due date and penalty

Unless otherwise authorized by the Commission, bills shall be payable immediately upon receipt and past due fifteen (15) days after the date of the telecommunications service provider mailing or after any deferred payment date previously established either by oral or written agreement between an end-user and the telecommunications service provider. The date after which the bill is past due shall be stated on the bill. If the bill is not paid when past due, the telecommunications service provider may apply late payment charges <u>of 1.5% unless otherwise approved</u> on any unpaid balance for regulated telecommunications services as provided in its filed, approved tariffs. Payment shall not be considered late if it is received by the due date at an authorized office.

SUBCHAPTER 13. OPERATING AND MAINTENANCE REQUIREMENTS

PART 3. SERVICE STANDARDS

165:55-13-12. Extension of facilities

(a) A Carrier of Last Resort will extend its distribution plant to furnish permanent service to any applicant located within one-quarter (1/4) mile of its existing facilities without requiring a construction charge, provided that the amount of plant to be constructed does not exceed that amount deemed necessary to serve the end-user's location. When an end-user requests services requiring an excessive quantity of facilities which will have extremely little potential for reuse, should that end-user move or otherwise discontinue service, a construction charge based on the cost of the facilities would apply.

(b) A Carrier of Last Resort shall extend its distribution plant to applicants in an area located more than one-quarter (1/4) mile from its existing facilities under the following conditions:

(1) New extensions or reinforcement of existing line facilities required for furnishing access lines associated with the service offered by a Carrier of Last Resort shall be constructed under the following conditions, when application is by an individual end-user or a developer for service of a permanent nature:

(A) An allowance of a one-quarter (1/4) mile, route measurement, per applicant will be made for such extensions without the application of a construction charge.

(B) Where construction is required in excess of the allowance stated in subparagraph (b)(1)(A) of this Section, applicants for service may be required to pay a construction charge for all reasonable costs in excess of the free allowance.

(C) A Carrier of Last Resort may make, at its option, an extension of its facilities above the free limit upon receipt of a lesser payment, or no payment, when the gross anticipated revenue from the extension will provide a Carrier of Last Resort with adequate return upon its investment pursuant to a formula approved by the Commission or contained in its approved terms and conditions of service.

(D) Additional charges may be applicable where natural or other barriers are encountered which require undue circuitous routing or abnormal costs to be incurred by a Carrier of Last Resort.

(E) When a Carrier of Last Resort requires a charge for the extension of facilities into an area more than one-quarter (1/4) mile from its existing facilities, the end-user(s) may apply to be provided telecommunications services by a Carrier of Last Resort providing service an adjacent certified area, if the Commission so orders. This subparagraph shall be limited to situations where a Carrier of Last Resort will not provide service to an area located within its service territory without the payment of construction charges.

(2) Nothing in this Chapter shall prohibit any RUS borrower from making extensions in compliance with RUS rules or terms and conditions contained in any loan documents.

(c) In lieu of extensions of telephone service pursuant to subsection (a) of this Section, the Carrier of Last Resort may require a developer desiring an extension to a prospective real estate subdivision to post a surety bond or make a cash deposit or bank letter of credit (at the option of the developer) equal to

the estimated total costs of the extension before the construction of the extension is commenced. Total cost of construction shall not include drops to individual users off the telephone distribution facilities. In the event the developer chooses to post a surety bond or bank letter of credit, there shall be added to the principal amount of the surety bond or bank letter of credit, an amount equal to the most recent average embedded debt cost of the Carrier of Last Resort on file with the Commission. At least annually, for a period of five (5) years, the Carrier of Last Resort shall give the developer a credit equal to the percentage which the number of installations made in said twelve (12) months period bears to seventy-five percent (75%) of the total number of installations contemplated by the developer and the Carrier of Last Resort for the completed subdivision. The credit referred to in this Chapter, in the case of deposit, shall be returned to the developer annually; with respect to a surety bond posted by the developer, the credit shall be in the form of an annual reduction of the face amount of the surety bond posted. Upon the developer receiving the applicable credit for each installation as set forth in this Chapter, the Carrier of Last Resort shall release or cause to be released the obligation of the developer and the surety, if a surety bond was posted; provided, however, if within five (5) years from the date of the surety bond or cash deposit, the proposed development area has not been developed in a sufficient amount for the developer to receive credit for the total cost of extension to the development as agreed upon, then the developer shall be obligated to pay the Carrier of Last Resort the total construction costs reduced by all credits previously allowed. In the event that said amount is not paid within sixty (60) days of the date due and a surety bond has been posted, the Carrier of Last Resort may declare a default and shall have the right to call upon the surety for payment of the remaining unpaid amount due. In the event of dispute over the circumstances requiring the posting of a surety bond or cash deposit, and/or the reasonableness of the face amount of such bond or cash deposit, a Carrier of Last Resort or the developer may apply to the Commission for an appropriate order resolving the dispute.

(d) In the event the Carrier of Last Resort is denied access to a premises or property by the property or building owner, and is asked at a later date to fulfill the Carrier of Last Resort obligation with regard to that premises or property, the Carrier of Last Resort may request a Motion for Waiver of OAC 165:55-13-12 if the costs associated with fulfillment of the Carrier of Last Resort obligation are deemed excessive by the Carrier of Last Resort.

SUBCHAPTER 19. UNLAWFUL PRACTICES

PART 1. SLAMMING

165:55-19-1.7. Preferred carrier freezes

(a) A preferred carrier freeze (or freezes) prevents a change in an end-user's preferred carrier selection for intraLATA/intrastate toll, interLATA/interstate toll, interLATA/ intrastate toll, and international toll unless the end-user gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this Section. No local exchange carrier shall impose a preferred carrier freeze on local exchange service.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all end-users, regardless of the end-user's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., ~~local exchange,~~ intraLATA/intrastate toll, interLATA/interstate toll, interLATA/intrastate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) **Solicitation and imposition of preferred carrier freezes.**

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in 165:55-19-1.4 and 165:55-19-1.5 for changing an end-user's preferred carrier selections; and an explanation that the end-user will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the end-user's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the end-user's written and signed authorization in a form that meets the requirements of (d)(3) of this Section; or

(B) The local exchange carrier has obtained the end-user's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect an end-user to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the end-user's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the end-user has authorized a preferred carrier freeze.

(3) **Written authorization to impose a preferred carrier freeze.** A local exchange carrier may accept an end-user's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this Section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with 165:55-19-1.5(b), (c), and (h) concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The end-user's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for ~~local exchange,~~ intraLATA/intrastate toll, interLATA/interstate toll service, interLATA/intrastate toll, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the end-user understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the end-user understands that any preferred carrier freeze may involve a charge to the end-user.

(e) **Procedures for lifting preferred carrier freezes.** All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer end-users the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept an end-user's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept an end-user's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the end-user in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the end-user's intent to lift the particular freeze.

(3) All existing accounts containing the Field Identification ("FID") for basic local exchange freeze will have the FID removed. This shall be accomplished no later than September 1, 2004.

SUBCHAPTER 23. WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER

PART 1. GENERAL PROVISIONS

165:55-23-1. Requirements

The requirements of this Subchapter pertain to the provision of Supported Services by designated wireless Eligible Telecommunications Carriers (hereinafter referred to as "wireless ETC" or "ETC").

165:55-23-2. [RESERVED]

165:55-23-3. Records to be provided to the Commission

(a) **Tariffs.** Prior to any wireless carrier, who has been designated an ETC, requesting funds from the Federal Universal Service Fund (FUSF), the Oklahoma Universal Service Fund (OUSF), or the Oklahoma Lifeline Fund (OLF), and at least thirty (30) days prior to commencing to provide the Supported Services, the wireless ETC shall make an informational filing with the Commission of a complete set of its tariffs or service offerings containing all of its Supported Services. Failure to comply with this Section may result in the filing of an application by the Director of the Public Utility Division to revoke the wireless carrier's ETC designation.

(b) **Location of records.** All records required by this Subchapter shall be kept at the general office of each wireless ETC and shall be made available to the Commission or its authorized representative upon reasonable request. Each wireless ETC governed by this Subchapter shall keep all of its books and records in accordance with good business practices and as required by this Subchapter, and at such place as they are normally kept in the usual course of business. The wireless ETC shall keep the Commission advised as to the location of these records and shall make them available to the Commission at reasonable times for examination and inspection at a location designated by the Commission.

(c) **Retention of records.** All records required by this Subchapter shall be preserved for two (2) years.

(d) **Contact names.** Each wireless ETC shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues.

(1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers; and,

(E) Tariff issues.

(e) **Other information.** Each wireless ETC shall promptly furnish such other information as the Commission Staff may reasonably request, unless otherwise ordered by the Commission.

(f) **Annual affirmation and proof of compliance with 911 Emergency Number Act.** Each wireless ETC shall provide to both the Director of the Public Utility Division and the Attorney General an annual written affirmation, signed before a Notary Public by an individual with the authority to bind the wireless ETC, affirming compliance with its obligations set forth in 63 O.S. § 2841. Upon request by either the Director of the Public Utility Division or the Attorney General of the State of Oklahoma, the wireless ETC shall provide supporting documentation of compliance.

(g) **Annual certification under 47 CR § 54. 314 and Reporting of Universal Service Offerings.** Each wireless ETC shall submit documentation, as necessary and requested by the Director of the Public Utility Division, for the Commission to file an annual certification with the Administrator of the federal USF and the FCC stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Such submissions shall be received by the Commission no later than September 1 of each year or upon such other date as is agreed upon between the Commission and the wireless ETC.

(1) The wireless ETC shall file a report, on a date agreed upon by the wireless ETC and the Commission, which includes:

(A) A notarized statement that the wireless ETC's Universal Service offering(s) contain the services required under the Act and Federal Rules for the receipt of USF funds, and

(B) A description of all the wireless ETC's rate plans, setting forth the rates, minutes of use and terms and conditions of service of said plans, along with confirmation that each such plan provides the Supported Services.

(2) The wireless ETC shall include in the report the amount of federal universal service funds received, a description of how such funds have been used and a certification that such funds have been used only for the provision, maintenance and upgrading of facilities and services for which the support is intended. If requested by the Commission, the wireless ETC shall make available to the Commission all documents and other information regarding such expenditures for verification purposes.

(h) **New Services.** If the wireless ETC provides a new service to customers in Oklahoma subsequent to the annual reporting date set forth in this Section, it will within thirty (30) days of first making such service available to customers, file an affidavit, signed by an individual authorized to bind the company, stating the information set forth above with respect to such service.

(i) **Annual report of operations.** No later than May 1 each year, unless otherwise determined by the Commission, each wireless ETC shall provide an annual report of operations for the preceding calendar year, to the Director of the Public Utility Division, in a format approved by the Director of the Public Utility Division and the Commission. In addition, each wireless ETC shall provide a copy of any annual report required to be filed with any federal regulatory agency(ies) provided that, if the wireless ETC's annual report includes operations outside Oklahoma, the information as to operations within the State of Oklahoma shall be separately reported. As a component part of the annual report of operations, each wireless ETC shall attach a copy of its Annual Report to Stockholders.

(j) **Complaints report.**

(1) Each wireless ETC shall maintain customer complaints that have been received by the company in a manner that includes, at a minimum:

(A) The end-user name;

(B) The account number;

(C) The applicable complaint code;

(D) The date the complaint was filed; and,

(E) The amount of refund, if any, given.

(2) If the account number only is utilized, a cross-reference with the end-user's name must also be readily available.

(3) The categories of complaints to be used shall be negotiated between the wireless ETC and the Director of the Consumer Services Division, subject to the approval of the Commission. Lists of the suggested customer complaint codes are attached as Appendices B and C to this Chapter.

(4) Each complaint shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the wireless carrier's services.

(5) The wireless ETC shall submit annually a customer complaint report containing a record of trouble/complaint calls from the wireless ETC's Oklahoma customers and/or such other information that indicates the nature of the customer's service complaint.

(6) The wireless ETC will provide such other information as may be requested, from time to time, by the Commission Staff.

(k) **Report attestation.** All reports required by this subchapter to be submitted to the Commission shall be attested to by an officer or authorized agent of the wireless ETC.

(l) **Due dates of reports.** All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified in this Chapter or unless otherwise agreed to by the Director of the Public Utility Division:

(1) Annual affirmation and proof of compliance with 911 Emergency Number Act - One hundred twenty (120) days after the end of the reporting period of the Wireless ETC. The affirmation shall include a verification that the information contained in the E911 emergency database has been reconciled with the information maintained by the company.

(2) Special and additional reports - As may be prescribed by the Commission.

(m) **Name changes and/or trade name additions and/or address changes.** Tariff revisions to reflect a change to the name and/or change, deletion or addition of a trade name under which the wireless ETC will be doing business in the State of Oklahoma, and/or change of address shall become effective, without Commission order, the date of filing such tariffs, provided the filing contains the attestation required by paragraph (5) of this Subsection. The request for name change or request for change, addition, or deletion of a trade name shall be accompanied by the following, as applicable:

(1) An amended Certificate of Incorporation effecting a change of name pursuant to 18 O.S. § 1076, 1077 or 1031;

(2) A Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140;

(3) A Withdrawal of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.1;

(4) A Transfer of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.2; and,

(5) An attestation that the tariffs are identical, except for the name change or change, addition or deletion of a trade name, to the existing tariffs of the Wireless ETC.

165:55-23-4. [RESERVED]

165:55-23-5. Emergency service reporting requirements

In areas equipped with E911 emergency service, when the end-user's number is changed due to a change of location or service to the end-user or there is a change in service provider with or without a change to the end-user's number, the wireless ETC shall report such changes to the appropriate E911 emergency number database within two (2) business days, or as required by agreement with the appropriate E911 agencies within the state, after completion of service orders. In the event of an error report, the wireless ETC shall correct the error within two (2) business days, unless the agreement with the appropriate E911 agency allows otherwise.

165:55-23-6. [RESERVED]

165:55-23-7. Content of bills

Wireless ETCs shall develop a bill design that can be easily interpreted by their customers and clearly sets forth separate charges for each Supported Service.

165:55-23-8. [RESERVED]

165:55-23-9. Billing disputes

(a) In the event of a dispute between an end-user and a wireless ETC, the wireless ETC shall make such investigation as is required by the particular case, and report the results thereof to the end-user.

(b) In the event the dispute is not resolved, the wireless ETC shall inform the end-user that the end-user may utilize the complaint procedures of the Commission's Consumer Services Division. The information to be provided to consumers shall be:

(1) The street address of the Consumer Services Division, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 460, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is P. O. Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday.

(c) When a complaint has been made with the Commission's Consumer Services Division, the wireless ETC shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by the Commission's Consumer Services Division. The end-user shall be required to pay the undisputed part of the bill and, if not paid, the wireless ETC may discontinue service.

165:55-23-10. [RESERVED]

165:55-23-11. Minimum service standards

(a) The purpose of this Section is to create a uniform standard governing the minimum components of the Supported Services for all end-users of wireless ETCs. Supported Services shall be offered by each wireless ETC pursuant to OAC 165:55-23-15 and 165:55-23-17.

(1) Each wireless ETC shall make available to each end-user subscribing to its Supported Services within its ETC designated service area the following service features:

(A) Local usage for Supported Services at uniform rates for end-users of a given class within its designated service area without usage sensitive charges;

(B) Dual tone multi-frequency signaling or its functional equivalent;

(C) Single-party service or its functional equivalent:

(D) Access to emergency services;
(E) Emergency telephone number services capable of automatic number identification, automatic location identification and call routing facilities to facilitate public safety response; e.g., Enhanced 911 Service, where the local government agency serving the end-user has in place a Public Safety Answering Point;
(F) Access to interexchange service;
(G) Access to telecommunications relay services by dialing 711;
(H) Access to Directory Assistance service;
(I) Access to operator services; and
(J) Toll limitation and/or blocking for qualifying low-income consumers.

165:55-23-12. [RESERVED]

165:55-23-13. Extension of facilities

(a) A wireless ETC shall, throughout the service area for which ETC designation is received, offer the Supported Services, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC, and shall advertise the availability of such Supported Services and the charges therefore using media of general distribution.
(b) Each wireless ETC, as a condition to its designation as an ETC, shall meet the following requirements and submit itself to Commission oversight, insofar as necessary to determine whether it has met and will continue to meet the requirements placed upon it:
(1) Customer Requests for Service
(A) Each wireless ETC shall provide a Supported Service to a requesting customer in accordance with such request no later than ninety (90) days from the date of the customer's bona fide reasonable request.
(i) If the wireless ETC determines that it cannot provide service on a reasonable basis within that time frame, it may seek a waiver of this requirement from the Commission, and upon notice and, if necessary, hearing, the Commission shall determine if such waiver shall be granted. Upon filing such an application for waiver, the wireless ETC shall provide a copy of the application to the wireless ETC in whose service territory the waiver is sought.
(ii) If a request comes from a customer within the wireless ETC's existing network, it will provide service to the customer within five (5) business days.
(iii) If a request comes from a customer residing in any area where the wireless ETC does not provide service, the wireless ETC will take the following series of steps to provide service to such customer.
(I) It will determine whether the customer's equipment can be modified or replaced to provide acceptable service.
(II) It will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.
(III) It will determine whether adjustments at the nearest cell site can be made to provide service.
(IV) It will determine whether there are any other adjustments to network or customer facilities that can be made to provide service.
(V) It will explore the possibility of offering the resold service of carriers that have facilities available to the customer's location.
(VI) It will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using high-cost support to serve the customer requesting service.
(iv) If there is no possibility of providing service short of the measures set forth in the sixth subunit above, within ninety (90) days of the customer's request for service, the wireless ETC shall file an application seeking a waiver in the manner set forth above in unit (b)(1)(A)(i) above. In such application, the wireless ETC shall state:
(I) The estimated cost of providing service to the requesting customer, and
(II) The wireless ETC's position regarding whether the request for service is reasonable.

165:55-23-14. [RESERVED]

165:55-23-15. Lifeline program

(a) Each wireless ETC shall file informational tariffs with the Commission implementing a program for which qualifying low-income end-users pay reduced charges as a result of the Lifeline support amount described in (e) below.
(b) The wireless ETC shall offer toll restriction to all qualifying low-income end-users at the time such end-user subscribes to Lifeline service. If the end-user elects to receive toll restriction, that service shall become part of that end-user's Lifeline service. Wireless ETCs may not collect a deposit in order to initiate Lifeline service if the qualifying low-income end-user voluntarily elects toll restriction, where available, from the wireless ETC. If toll restriction is unavailable, or if it is available and the qualifying low-income end-user does not elect toll restriction, the wireless ETC may charge a deposit as detailed in OAC 165:55-9-14.
(c) Each wireless ETC shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.
(d) Qualifying end-users must meet the eligibility criteria set out in OAC 165:59-9-3.

(e) For a qualifying low-income end-user who is not an eligible resident of Tribal lands, the Lifeline support amount shall be sufficient to cause the rate paid by the end-user to be equivalent to the rate the end-user would pay for Lifeline service had the end-user received Lifeline service from the Incumbent LEC in whose service territory the end-user would receive wireline local exchange service.

(f) The wireless ETC shall instruct applicants to the Lifeline program to indicate, at the time of application, in writing, all qualifying programs under which the applicant is eligible for or receives assistance or benefits.

165:55-23-16. [RESERVED]

165:55-23-17. Link-up program

(a) Each wireless ETC shall file informational tariffs that offer a Link-up assistance program. This program shall offer:

(1) For a qualifying low-income end-user who is not a resident of a reservation or does not reside near reservation lands, a reduction in the Wireless ETC's customary charge for commencing wireless telecommunications service for a single wireless unit billed at an end-user's principal place of residence. This program will offset one half of the initial connection fee or $30.00, whichever is less. Eligibility criteria for this program shall be the same as OAC 165:59-9-3.

(2) For an eligible resident living on or near a reservation, a reduction of up to $70.00, in addition to the reduction in (1) above to cover 100% of the charges between $60.00 and $130.00 for installation of initial service billed at the end-user's principal place of residence.

(3) A deferred payment plan for the charges assessed for initiating service for which the end-user does not pay interest. The interest charges not assessed to the end-user shall be for connection charges up to $200.00 that are deferred for a period not to exceed one year. Charges assessed for initiating service include any charges that the wireless ETC customarily assesses to connect end-users. These charges do not include any security deposit requirements.

(b) A qualifying low-income end-user who is a resident of a reservation or resides near reservation lands may choose one or both of the programs set forth in (a)(1) and (a)(2) above of this Section. An eligible resident living on or near a reservation may participate in the programs set forth above.

(c) A wireless ETC shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for service billed at a principal place of residence with an address different from the residence address at which the Link-up assistance was provided previously.

(d) A wireless ETC shall publicize the availability of Link-up support in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Link-up shall be the same as the criteria established for Lifeline in accord with OAC 165:59-9-3.

165:55-23-18. [RESERVED]

165:55-23-19. Responsibility for adequate and safe service

(a) A wireless ETC is responsible for providing adequate and efficient wireless service to every served end-user for which the wireless ETC reports and receives federal or state universal service support.

(b) A Wireless ETC that uses its own facilities to provide Supported Service shall install and maintain its system so as to render safe, efficient, and continuous service, and shall keep all of its equipment and facilities in a good state of repair.

165:55-23-20. [RESERVED]

165:55-23-21. Emergencies

All wireless ETCs shall make adequate provision for emergencies in order to prevent interruption of continuous ETC telephone service throughout its Supported Service area.

165:55-23-22. [RESERVED]

165:55-23-23. Response to customer complaint inquiries

A wireless ETC shall respond to the Commission upon written or electronic inquiry from the Commission within the following time periods:

(1) Inquiries regarding disconnection, suspension or termination of Supported Services - within one (1) business day of receipt of inquiry from the Commission.

(2) Inquiries other than for disconnection, suspension or termination of Supported Services - within three (3) business days of receipt of inquiry from the Commission.

PART 3. TRANSMISSION OBJECTIVES

165:55-23-50. Service standards; sufficient operating and maintenance force

A wireless ETC shall maintain an operating and maintenance force sufficient to meet service objectives and minimum standards for restoration of service after interruption as follows:

(1) Provisions will be made to receive customer trouble reports at all times, twenty-four (24) hours per day.

(2) Provision will be made to correct interruptions of service to persons and agencies required to respond to emergencies involving human life and safety at all times, consistent with the bona fide needs of the end-user and the availability and safety of wireless ETC personnel.

165:55-23-51. [RESERVED]

165:55-23-52. Records of trouble reports

(a) The wireless ETC shall maintain its network so as to minimize customer trouble reports for Supported Services in an economical manner, but shall not exceed eight reports per one hundred (100) customers per month per service area averaged over a three-month period. An occurrence of a violation of this procedure shall be considered as each day in the month for which the three-month average of trouble reports for that month and the preceding two months exceed this criteria for the service area in question.

(b) The response of a wireless ETC to customer trouble reports shall be eight-five percent (85%) of all trouble reports cleared within twenty-four (24) hours.

165:55-23-53. [RESERVED]

165:55-23-54. Notice of service interruptions

(a) The Commission shall be notified, through the Director of the Consumer Services Division, of interruptions in Supported Services causing customer to not have access to one or more cell sites within the designated service area; a mobile switching office or any interruption which, in the judgment of the wireless ETC, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile, twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

(1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;

(2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service provider, or as may be requested by the Commission Staff; and,

(3) A conclusory contact detailing the results and completion of the restoration of service.

165:55-23-55. [RESERVED]

165:55-23-56. Restoration of service plan

Each wireless ETC shall have a written restoration of service plan (Plan) to be followed during interruptions in Supported Services of which the Commission is to be notified under OAC 165:55-13-52. Each wireless ETC shall submit its Plan by September 30 of each year to the Commission through the Director of the Consumer Services Division. In lieu of submitting a Plan, a wireless ETC may submit a letter confirming that a previously submitted Plan has not changed or detailing changes to the Plan. The Plan shall contain the name and telephone numbers of company-designated liaison(s) to be contacted during emergency periods by Commission staff during business and non-business hours. The Plan should indicate that the wireless ETC is prepared to take the following types of action where necessary:

(1) To make an initial assessment of the extent of the Supported Service interruption in order to comply with the reporting requirements of OAC 165:55-13-52(b)(1).

(2) To make a determination if the Supported Service interruption can be restored by the use of in-house personnel only, or if contractors (personnel obtained from outside resources) will be required.

(3) To provide priority consideration to restoration of Supported Service, where feasible, to emergency services (hospitals, law enforcement and fire fighting entities).

(4) To make intermediate assessments of the restoration of Supported Service in order to comply with the requirements of OAC 165:55-13-52(b)(2).

(5) To make a conclusory assessment of the restoration of Supported Service in order to comply with the requirements of OAC 165:55-13-52(b)(3).

165:55-23-57. [RESERVED]

165:55-23-58. Customer choice

(a) Where choices are available, every customer shall have the right to choose his or her telecommunications service provider, whether wireless or wireline.

(b) A wireless ETC shall not enter into a contract with the owner or manager of multi-tenant dwellings to exclusively provide Supported Services to the exclusion of other telecommunications service providers.

APPENDIX A. TELECOMMUNICATIONS COMPLAINT REPORT FORM [REVOKED]

APPENDIX A. TELECOMMUNICATIONS COMPLAINT REPORT FORM [NEW]

COMPLAINT REPORT FORM

Company Name _____

Date Complaint Received _____ Time of Call _____

Customer (or Account) Name _____

Telephone No. _____ Contact No. (if different) _____

Customer Address _____ City _____

Location of Complaint _____

Name of Caller (if not customer) _____ Contact No. for Caller _____

Complaint Code _____

Nature of the Complaint:

_____

_____

_____

_____

Company findings and resolution:

_____

_____

_____

_____

Refund/Credit made, if applicable, Yes ____ No _____ Amount $_____

Date closed _____ Closed by _____

APPENDIX . WIRELESS ETC CUSTOMER COMPLAINT CODES [NEW]

Code	Description
NETCON	Can't connect to the network
CALPLA	Can't place call
CALREC	Can't receive call
DRSTLK	Cross-talk
CALCUT	Cutting In/Out
DEAAIR	Dead Air
ECHTON	Digital Echo/Tones
DRPCAL	Dropped Call
FBDLAY	Fast busy-delayed
DBIMMD	Fast busy-immediate
FTRISS	Feature issue
LL2MBL	Landline to mobile issue
NPSPCA	No/Poor service – Poorly covered area
NPSWCA	No/Poor service – Well covered area
MSGRCV	Not able to receive message
ONEWAD	One way audio
RMHMAR	Roaming in home area
STATIC	Static
TRNISS	Translation issue
WKSNGL	Weak signal

[OAR Docket #04-1061; filed 5-26-04]

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

[OAR Docket #04-1059]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Certificates, Reports, and Records
165:56-3-1. Certificate of Convenience and Necessity [AMENDED]
Subchapter 5. Tariffs
165:56-5-5. Revisions to tariffs [AMENDED]
165:56-5-5.2. Competitive services [REVOKED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
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None
ANALYSIS:
A change to OAC 165:56-3-1 streamlining the Commission's procedure for gathering information. Applicants seeking to expand service offerings under an existing Certificate of Convenience and Necessity will be permitted to rely on previously submitted information or updated information. Applicants will submit a written affirmation that such information is true. Applicants may move for a waiver of certain publication requirements.

A change to OAC 165:56-3-1 requiring that applicants provide an electronic copy of the notice to the Director of the Public Utility Division for publication on the Commission's website.

A change to OAC 165:56-5-5 containing the express determination that resold interexchange services are competitive. Resold interexchange tariff revisions will become effective without Commission order. Depending on the interexchange service, tariff revisions will be effective on the same day revised tariff sheets are delivered to the Director, thirty (30) days later, or some date specified in the revised tariff sheets.

A change to OAC 165:56-5-5 providing for a shorter time period for an amended application for tariff revisions to become effective. A deletion of OAC 165:56-5-5.2.
CONTACT PERSON:
Lenora Burdine (405) 522-1010

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. CERTIFICATES, REPORTS AND RECORDS

165:56-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person shall resell any telecommunications service obtained from a certificated carrier to any customer in Oklahoma, without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Application for Certificate of Convenience and Necessity.** An application for a Certificate of Convenience and Necessity shall be made pursuant to the requirements of 17 O.S. § 131 *et seq.* and shall conform to the requirements thereof and with the Commission's Rules of Practice, OAC 165:5, and any additional requirements set forth in this Chapter. An original and eight (8) copies of the application for a Certificate of Convenience and Necessity shall be filed with the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(c) **Application requirements for Certificate of Convenience and Necessity.** An applicant to the Commission for a Certificate of Convenience and Necessity to provide reseller service in the State of Oklahoma shall be required to demonstrate its financial, managerial, and technical ability to provide the requested reseller service in the State of Oklahoma. An application for a Certificate of Convenience and Necessity to provide reseller services shall include as attachments to the application the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant, in a format approved by the Director of the Public Utility Division:

(1) As applicable, the complete name, including each and every trade name under which business will be conducted, corporate or other headquarters address and names/addresses of principal corporate officers or partners of the entity proposing to resell telecommunications service to the public in the State of Oklahoma. Also, include the telephone number and, if applicable, the toll-free telephone number.

(2) If different from those provided in paragraph (1) of this subsection, the name(s) and address(es) of all officers and corporate offices of the reseller located in the State of Oklahoma and the name(s) and address(es) of employee(s) responsible for Oklahoma operations.

(3) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma.

(4) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name, i.e. a d/b/a, utilized by the reseller.

(5) A financial statement.

(6) Contact name(s), address(es) and telephone number(s) of the individual(s) responsible for providing service to customers, for repairs and maintenance, for answering complaints, and supplying refunds. This will be the principal contact to be utilized by the Commission's

Consumer Services Division and Public Utility Division regarding questions and complaints against the reseller.

(7) A description of the reseller's proposed procedures used to verify customer-ordered changes in presubscribed carriers, including, but not limited to, a proposed letter of agency that is consistent with the requirements of 47 CFR Ch. I, Section 64.1150, proposed independent third-party verification script and/or proposed telephone contact script.

(8) A complete set of proposed tariffs which shall include terms and conditions of service and all rates, charges, and service classifications in a format approved by the Director of the Public Utility Division. The proposed tariffs shall comply with OAC 165:56-5-1 through OAC 165:56-5-3.

(9) A copy of the applicant's proposed complaint report form which is consistent with OAC 165:56-7-5. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix H and Appendix I, respectively, to this Chapter.

(10) A written affirmation, signed before a Notary Public by someone with authority to bind the applicant, that:

(A) The information contained in the application is true and correct;

(B) The reseller is familiar with and will comply with all applicable federal and state laws and the rules and orders of the Commission;

(C) The applicant possesses the financial ability to provide reseller services in the State of Oklahoma;

(D) The reseller will contribute to the Oklahoma Universal Service Fund annually pursuant to OAC 165:59;

(E) The reseller understands the Commission's contempt authority;

(F) A statement that the applicant is not currently under investigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation, if that is the case;

(G) A statement that the applicant has not been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation or any consumer protection law or regulation, if that is the case; and

(H) If either of the statements required in (F) and (G) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(11) The reseller's carrier identification code (CIC) and a statement that the reseller will provide its CIC to each LEC providing service in the State of Oklahoma, in order for the reseller to be identified. In the event the reseller does not have an assigned CIC, proof shall be provided that efforts to obtain the code have been initiated. If the reseller uses more than one CIC, each CIC and all associated trade name(s) shall be provided.

(12) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(13) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(14) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(15) A list of all other states, if any, where:

(A) The applicant is authorized to operate;

(B) Authorization to operate is pending;

(C) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and,

(D) Authorization has been revoked, with a certified copy of the revocation document attached.

(d) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:56-3-1(c) and 165:56-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances.

(~~d~~e) **Hearing requirements.** If no objections have been filed to an application for a Certificate of Convenience and Necessity within thirty (30) days from the date of the first publication of Notice that the applicant is seeking a Certificate of Convenience and Necessity, the Commission may enter an order granting the Certificate of Convenience and Necessity to provide resellers service without hearing. If objections are filed, a hearing shall be held on the application.

(~~e~~f) **Notice requirements of CCN applications**. Applicants for a Certificate of Convenience and Necessity to provide reseller services shall cause notice of the application to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the territory of proposed operation. In the event state-wide operation is proposed, the notice shall be published in either:

(1) Each county in the State of Oklahoma; or,

(2) A state-wide version of newspapers of general circulation published in Oklahoma and Tulsa counties.

In addition, at the time the application is filed, the Applicant shall provide an electronic copy of Notice of the Application, to the Director of the Public Utility Division for posting on the OCC website. The Director of the Public Utility Division will then place the Notice on the OCC website within five (5) business days.

(~~f~~g) **Amended application.** During the Staff's review of the reseller's application, certain revisions and/or corrections to documents attached to the application may be requested. After the parties have agreed to the necessary revisions and/or corrections, such revisions and/or corrections shall be attached to an amended application. The reseller shall file an original and eight (8) copies of its amended application with the Commission's Court Clerk's Office. Requested revisions and/or corrections may include, but shall not be limited to:

(1) Revisions to the applicant's proposed tariffs;

(2) Provision of documents omitted from the originally filed application; and/or,

(3) Correction of the statement, in the body of the application only, regarding the services for which authority to provide is being sought.

(~~g~~h) **Additional information.** The Public Utility Division Staff may issue data requests for additional relevant information as may be necessary. Data request responses shall be submitted to the Staff member requesting the information, and not filed with the Commission's Court Clerk.

(~~h~~i) **Approval requirement.** Unless provided otherwise in this Chapter, no Certificate of Convenience and Necessity shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

SUBCHAPTER 5. TARIFFS

165:56-5-5. Revisions to tariffs

(a) ~~Once a certificate of convenience and necessity has been granted by the Commission, revisions to tariffs shall be made by filing an application, including an original and eight (8) copies, styled as a Notice and Filing of Tariff Revisions with the Commission's Court Clerk's office accompanied by the applicable filing fee. The Notice and Filing of Tariff Revisions shall conform with the Commission's Rules of Practice, OAC 165:5.~~Resold interexchange services are determined to be competitive.

~~(b) Revisions to tariffs for directory assistance, operator services, terms and conditions of service and noncompetitive services shall become effective without Commission order thirty (30) days after the date of filing said Notice and Filing, unless suspended by Commission order pursuant to OAC 165:56-5-6.~~

(~~c~~b) Revisions to ~~tariffs for~~ the price components of competitive services provided by a reseller, as such services(s) are determined competitive by the Commission ~~pursuant to OAC 165:56-5-5.2~~, shall become effective after three (3) copies of the revised tariff pages have been provided to the Director of the Public Utility Division. The effective date of the tariff revision shall be stated on the face of the revised tariff pages, which shall be dated no earlier than the date provided to the Director of the Public Utility Division.

(c) Revisions to the terms and conditions of service provided by a reseller shall become effective, without Commission order thirty (30) days after the reseller has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division.

(d) Revisions to tariffs for any competitive services, which contain a combination of price and nonprice components, shall become effective ~~pursuant to OAC 165:56-5-5.2(f)~~, without Commission order thirty (30) days after the reseller has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division.

(e) Revisions to tariffs for directory assistance, operator services and other noncompetitive services shall become effective without Commission order thirty (30) days after the date of filing said Notice and Filing, unless suspended by Commission order pursuant to OAC 165:56-5-6. The Notice and Filing of Tariff Revisions shall be made by filing an Application, including an original and eight (8) copies, styled as a Notice and Filing of Tariff Revisions, with the Commission's Court Clerk's Office accompanied by the applicable filing fee. The Notice and Filing of Tariff Revisions shall conform with the Commission's Rules of Practice, OAC 165:5. The Notice and Filing of Tariff Revisions shall be provided to the Attorney General of the State of Oklahoma, all IXCs, LECs and those other certificated resellers, which have made written request to the reseller, in a manner prescribed by the Director of the Public Utility Division and shall conform with the Commission's Rules of Practice and the provisions of this Chapter.

~~(1) Any written request required by this subsection shall be made directly to the reseller.~~

~~(2)~~ An applicant may require reimbursement of the postage and nonlabor-related cost of copying from the party(ies) requesting information pursuant to this Section. However, under no circumstances shall reimbursement be required from the Attorney General of the State of Oklahoma.

(f) Simultaneous with the filing of the proposed tariff revisions, the reseller shall deliver to the Public Utility Division Staff:

(1) A copy of the Notice required by OAC 165:56-5-12 that will be sent to the end-users affected by any increased rate; and,

(2) The rationale for the proposed tariffs.

(g) A copy of the existing tariff page(s) with the requested change(s) denoted shall be filed with the application and shall be included in the copy sent to the Attorney General, but need

not be included with copies of the tariff revision sent to the service list.

(h) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:56-5-6 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

(i) ~~The filing of an amended application shall restart the time period set forth in subsection (b) of this Section.~~ If an amended application is filed, the tariff revisions set forth in the amended application shall become effective without Commission order, unless suspended pursuant to OAC 165:56-5-6, on the later of the following dates: 1) the date that the tariff revisions would have become effective if not amended, or 2) the seventeenth (17th) day after the date the amended application was filed.

(j) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(k) Not later than fifteen (15) days after an order approving the tariff revision is issued, or after the tariff(s) become effective without suspension, an original and two (2) copies of the approved tariff(s) which conform to OAC 165:56-5-3 shall be provided to the Public Utility Division.

(l) In order to facilitate timely review, in streamlined tariff revision causes, each reseller shall answer, within ten (10) business days from the date of receipt, all data requests issued; unless an objection is filed or the parties agree in writing to a different response time.

(m) Failure to comply with subsection (j) of this Section may result in the filing of a Motion to Cease and Desist regarding the offering(s) of the revised tariff.

(n) The Public Utility Division may issue data requests for additional information during its review of the requested revision(s).

165:56-5-5.2. Competitive services [REVOKED]

~~(a) A reseller may file an application to have the Commission determine that a regulated reseller service, other than local directory assistance or operator services, is subject to effective competition and is therefore competitive for the applicant and/or the applicant class.~~

~~(b) In determining whether a service is competitive, factors the Commission will consider include, but are not limited to:~~

~~(1) The number and size of alternative providers of comparable services;~~

~~(2) The extent to which comparable services are available from alternative providers in the relevant market;~~

~~(3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates and terms and conditions;~~

~~(4) Public interest considerations; and,~~

~~(5) Other indicators of market power with respect to a service, which may include market share, growth in market share and whether the alternative provider(s) of comparable services are affiliated with the reseller.~~

~~(c) In considering these and other factors, the Commission is not required to give equal weight to each factor in subsection (b) of this Section, but has discretion to give more weight to a particular factor or factors, based on the evidence.~~

~~(d) As part of its order determining a service to be competitive, the Commission may require the passage of a transitional period, not to exceed two (2) years. During such transitional period, proposed tariff changes of all resellers shall be deemed lawful and effective thirty (30) days after filing, unless the Commission suspends the proposed tariff change before the end of the 30 day period. If suspended, the provisions of OAC 165:56-5-6 shall apply.~~

~~(e) Following any transitional period ordered by the Commission pursuant to subsection (d), the rates charged by a reseller for a service determined to be competitive shall become effective on the date specified on the revised tariff sheets, after the reseller has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division. The effective date shall be no earlier than the date the tariff revisions are delivered to the Director of the Public Utility Division.~~

~~(f) Following any transitional period ordered by the Commission pursuant to subsection (d), the terms and conditions under which competitive services are offered shall be submitted to the Director of the Public Utility Division and made available for public inspection. Changes in terms and conditions, and any combination of price and non-price components, shall be submitted at least thirty (30) days prior to the date when such changes shall be implemented by the reseller.~~

~~(g) Notwithstanding the provisions of this Section, the Commission may, at any time, revoke the competitive designation of a service, after notice and hearing, if the Commission determines that the service is no longer a competitive service. If the competitive designation of a service is revoked by the Commission, changes in the rates of the service or services affected shall be regulated pursuant to the provisions of OAC 165:56-5-5(b).~~

~~(h) Any revised tariff for a service which has been determined to be competitive by the Commission, pursuant to this subsection, shall identify the cause and order number making such designation of competitiveness.~~

[OAR Docket #04-1059; filed 5-26-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 57. OPERATOR SERVICE PROVIDERS TELECOMMUNICATIONS SERVICES

[OAR Docket #04-1060]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Certificates, Reports, and Records

Part 1. Certificates of Convenience and Necessity

165:57-5-1. Certificate of Convenience and Necessity [AMENDED]

165:57-5-2. Notice of hearing for Certificate of Convenience and Necessity [AMENDED]

Subchapter 7. Tariffs

165:57-7-5. Revisions to tariffs [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
A change to OAC 165:57-5-1 streamlining the Commission's procedure for gathering information. Applicants seeking to expand service offerings under an existing Certificate of Convenience and Necessity ("CCN") will be permitted to rely on previously submitted information or updated information. Applicants will submit a written affirmation that such information is true. Applicants may move for a waiver of certain publication requirements. A change to OAC 165:57-5-1 adding a requirement that applicants provide an electronic copy of the notice to the Director of the Public Utility Division for publication on the Commission's website.
A change to OAC 165:57-5-2 amending text to change rule cite.
A change to OAC 165:57-7-5 establishing a new formula for calculating the effective date of a tariff revision in the event the application is amended.
CONTACT PERSON:
Lenora Burdine (405) 522-1010

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. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:57-5-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person or entity shall furnish operator services to any end-user in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission. ILECs and certificated IXCs providing operator services prior to January 1, 1996, shall not be required to obtain a Certificate of Convenience and Necessity for the operator services being provided on that date.

(b) **Application for Certificate of Convenience and Necessity.** An applicant to the Commission for a Certificate of Convenience and Necessity to provide operator service in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested operator service in the State of Oklahoma. An application for Certificate of Convenience and Necessity to provide operator services shall be made pursuant to the requirements of 17 O.S. § 131 *et seq*. and shall conform to the requirements thereof and with the Commission's Rules of Practice, OAC 165:5, and any additional requirements set forth in this Chapter. An application for a Certificate of Convenience and Necessity shall be in a format approved by the Director of the Public Utility Division. An original and eight (8) copies of the application for a Certificate of Convenience and Necessity shall be filed with the Commission's Court Clerk's Office. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(c) **Application requirements for Certificate of Convenience and Necessity.** An application to the Commission for a Certificate of Convenience and Necessity to provide operator services shall include as attachments to the application the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant, in the format set forth in Appendix G to this Chapter:

(1) As applicable the complete name, including each and every trade name(s) under which business will be conducted, corporate or other headquarters address and names/addresses of principal corporate officers or partners of the entity proposing to provide operator services to the public in the State of Oklahoma. Also, include the telephone number and, if applicable, the toll free telephone number.

(2) If different from those provided in paragraph (1) of this subsection, the name(s) and address(es) of all officers and corporate offices of the OSP located in the State of Oklahoma and the name(s) and address(es) of employee(s) responsible for Oklahoma operations.

(3) A copy of the applicable certificate, issued by Oklahoma's Secretary of State to transact business in the State of Oklahoma.

(4) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name, i.e. a d/b/a, used by the operator service provider in the State of Oklahoma.

(5) A financial statement.

(6) Contact name(s), address(es) and the toll free telephone number(s) of the individual(s) responsible for providing service to Aggregators and consumers, for repairs and maintenance, for answering complaints, and supplying refunds. This will be the principal contact to be utilized by the Commission's Consumer Services Division and Public Utility Division regarding questions and complaints against the company.

(7) A description of the OSP's proposed procedures used to verify customer-ordered changes in presubscribed carriers, including, but not limited to a proposed "letter of agency" that is consistent with the requirements of 47 CFR Ch.1, Section 64.1150, proposed independent third-party verification script and/or proposed telephone contact script.

(8) A complete set of proposed tariffs which shall include terms and conditions of service and all rates, tolls, charges, and service classifications in a format approved by the Director of the Public Utility Division. The proposed tariffs shall comply with OAC 165:57-7-1 through OAC 165:57-7-3.

(9) An example of signage proposed to be utilized by the OSP which is in conformance with OAC 165:57-3-2.

(10) A copy of the applicant's proposed complaint report form which is consistent with OAC 165:57-5-24. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix H and Appendix I, respectively, to this Chapter.

(11) A written affirmation, signed before a Notary Public by someone with authority to bind the applicant, in a format approved by the Director of the Public Utility Division, that:

(A) The information contained in the application is true and correct;

(B) The OSP is familiar with and will comply with all applicable federal and state laws, and the rules and orders of the Commission;

(C) The applicant possesses the financial ability to provide operator service(s) in the State of Oklahoma;

(D) The OSP will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59; and,

(E) The OSP understands the Commission's contempt authority.

(12) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(13) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service, and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(14) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities, or other documentation as may be requested by the Commission.

(15) A list of all other states, if any, where:

(A) The applicant is authorized to operate;

(B) Authorization to operate is pending;

(C) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,

(D) Authorization has been revoked, with a certified copy of the revocation document attached.

(d) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:57-5-1(c) and 165:57-5-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances.

(~~d~~e) **Hearing requirements.** If no objections have been filed to an application for a Certificate of Convenience and Necessity within thirty (30) days from the date of the first publication of Notice of the Certificate of Convenience and Necessity, the Commission may enter an order granting the Certificate of Convenience and Necessity to provide operator service without hearing. If objections are filed, a hearing shall be held on the application.

(~~e~~f) **Notice requirements of CCN applications.** Applicants for a Certificate of Convenience and Necessity to provide operator services shall cause notice of the application to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the area of proposed operation. In the event state-wide operation is proposed, the notice shall be published in either:

(1) Each county in the State of Oklahoma; or,

(2) A state-wide version of newspapers of general circulation published in Oklahoma and Tulsa counties.

In addition, at the time the Application is filed, the Applicant shall provide an electronic copy of Notice of the Application, to the Director of the Public Utility Division for posting on the OCC website. The Director of the Public Utility Division will then place the Notice on the OCC website within five (5) business days.

(~~f~~g) **Amended Application.** During the Staff's review of the OSP's application, certain revisions and/or corrections to documents attached to the application may be requested. After the parties have agreed to the necessary revisions and/or corrections, such revisions and/or corrections shall be attached to an amended application. The OSP shall file an original and eight (8) copies of its amended application with the Commission's Court Clerk's Office. Requested revisions and/or corrections may include, but shall not be limited to:

(1) Revisions to the applicant's proposed tariffs;

(2) Provision of documents omitted from the originally filed application; and/or,

(3) Correction of the statement, in the body of the application only, regarding the services for which authority to provide is being sought.

(~~g~~h) **Additional Information.** The Public Utility Division Staff may issue data requests for additional relevant information as may be necessary. Data request responses should be submitted to the Staff member requesting the information, and not filed with the Commission's Court Clerk.

(~~h~~i) **Approval requirement.** Unless provided otherwise in this Chapter, no Certificate of Convenience and Necessity shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

165:57-5-2. Notice of hearing for Certificate of Convenience and Necessity

If a hearing concerning the merits of an application is required pursuant to OAC 165:57-5-1~~(d)~~ (e), the applicant shall give notice of the hearing to all parties of record and the Attorney General of the State of Oklahoma, at least 15 days prior to the hearing.

SUBCHAPTER 7. TARIFFS

165:57-7-5. Revisions to tariffs

(a) Once a certificate of convenience and necessity has been granted by the Commission, an original and eight (8) copies of the revisions to tariffs shall be made by filing an application styled as a Notice and Filing of Tariff Revisions with the Commission's Court Clerk's Office accompanied by the applicable filing fee. Notice and Filing of Tariff Revisions will conform with the Commission's Rules of Practice, OAC 165:5, the provisions of this Chapter.

(b) Revisions to tariffs and terms and conditions of service shall become effective without Commission order thirty (30) days after the date of filing said Notice and Filing of Tariff Revisions, unless suspended by Commission order pursuant to OAC 165:57-7-6.

(c) The Notice and Filing of Tariff Revisions shall be provided to the Attorney General of the State of Oklahoma, and to all IXCs, LECs and those other certificated OSPs that have made written request to the OSP, in a manner prescribed by the Director of the Public Utility Division and shall conform with the Commission's Rules of Practice and the provisions of this Chapter.

(1) Any written request required by this subsection shall be made directly to the OSP.

(2) An applicant may require reimbursement of the postage and nonlabor-related cost of copying from the party(ies) requesting information pursuant to this Section. However, under no circumstances shall reimbursement be required from the Office of the Attorney General of the State of Oklahoma.

(d) Simultaneous with the filing of the proposed tariff revisions, the OSP shall deliver to the Public Utility Division Staff and the Office of the Attorney General of the State of Oklahoma:

(1) A copy of the Notice required by subsection (f) (e) of this Section that will be sent to the end-users affected by any increased rate:

(2) The rationale for the proposed tariffs: and

(3) A copy of the existing tariff page(s) with the requested changes denoted.

(e) At least twenty (20) days prior to implementing any increased rate, the OSP must provide notice to the affected aggregators or end-users of the increase. Said notice shall be provided by any of the following:

(1) Prominent display on the aggregator's or end-user's bill;

(2) Direct mailing;

(3) Prominent display on an insert in the end-user's bill; or,

(4) Any other method of notice approved by the Director of the Public Utility Division.

(f) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:57-7-6 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

(g) ~~The filing of an amended application shall restart the time period set forth in subsection (b) of this Section.~~ If an amended application is filed, the tariff revisions set forth in the amended application shall become effective without Commission order, unless suspended pursuant to OAC 165:57-7-6, on the later of the following dates:

(1) The date that the tariff revisions would have become effective if not amended, or

(2) The seventeenth (17th) day after the date the amended application was filed.

(h) Tariff revisions proposing rates which are below the maximum rate charged by the certificated IXCs or certificated LECs shall become effective without Commission order thirty (30) days after the date of filing said revisions, unless suspended by Commission Order pursuant to OAC 165:57-7-6.

(i) Tariff revisions proposing rates which exceed the maximum rate charged by the certificated IXCs or certificated LECs shall become effective only by Commission order after such notice and hearing, if any, as directed by the Commission. In addition, the OSP shall provide cost of service data to the Commission and such proposed rates shall be subject to a cost of service review by the Commission.

(j) Not later than fifteen (15) days after an order approving the tariff revision is issued, or after the tariff(s) become effective without suspension, an original and two (2) copies of the approved tariff(s) which conform to OAC 165:57-7-3 shall be provided to the Public Utility Division.

(k) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(l) In order to facilitate timely review, in streamlined tariff revision causes, each operator service provider shall answer, within ten (10) business days from the date of receipt, all data requests issued; unless an objection is filed or the parties agree in writing to a different response time.
(m) Failure to comply with subsection (j) of this Section may result in the filing of a Motion to Cease and Desist regarding the offering(s) of the revised tariff.

[OAR Docket #04-1060; filed 5-26-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 58. FACILITATION AND PROVISIONING OF PAYPHONE SERVICE

[OAR Docket #04-1058]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Certificates, Reports, and Records
Part 1. Certificate of Convenience and Necessity
165:58-3-1. Certificate of Convenience and Necessity [AMENDED]
165:58-3-2. Expansion of service territory [NEW]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
DATES:
Comment period:
January 7, 2004 thru March 24, 2004
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March 24, 2004
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Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2004.
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Effective:
July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
A change to OAC 165:58-3-1 streamlining the Commission's procedure for gathering information. Applicants seeking to expand service offerings under an existing Certificate of Convenience and Necessity will be permitted to rely on previously submitted information or updated information. Applicants will submit a written affirmation that such information is true. Applicants may move for a waiver of certain publication requirements. This change would not apply to an applicant seeking to expand its service territory.
A change to OAC 165:58-3-1 adding a requirement that applicants provide an electronic copy of the notice to the Director of the Public Utility Division for publication on the Commission's website.
The addition of a new rule at OAC 165:58-3-2 allowing for the expansion of a service territory.
CONTACT PERSON:
Lenora Burdine (405) 522-1010

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. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATE OF CONVENIENCE AND NECESSITY

165:58-3-1. Certificate of Convenience and Necessity
(a) **Requirement for Certificate of Convenience and Necessity.** No person or entity shall furnish payphone service under any name to any end-user in the State of Oklahoma without first having secured from this Commission a Certificate of Convenience and Necessity to provide payphone service. Incumbent LECs and certificated IXCs providing payphone service prior to January 1, 1996, shall not be required to obtain an additional Order granting it a Certificate of Convenience and Necessity for the payphone services being provided on that date, except as provided in OAC 165:58-3-4.
(b) **Application for Certificate of Convenience and Necessity.** An application for a Certificate of Convenience and Necessity to provide payphone service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and eight (8) copies of the application for Certificate of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk accompanied by the established filing fee. An example of the format for the application for Certificate of Convenience and Necessity is available from the Public Utility Division.
(c) **Application requirements for Certificate of Convenience and Necessity.** An applicant to the Commission for a Certificate of Convenience and Necessity to provide payphone service in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested payphone service in the State of Oklahoma. An application for a Certificate of Convenience and Necessity to provide payphone service, except as provided for in OAC 165:58-3-4, shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant in a format approved by the Director of the Public Utility Division.
(1) The application shall contain the following information:
(A) As applicable, the complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. (1991) §1140, corporate or other headquarters street address and names/addresses of principal or corporate officers or partners of the entity proposing to provide payphone service to the public in the State of Oklahoma. Also,

include the telephone number and, if applicable, the toll-free telephone number.

(B) If different from those provided pursuant to subparagraph (1)(A) of this subsection, the name(s) and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(2) The attachments to the application shall include the following:

(A) A copy of the applicable certificate, issued to corporations by Oklahoma's Secretary of State, to transact business in the State of Oklahoma or for non-corporations, issued by the County Clerk's Office in each county in which the applicant intends to operate payphones.

(B) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name, i.e. d/b/a, utilized by the payphone service provider.

(C) A financial statement.

(D) Contact names(s), address(es) and telephone number(s) of the individual(s) responsible for providing service to customers, for repair and maintenance, for answering complaints, and supplying refunds. This will be the principal contact to be utilized by the Commission's Consumer Services Division and Public Utility Division regarding questions and complaints against the payphone service provider.

(E) A brief description of its history of providing payphone service or other telecommunications services, in order to demonstrate its managerial and technical experience and abilities. Applicants without prior telecommunications or payphone experience shall provide documentation which supports its managerial and technical ability or other documentation as may be requested by the Commission.

(F) A complete set of proposed tariffs which shall include terms and conditions of service and all rates and charges for each service classification in a format approved by the Director of the Public Utility Division. The proposed tariffs shall conform with OAC 165:58-7.

(G) A copy of the applicant's proposed complaint report form which should comply with OAC 165:58-3-23. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix J and Appendix K, respectively, to this Chapter.

(H) A copy of the applicant's established procedures it intends to utilize in the State of Oklahoma to test its service location(s) and instrument(s).

(I) A statement signed in the presence of a Notary Public by an authorized agent of the payphone service provider attesting to the following:

(i) Compliance with all requirements of all applicable federal, state and local laws and regulations concerning the provision of payphone service to the disabled and hearing impaired;

(ii) Compliance with the National Electrical Safety Code;

(iii) That the payphone service provider's instruments are registered pursuant to FCC Part 68;

(iv) That the payphone service provider will pay the Public Utility assessment fee levied annually.

(v) That the payphone service provider will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the payphone service provider understands the Commission's contempt authority;

(vii) That the applicant will comply with all the signage requirements of OAC 165:58-5-3;

(viii) That all statements contained in the application are true and correct;

(ix) That the applicant possesses the financial ability to provide payphone service in the State of Oklahoma;

(x) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission; and

(xi) That the applicant will follow the requirements of the Oklahoma E911 Emergency Fund pursuant to OAC 165:61.

(J) A listing of any other certificate(s) issued by the Commission, and identification of the service(s) being provided pursuant to such Certificate(s).

(3) Additional information as requested by the Commission.

(d) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57, and/or 58, must make Application to the OCC and provide all information and notice as required in Sections 165:58-3-1(c) and 165:58-3-3 However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an Application shall be filed pursuant to OAC 165:58-3-2.

(~~d~~e) **Hearing requirements.** If no objections have been filed to an application for a Certificate of Convenience and Necessity within (thirty) 30 days from the date of the first publication of Notice that the applicant is seeking a Certificate

of Convenience and Necessity, the Commission may enter an order granting the Certificate of Convenience and Necessity without hearing. If objections are filed, a hearing shall be held on the application.

(~~e~~f) **Notice requirements of CCN applications.** Applicants for a Certificate of Convenience and Necessity to provide payphone service shall give Notice of the Application, by publishing the notice of Application, in a format approved by the Director of the Public Utility Division, once a week for two (2) consecutive weeks in some newspaper of general circulation in each territory where service will be offered. Additionally, the applicant shall forward a copy of the Notice of Application by mail or personal service to the Attorney General of the State of Oklahoma. If objections are filed to the application within (thirty) 30 days from the date of the first publication of the Notice of Application, notice of the hearing shall be given as set forth in OAC 165:58-3-3. In addition, at the time the Application is filed, the Applicant shall provide an electronic copy of Notice of the Application, to the Director of the Public Utility Division for posting on the OCC website. The Director of the Public Utility Division will then place the Notice on the OCC website within five (5) business days.

(~~f~~g) **Amended application.** During the Staff's review of the payphone service provider's application, certain revisions and/or corrections to documents attached to the application may be requested. After the parties have agreed to the necessary revisions and/or corrections, such revisions and/or corrections shall be attached to an amended application. The payphone service provider shall file an original and eight (8) copies of its amended application with the Commission's Court Clerk's Office. Requested revisions and/or corrections may include, but shall not be limited to:

(1) Revisions to the applicant's proposed tariffs;

(2) Provision of documents omitted from the originally filed application; and/or,

(3) Correction of the statement, in the body of the application only, regarding the services for which authority to provide is being sought.

(~~g~~h) **Adjunct and/or additional services.** Applicants seeking a Certificate of Convenience and Necessity to provide payphone services, that also intend to provide interexchange services and/or operator services as an adjunct service, solely in conjunction with and through its own public and/or semi-public payphone instruments, may file a single application seeking authority for all of the services it desires to provide. However, the application provided for under this subsection shall sufficiently address each of the relevant provisions required by the applicable Commission rules for applicants seeking authority to provide such service(s) (e.g., Reseller rules at OAC 165:56; OSP rules at OAC 165:57, etc.) for such adjunct authority to be considered by the Commission. In addition, the payphone service provider must ensure that its tariff includes the information set forth in OAC 165:58-7-2 for every adjunct service it intends to offer in the provisioning of payphone service. Any applicant or holder of a Certificate of Convenience and Necessity to provide payphone service, who seeks to provide any additional service(s) (e.g., interexchange service, operator service, etc.) to the general public, which is/are regulated by the Commission but which exceeds the offering of adjunct service(s) as contemplated by this subsection, must file a separate application seeking authority to provide such additional service(s) and must fully comply with the appropriate Commission rules and regulations governing the application process and the provisioning of such regulated service(s).

165:58-3-2. Expansion of service territory.

An Applicant wishing to expand its service territory must make application to the OCC and provide all information and notice as required under 165:58-3-1(c) and 165:58-3-1(e). However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct. If the previously submitted information is no longer true and correct, Applicant shall submit updated information along with a written affirmation.

[OAR Docket #04-1058; filed 5-26-04]

TITLE 270. OKLAHOMA FIREFIGHTERS PENSION AND RETIRMENT SYSTEM CHAPTER 10. FIREFIGHTERS PENSION AND RETIREMENT PLAN

[OAR Docket #04-901]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
270:10-1-4. [REVOKED]
270:10-1-5. [AMENDED]
270:10-1-7. [AMENDED]
270:10-1-8. [AMENDED]
AUTHORITY:
Board of Trustees of the Oklahoma Firefighters Pension and Retirement System; O.S. Title 11, Section 49-100.7 (B)
DATES:
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January 15, 2004 to February 13, 2004
Public hearing:
None held or requested
Adoption:
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Gubernatorial approval:
April 1, 2004
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Failure of the Legislature to disapprove the rules resulted in approval on April 16, 2004
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April 16, 2004
Effective:
June 26, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Chapter 10 establishes medical and physical requirements for the acceptance of new members into the System, establishes a description of the essential functions of all eligible firefighters, establishes standard operating procedures and establishes the process for the purchase of transferred credited service. The amendments to the medical requirements and essential functions reflect recent changes in the National Fire Protections Associations standards concerning these issues. The amendments to the standard operating procedures more clearly define the procedures and requirements necessary to be in compliance with recent statutory changes, Attorney General Opinions, court rulings, administrative past practices and Internal Revenue compliance. The amendments would further provide necessary grammatical changes to the chapter for the purpose of clarity as to their meaning and intent.

CONTACT PERSON:

Herb Bradshaw, Deputy Director, Oklahoma Firefighters Pension and Retirement System, 4545 N. Lincoln, Suite 265, Oklahoma City, Oklahoma, 73105-3414

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 26, 2004:

270:10-1-4. Definitions [REVOKED]

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

~~**"Candidate"** means any person being considered for a position of a paid firefighter in a participating municipality or a fire protection district.~~

~~**"Category A medical condition"** means a medical condition that shall preclude a person from performing the essential functions of fire suppression, prevention, and life safety duties in a fire department by presenting a significant risk to the safety and health of the person or others.~~

~~**"Category B medical condition"** means a medical condition that based on its severity or degree may preclude a person from performing the essential functions of fire suppression, prevention, and life safety duties in fire department by presenting significant risk to the safety and health of the person or others.~~

270:10-1-4.1. Medical evaluation

(a) Any candidate applying for entrance into the System as a paid firefighter must provide to the System written certification from a physician that the candidate has met the minimum medical requirements for entrance. Medical evaluations of such candidates shall be conducted prior to applications for entrance being submitted to the System. For the purposes of this section, candidate means any person being considered for membership as a paid firefighter. Medical evaluations of candidates including history, examinations, evaluations, and laboratory tests, shall be performed on each candidate in order to detect any condition(s) that could adversely affect the candidate's ability to safely perform all essential job functions of fire suppression, prevention and life safety duties, as set forth in 11 O.S. §49-100, *et seq.*

(b) The purpose of the minimum medical requirements is to reduce the risk and burden of fire Service occupational morbidity and mortality while improving the safety and effectiveness of firefighters operating to protect civilian life and property. The minimum medical requirements ensure that candidates are medically capable of performing required duties, and reduces the risk of occupational injuries and illnesses, which has direct impacts on the well being of the candidate, members of the System, the System itself and the general civilian population.

270:10-1-5. ~~Medical requirements for fire department candidates~~ Medical conditions affecting ability to safely perform essential job functions.

~~The job duties of a firefighter have been utilized by the Board in establishing the following medical standards for membership in the system:~~

(a) Medical conditions that can affect a candidate's ability to safely perform essential job functions shall be designated either Category A or Category B.

(b) Candidates with Category A medical conditions shall not be certified as meeting the medical requirements for entrance into the System.

(c) Candidates with Category B medical conditions shall be certified as meeting the medical requirements for entrance into the System only if they can perform the essential job functions without posing a significant safety and health risk to themselves, members, or civilians.

(1) Head.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Deformities of the skull such as depression or exostoses.~~

~~(ii) Deformities of the skull associated with evidence of disease of the brain, spinal cord, or peripheral nerves.~~

~~(iii) Loss or congenital absence of the bony substance of the skull.~~

~~(iv) Any other head condition that results in a person not being able to perform as a firefighter~~

(A) Category A medical conditions shall include the following:

(i) Defect of skull preventing helmet use or leaving underlying brain unprotected from trauma.

(ii) Any skull or facial deformity that would not allow for a successful respiratory facepiece fit test.

(iii) Any head condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Deformities of the skull such as depressions or exostoses.

(ii) Deformities of the skull associated with evidence of disease of the brain, spinal cord, or peripheral nerves.

(iii) Loss or congenital absence of the bony substance of the skull.

(2) Neck.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Thoracic outlet syndrome.~~

~~(ii) Congenital cysts, chronic draining fistulas, or similar lesion.~~

~~(iii) Contracture of neck muscles.~~

~~(iv) Any other neck condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Any neck condition that results in a person not being able to safely perform essential job functions.

(ii) Reserved.

(B) Category B medical conditions shall include the following:

(i) Thoracic outlet syndrome.

(ii) Congenital cysts, chronic draining fistulas, or similar lesions.

(iii) Contraction of neck muscles.

(3) Eyes and Vision.

~~(A) Category A medical conditions shall include:~~

~~(i) Far visual acuity. Far visual acuity shall be at least 20/30 in each eye corrected with contact lenses or spectacles. Far visual acuity uncorrected shall be at least 20/100 in each eye for wearers of hard contacts or spectacles. Successful long-term soft contact lens wearers shall not be subject to the uncorrected criterion.~~

~~(ii) Peripheral vision. Visual field performance without correction shall be 140 degrees in the horizontal meridian of each eye.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Diseases of the eye such as retinal detachment, progressive retinopathy, or optic neuritis.~~

~~(ii) Ophthalomological procedures such as radial keratotomy or repair of retinal detachment.~~

~~(iii) Any other eye condition that results in a person not being able to perform as a firefighter.~~

~~(iv) Color vision inadequate to identify red, green, and yellow color.~~

(A) Category A medical conditions shall include the following:

(i) Far visual acuity. Far visual acuity less than 20/40 binocular, corrected with contact lenses or spectacles. Far visual acuity less than 20/100 binocular for wearers of hard contacts or spectacles, uncorrected.

(ii) Color perception. Monochromatic vision resulting in inability to use imaging devices.

(iii) Monocular vision.

(iv) Any eye condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Diseases of the eye such as retinal detachment, progressive retinopathy, or optic neuritis.

(ii) Ophthalmological procedures such as radial keratotomy, Lasik procedure, or repair of retinal detachment.

(iii) Peripheral vision in the horizontal meridian of less than 110 degrees in the better eye or any condition that significantly affects peripheral vision in *both* eyes.

(4) Ears and hearing.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Hearing deficit in the pure tone thresholds in the unaided worst ear. EITHER~~

~~(I) Greater than 25dB in three of the four frequencies 500 Hz, 1000 Hz, 2000 Hz, 3000 Hz, OR~~

~~(II) Greater than 30dB in any one of three frequencies 500 Hz, 1000 Hz, 2000 Hz AND an average greater than 30dB for the four frequencies 500 Hz, 1000 Hz, 2000 Hz, 3000 Hz.~~

~~(ii) Auditory canal - atresia severe stenosis, or tumor.~~

~~(iii) Severe external otitis.~~

~~(iv) Auricle - severe agenesis or traumatic deformity~~

~~(v) Mastoid - severe mastoiditis or surgical deformity~~

~~(vi) Meniere's syndrome or labyrinthitis.~~

~~(vii) Otis media.~~

~~(viii) Any other ear condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Chronic vertigo or impaired balance as demonstrated by the inability to tandem gait walk.

(ii) On audiometric testing, average hearing loss in the unaided better ear greater than 40 decibels (db) at 500 Hz, and 2000 Hz when audiometric device is calibrated to ANSI Z24.5.

(iii) Any ear condition (or hearing impairment) that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Unequal hearing loss.

(ii) Average uncorrected hearing deficit at the test frequencies 500 Hz, 1000 Hz, 2000 Hz, and 3000 Hz greater than 40 dB in *either* ear.

(iii) Atresia, stenosis, or tumor of the auditory canal.

(iv) External otitis.

(v) Agenesis or traumatic deformity of the auricle.

(vi) Mastoiditis or surgical deformity of the mastoid.

(vii) Mèniére's syndrome, labyrinthititis, or tinnitus.

(viii) Otitis media.

(5) Dental.

~~(A) There are not Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Diseases of the jaws or associated tissues.~~

~~(ii) Orthodontic appliances.~~

~~(iii) Oral tissues, extensive loss.~~

~~(iv) Relationship between the mandible and maxilla that precludes satisfactory postorthodontic replacement or ability to use protective equipment.~~

~~(v) Any other dental condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Any dental condition that results in a person not being able to safely perform the duties of a firefighter.

(ii) Reserved.

(B) Category B medical conditions shall include the following:

(i) Diseases of the jaws or associated tissues.

(ii) Orthodontic appliances.

(iii) Oral tissues, extensive loss.

(iv) Relationship between the mandible and maxilla that interferes with satisfactory postorthodontic replacement or ability to use protective equipment.

(6) Nose, oropharynx, trachea, esophagus, and larynx.

~~(A) Category A medical conditions shall include:~~

~~(i) Tracheostomy.~~

~~(ii) Aphonia.~~

~~(iii) Anosmia.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Congenital or acquired deformity.~~

~~(ii) Allergic respiratory disorder.~~

~~(iii) Sinusitis, recurrent.~~

~~(iv) Dysphonia.~~

~~(v) Any other nose, oropharynx, trachea, esophagus, or larynx condition that results in a person not being able to perform as a firefighter or to communicate effectively.~~

(A) Category A medical conditions shall include the following:

(i) Tracheostomy.

(ii) Aphonia.

(iii) Any nasal, oropharyngeal, tracheal, esophageal, or laryngeal condition that results in not being able to perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Congential or acquired deformitiy.

(ii) Allergic rhinitis.

(iii) Epistaxis, recurrent.

(iv) Sinusitis, recurrent.

(v) Dysphonia.

(vi) Anosmia.

(vii) Tracheal stenosis.

(viii) Naso-pharyngeal polyposis.

(7) Lungs and chest wall.

~~(A) Category A medical conditions shall include active hemoptysis, empyema, current pneumonia, pulmonary hypertension, active tuberculosis, or infectious disease of the lungs or pleural space.~~

~~(B) Category B conditions shall include:~~

~~(i) Pulmonary resectional surgery, chest wall surgery, pneumothorax.~~

~~(ii) Bronchial asthma of reactive airways disease.~~

~~(iii) Fibrothorax, chest wall deformity, diaphragm abnormalities.~~

~~(iv) Chronic obstructive airways disease.~~

~~(v) Hypoxemic disorders.~~

~~(vi) Interstitial lung disease.~~

~~(vii) Pulmonary vascular disease~~

~~(viii) Bronchiectasis.~~

(A) Category A medical conditions shall include the following:

(i) Active hemoptysis.

(ii) Empyema.

(iii) Pulmonary hypertension.

(iv) Active tuberculosis.

(v) Obstructive lung diseases (e.g., emphysema, chronic bronchitis, asthma, etc.) with an FEV_1/FVC <0.75, with both FEV_1 FVC below normal (<0.80%) as defined by the American Thoracic Society.

(vi) Hypoxemia - Oxygen saturation <90% at rest or exercise desaturation to <90% (exercise testing indicated when resting oxygen is <94% but >90%). Evaluate VO^2 max as described by American College of Sports Medicine (ACSM).

(vii) Asthma - Reactive airways disease requiring bronchodilator or corticosteroid therapy in the previous 2 years. A candidate who has required these medications but who does not believe he/she has asthma shall demonstrate a normal response to cold air or methacholine (PC20 greater than 16mg/ml). To be safely administered, this test shall be performed by a qualified specialist and to be valid the candidate shall be off all anti inflammatory medications for at least 4 weeks and off bronchodilators the day of testing. A negative challenge test [as described by American Thoraic Society (ATS)], along with no recentepisode of bronchospasm off medication shall be considered evidence that the candidate does not have clinically significant airways hyperactivity or asthma.

(viii) Any pulmonary condition that results in a person not being able to safely perform essential job functions

(B) Category B medical conditions shall include the following:

(i) Pulmonary resectional surgery, chest wall surgery, and pneumothorax.

(ii) Pleural effusion.
(iii) Fibrothorax, chest wall deformity, and diaphragm abnormalities.
(iv) Interstitial lung diseases.
(v) Pulmonary vascular diseases or history of pulmonary embolism.
(vi) Bronchiectasis.
(vii) Infectious diseases of the lung or pleural space.
(vii) Cystic fibrosis
(ix) Central or obstructive apnea.
(x) Any other pulmonary condition that results in a person not being able to safely perform as a member.

(8) Heart
~~(A) Category A medical conditions shall include:~~
~~(i) Current angina pectoris.~~
~~(ii) Coronary artery disease including history of myocardial infarction, coronary artery bypass surgery, or coronary angioplasty, and similar procedures.~~
~~(iii) Cardiac pacemaker.~~
~~(iv) Recurrent syncope.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Significant valvular lesions of the heart including prosthetic valves.~~
~~(ii) Atrial tachycardia, flutter, or fibrillation.~~
~~(iii) Third degree atrio-ventricular block.~~
~~(iv) Ventricular tachycardia.~~
~~(v) Hypertrophy of the heart.~~
~~(vi) Recurrent paroxysmal tachycardia.~~
~~(vii) History of a congenital abnormality.~~
~~(viii) Any other cardiac condition that results in a person not being to perform as a firefighter.~~
(A) Category A medical conditions shall include the following:
(i) Corornary artery disease, including history of myocardial infarction, angina pectoris, coronary artery bypass surgery, coronary angioplasty, and similar procedures.
(ii) Cardiomyopathy or congestive heart failure, including signs or symptoms of compromised left or right ventricular function, including dyspnea, S3 gallop, peripheral edema, enlarged ventricle, abnormal ejection fraction, and/or inability to increase cardiac output with exercise.
(iii) Acute pericarditis, endocarditis, or myocarditis.
(iv) Syncope, recurrent.
(v) A medical condition requiring an automatic implantable cardiac defibrillator or history of ventricular tachycardia or ventricular fibrillation due to ischemic or valvular herart disease, or cardiomyopathy.
(vi) Third-degree atrioventricular block.
(vii) Cardiac pacemaker.
(viii)Idiopathic hypertrophic subaortic stenosis.
(ix) Any cardiac condition that results in a person not being able to safely perform essential job functions.
(B) Category B medical conditions shall include the following:
(i) Valvular lesions of the heart, including prosthetic valves.
(ii) Recurrent supraventricular or atrial tachycardia, flutter, or fibrillation.
(iii) Left bundle branch block.
(iv) Second-degree atrioventricular block in the absence of structural heart disease.
(v) Sinus pause >3 seconds.
(vi) Ventricular arrhythmia (history or presence of multi-focal PVCs or nonsustained ventricular tachycardia on resting EKG with or without symptoms; history or presence of sustained ventricular tachycardia with or without symptoms).
(vii) Cardiac hypertrophy or hypertrophic cardiomyopathy.
(viii) History of congenital abnormality.
(ix) Chronic pericarditis, endocarditis, or myocarditis.

(9) Vascular system.
~~(A) Category A medical conditions shall include:~~
~~(i) Congenital or acquired lesions of the aorta and major vessels.~~
~~(ii) Marked circulatory instability as indicated by orthostatic hypotension, persistent tachycardia, and severe peripheral vasomotor disturbances.~~
~~(iii) Aneurysm of the heart or major vessel, congenital or acquired.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Hypertension.~~
~~(ii) Peripheral vascular disease such as Raynaud's phenomenon.~~
~~(iii) Recurrent thrombophlebitis.~~
~~(iv) Chronic Lymphedema due to lymphopathy or severe venous valvular incompetency.~~
~~(v) Any other vascular condition that results in a person not being able to perform as a firefighter.~~
(A) Category A medical conditions shall include the following:
(i) Hypertension with evidence of end organ damage or not controlled by approved medications.
(ii) Thoracic or abdominal aortic aneurysm.
(iii) Carotid artery stenosis or obstruction resulting in ≥50 percent reduction in blood flow.
(iv) Peripheral vascular disease resulting in symptomatic claudication.
(v) Any other vascular condition that results in a person not being able to safely perform essential job functions.
(B) Category B medical conditions shall include the following:
(i) Vasospastic phenomena such as Raynaud's phenomenon.

(ii) Thrombophlebitis and varicosities.
(iii) Chronic lymphedema due to lymphadenopathy or venous valvular incompetency.
(iv) Congenital or acquired lesions of the aorta or major vessels.
(v) Circulatory instability as indicated by orthostatic hypotension, persistent tachycardia, and peripheral vasomotor disturbances.
(vi) History of surgical repair of aneurysm of the heart or major vessel.

(10) Abdominal organs and gastrointestinal system.
~~(A) Category A medical conditions shall include chronic active hepatitis.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Cholecystectomy or cholecystitis.~~
~~(ii) Gastritis.~~
~~(iii) Hemorrhoids.~~
~~(iv) Acute hepatitis.~~
~~(v) Hernia.~~
~~(vi) Inflammatory bowel disease.~~
~~(vii) Intestinal obstruction.~~
~~(viii) Pancreatitis.~~
~~(ix) Resection, bowel.~~
~~(x) Ulcer, gastrointestinal.~~
~~(xi) Cirrhosis, hepatic or biliary.~~
~~(xii) Any other gastrointestinal condition that results in a person not being able to perform the duties of a firefighter.~~
(A) Category A medical conditions shall include the following:
(i) Presence of uncorrected inguinal/femoral hernia regardless of symptoms.
(ii) Any gastrointestinal condition that results in a person not being able to safely perform essential job functions.
(B) Category B medical conditions shall include the following:
(i) Cholecystitis.
(ii) Gastritis.
(iii) GI bleeding.
(iv) Acute hepatitis.
(v) Hernia including the following:
(I) Uncorrected umbilical, ventral, or incisional hernia if significant risk exists for infection or strangulation.
(II) Significant symptomatic hiatal hernia if associated with asthma, recurrent pneumonia, chronic pain, or chronic ulcers.
(III) Surgically corrected hernia >3months after surgical correction.
(vi) Inflammatory bowel disease or irritable bowel syndrome.
(vii) Intestinal obstruction.
(viii)Pancreatitis.
(ix) Diverticulitis.
(x) History of gastrointestinal surgery.
(xi) Peptic or duodenal ulcer or Zollinger-Ellison syndrome.
(xii) Asplenia.
(xiii)Cirrhosis, hepatic or bilary.
(xiv)Chronic active hepatitis.

(11) Reproductive system.
~~(A) There are no category A medical conditions.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Dysmenorrhea.~~
~~(ii) Endometriosis, ovarian cysts, or other gynecologic conditions.~~
~~(iii) Testicular or epididymal mass.~~
~~(iv) Pregnancy for its duration.~~
~~(v) Any other genital condition that results in a person not being able to perform the duties of a firefighter.~~
(A) Category A medical conditions shall include the following:
(i) Any genital condition that results in a person not being able to safely perform essential job functions.
(ii) Reserved.
(B) Category B medical conditions shall include the following:
(i) Pregnancy, for its duration.
(ii) Dysmenorrhea.
(iii) Endometriosis, ovarian cysts, or other gynecologic conditions.
(iv) Testicular or epididymal mass.

(12) Urinary system.
~~(A) There are no Category A medical conditions.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Diseases of the kidney.~~
~~(ii) Diseases of the ureters, bladder or prostate.~~
~~(iii) Any other urinary condition that results in a person not being able to perform as a firefighter.~~
(A) Category A medical conditions shall include the following:
(i) Renal failure or insufficiency requiring continuous ambulatory peritoneal dialysis (CAPD) or hemodialysis.
(ii) Any urinary condition that results in a person not being able to safely perform essential job functions.
(B) Category B medical conditions shall include the following:
(i) Diseases of the kidney.
(ii) Diseases of the ureter, bladder, or prostate.

(13) ~~Spine, scapulae, ribs, and sacroiliac joints.~~
~~(A) There are no Category A medical conditions.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Arthritis.~~
~~(ii) Structural abnormality, fracture, or dislocation.~~
~~(iii) Nucleus pulposus, herniation of or history of laminectomy.~~
~~(iv) Any other spinal condition that results in a person not being able to perform the duties of a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Scoliosis of thoracic or lumbar spine with angle ≥40 degrees.

(ii) History of multiple spinal surgeries or spinal surgery involving fusion of more than 2 vertebrae, diskectomy or laminectomy, or rods that are still in place.

(iii) Any spinal or skeletal condition producing sensory or motor deficit(s) or pain due to rediculopathy or nerve root compression.

(iv) Any spinal or skeletal condition causing pain that frequently or recurrently requires narcotic analgesic medication.

(v) Cervical vertebral fractures with multiple vertebral body compression greater than 25 percent; evidence of posterior element involvement, nerve root damage, disc involvement, dislocation (partial, moderate, severe), abnormal exam, ligament instability, symptomatic, and/or less than 6 months post injury or 1 year since surgery.

(vi) Thoracic vertebral fractures with vertebral body compression greater than 50 percent; evidence of posterior element involvement, nerve root damage, disc involvement, dislocation (severe-with or without surgery), abnormal exam, ligament instability, symptomatic, and/or less than 6 months post injury or 1 year since surgery.

(vii) Lumbosacral vertebral fractures with vertebral body compression greater than 50 percent; evidence of posterior element involvement, nerve root damage, disc involvement, dislocation (severe- with or without surgery), abnormal exam, ligament instability, symptomatic, and/or less than 6 months post injury or 1 year since surgery.

(viii)Any spinal or skeletal condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Congenital or developmental malformations of the back, particularly those that can cause instability, neurological deficits, pain, or limits flexibility.

(ii) Scoliosis with angle <40 degrees.

(iii) Arthritis of the cervical, thoracic, or lumbosacral spine.

(iv) Facet atrophism, high lumbosacral angle, hyperlordosis, Schmorl's nodes, Scheuermann's disease, spina bifida occulta, spondylolisthesis, spondylolysis, Or transitional vertebrae.

(v) History of infections or infarcts in the spinal cord, epidural space, vertebrae, or axial skeletal joints.

(14) Extremities.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Limitation of motion of a joint.~~

~~(ii) Amputation or deformity of a joint or limb.~~

~~(iii) Dislocation of a joint.~~

~~(iv) Joint reconstruction, ligamentous instability, or joint replacement.~~

~~(v) Chronic osteoarthritis or traumatic arthritis.~~

~~(vi) Inflammatory arthritis.~~

~~(vii) Any other extremity condition that results in a person not being able to perform the duties of firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Bone hardware such as metal plates or rods supporting the bone during healing.

(ii) History of total joint replacement.

(iii) Amputation or congenital absence of upper extremity limb (hand or higher).

(iv) Amputation of either thumb proximal to the mid-proximal phalanx.

(v) Amputation or congenital absence of lower extremity limb (foot or above).

(vi) Chronic nonhealing or recent bone grafts.

(vii) History of more than on dislocation of the shoulder without surgical repair or with history of recurrent shoulder disorders within the last 5 years with pain or loss of motion, and with or without radiographic deviations form normal.

(viii)Any extremity condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) History of shoulder dislocation with surgical repair.

(ii) Significant limitation of function of shoulder, elbow, wrist, hand, or finger, due to weakness, reduced range of motion, atrophy, unequal length, absence, or partial amputation.

(iii) Significant lack of full motion of hip, knee, ankle, foot, or toes due to weakness, reduced range of motion, atrophy, unequal length, absence, or partial amputation.

(iv) History of meniscectomy or ligamentous repair of knee.

(v) History of intra-articular, malunited, or nonunion of upper or lower extremity fracture.

(vi) History of osteomyelitis, septic, or rheumatoid arthritis.

(15) Neurological disorders.

~~(A) Category A medical conditions shall include:~~

~~(i) Ataxias of heredo-degenerative type.~~

~~(ii) Cerebral arteriosclerosis as evidenced by documented episodes of neurological impairment.~~

~~(iii) Multiple sclerosis with activity or evidence of progression within previous three years.~~

~~(iv) Progressive muscular dystrophy or atrophy.~~

~~(v) All elliptical conditions including simple partial complex, partial generalized and psychomotor seizure disorders other than those with complete control during previous five (5) years, as evidenced by normal neurological examination and definitive statement from a qualified neurological specialist.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Congenital malformations.~~

~~(ii) Migraine.~~

~~(iii) Clinical disorders with paresis, paralysis, dyscoordination, deformity, abnormal motor activity, abnormality of sensation, or complaint of pain.~~

~~(iv) Suarachnoid or intracerebral hemmorage.~~

~~(v) Abnormalities from recent head injury such as severe cerebral contusion or concussion.~~

~~(vi) Any other neurological condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Ataxias of heredo-degenerative type.

(ii) Cerebral arteriosclerosis as evidenced by a history of transient ischemic attack, reversibile ischemic neurological deficit, or ischemic stroke.

(iii) Hemiparalysis or paralysis of a limb.

(iv) Multiple sclerosis with activity or evidence of progression within previous 3 years.

(v) Myasthenia gravis with activity or evidence of progression within previous 3 years.

(vi) Progressive muscular dystrophy or atrophy.

(vii) Uncorrected cerebral aneurysm.

(viii) All epileptic conditions to include simple partial, complex partial, generalized, and psychomotor seizure disorders other than those with complete control during previous 5 years. A candidate shall also have normal neurological examination without structural abnormality on brain imaging, normal awake and asleep EEG with photic stimulation and hyperventilation, as well as definitive statement form qualified neurological specialist. A candidate with epilepsy shall not be cleared for fire-fighting duty until he or she has completed 5 years without a seizure on a stable medical regimen or 1 year without a seizure after discontinuing all anti-epileptic drugs.

(ix) Dementia (Alzheimer's and other neuro-degenerative diseases) with symptomatic loss of function or cognitive impairment (e.g., ≤28 on Mini-Mental Status Exam).

(x) Any neurological condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Congenital malformations.

(ii) Migraine.

(iii) Clinical disorders with paresis, dyscoordination, deformity, abnormal motor activity, abnormality of sensation, or complaint of pain.

(iv) History of subarachnoid or intraparenchymal hemorrhage.

(v) Abnormalities from recent head injury such as severe cerebral contusion or concussion.

(16) Skin.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Acne or inflammatory skin disease.~~

~~(ii) Eczema.~~

~~(iii) Any other dermatologic condition that results in the person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Metastatic or locally extensive basal or squamous cell carcinoma or melanoma.

(ii) Any dermatolgic condition that would not allow for a successful respiratory facepiece fit test.

(iii) Any dermatologic condition that results in the person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Skin conditions of a chronic or recurrent nature (eczema, cystic acne, psoriasis) that cause skin openings or inflammation or irritation of the skin surface.

(ii) Surgery or skin grafting.

(iii) Mycosis fungoides.

(iv) Cutaneous lupus erthematosus.

(v) Raynaud's phenomenon.

(vi) Scleroderma (skin).

(vii) Vasculitic skin lesions.

(viii) Atopic dermatitis/eczema.

(ix) Contact or seborrheic dermatitis.

(x) Stasis dermatitis.

(xi) Albinism Dariers Disease, Ichthyosis Marfan's Syndrome, Neurofibromatosis, and other genetic conditions.

(xii) Folliculitis, Pseudo-folliculitis, Miliaria, Keloid folliculitis.

(xiii) Hidradenitis suppurativa, Furuncles, Carbuncles, or Grade IV acne (cystic).

(xiv) Mechano-Bullous Disorders (Epidermolysis Bullosa, Hailey Pemphigus, Porphyria, Pemphigoid).

(xv) Urticaria or Angioedema.

(17) Blood and blood-forming organs.

~~(A) Category A medical conditions shall include:~~

~~(i) Hemorrhagic states requiring replacement therapy.~~

~~(ii) Sickle cell disease (homozygous).~~

~~(B) Category B medical conditions shall include:~~

~~(i) Anemia.~~

~~(ii) Leukopenia.~~

~~(iii) Polycythemia vera.~~
~~(iv) Splenomegaly.~~
~~(v) History of thromboembolic disease.~~
~~(vi) Any other hematological condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:
(i) Hemorrhagic states requiring replacement therapy.
(ii) Sickle cell disease (homozygous)
(iii) Clotting disorders.
(iv) Any hematological condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:
(i) Anemia.
(ii) Leukopenia.
(iii) Polycythemia vera.
(iv) Splenomegaly.
(v) Any other hematological condition that results in a person not being able to safely perform essential job functions.

(18) Endocrine and metabolic disorders.
~~(A) Category A medical conditions shall include diabetes mellitus treated with insulin or an oral hypoglycemic agent with a history of one or more episodes or incapacitating hypoglycemia.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Diseases of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.~~
~~(ii) Nutritional deficiency disease or metabolic disorder.~~
~~(iii) Diabetes mellitus requiring treatment with insulin or oral hypoglycemic agent without a history of incapacitating hypoglycemia.~~
~~(iv) Any other endocrine or metabolic condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:
(i) Diabetes mellitus, which is treated with insulin.
(ii) Diabetes not treated by insulin, which is not controlled as evidenced by Hemoglobin A1C (Hb A1C) measurement.
(iii) Any endocrine or metabolic condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:
(i) Diseases of the adrenal gland, pituitary gland, parathyroid gland, or thyroid bland of clinical significance.
(ii) Nutritional deficiency diseases or other metabolic disorder.
(iii) Diabetes mellitus that is well controlled on diet, exercise, and/or oral hypoglycemic agents.

(19) Systemic diseases and miscellaneous conditions.
~~(A) There are no Category A medical conditions.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Connective tissue disease, such as dermatomyositis, lupus erythematosus, scleroderma and rheumatoid arthritis.~~
~~(ii) Residuals form past thermal injury.~~
~~(iii) Documented evidence of a predisposition to heat stress with recurrent episodes or resulting residual injury.~~
~~(iv) Any other systemic condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:
(i) Any systemic condition that results in a person not being able to safely perform essential job functions.
(ii) Reserved.

(B) Category B medical conditions shall include the following:
(i) Connective tissue disease, such a dermatomyositis, systemic lupus erythematosus, scleroderma, and rheumatoid arthritis.
(ii) History of thermal, chemical, or electrical burn injury with residual functional deficit.
(iii) Documented evidence of a predisposition to heat stress with recurrent episodes or resulting injury.

(20) Tumors and malignant diseases.
~~(A) Category A medical conditions shall include malignant disease which is newly diagnosed, untreated, or currently being treated until treatment has been completed.~~
~~(B) Category B medical conditions shall include:~~
~~(i) Treated malignant disease shall be evaluated based upon that person's current physical condition and on the likelihood of that person's disease to recur or progress.~~
~~(ii) Any other tumor or similar condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:
(i) Malignant disease that is newly diagnosed, untreated, or currently being treated.
(ii) Any tumor or similar condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:
(i) Benign tumors.
(ii) History of CNS tumor or malignancy.
(iii) History of head and neck malignancy.
(iv) History of lung cancer.
(v) History of GI or GU malignancy.

(vi) History of bone or soft tissue tumors or malignancies.

(vii) History of hematological malignancy.

(21) Psychiatric conditions.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) A history of psychiatric condition or substance abuse problem shall be evaluated based upon that person's current condition.~~

~~(ii) Any other psychiatric condition that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following.

(i) Any psychiatric condition that results in a person not being able to safely perform essential job functions.

(ii) Reserved.

(B) Category B medical conditions shall include the following:

(i) A history of psychiatric condition or substance abuse problem.

(ii) Requirement for medications that increase an individual's risk of heat stress, or other interference with the ability to safely perform essential job functions.

(22) Chemicals, drugs, and medications.

~~(A) There are no Category A medical conditions.~~

~~(B) Category B medical conditions shall include:~~

~~(i) Anticoagulant agents.~~

~~(ii) Cardiovascular agents.~~

~~(iii) Narcotics.~~

~~(iv) Sedative hypnotics.~~

~~(v) Stimulants.~~

~~(vi) Psychoactive agents.~~

~~(vii) Steroids.~~

~~(viii) Any other chemical, drug, or medication that results in a person not being able to perform as a firefighter.~~

(A) Category A medical conditions shall include the following:

(i) Narcotics, including methadone.

(ii) Sedative-hypnotics.

(iii) Drugs that prolong Prothrombin Time, Partial Thromboplastin Time, or INR.

(iv) Beta-adrenergic blocking agents.

(v) Respiratory medications: Inhaled bronchodilators, inhaled corticosteroids, systemic corticosteroids, theophylline, and leukotriene-receptor blockers/antagonists.

(vi) Any chemical drug, or medication that results in a person not being able to safely perform essential job functions.

(vii) Evidence of illegal drug use detected through testing, conducted in accordance with Substance Abuse and Mental Health Service Administration (SAMHSA), shall be a Category A medical condition.

(viii) Evidence of clinical intoxication or a measured blood alcohol level that exceeds the legal definition of intoxication according to the AHJ at the time of medical evaluation shall be a Category A medical condition.

(B) Category B medical conditions shall include the use of the following:

(i) Cardiovascular agents.

(ii) Stimulants.

(iii) Psychoactive agents.

(iv) Corticosteroids.

(v) Antihistamines.

(vi) Muscle relaxants.

270:10-1-7. Description of essential functions of all eligible firefighters

~~To be eligible to be members of the System, firefighters shall perform the essential functions of fire suppression, prevention, and life safety duties in the fire department.~~

~~(1) Summary of essential functions.~~

~~(A) Performs firefighting duties such as combating, extinguishing and preventing fires, and answering emergency calls with an engine, ladder, or miscellaneous vehicles. Lays and connects hoses, direct water onto burning structures, raises and climbs ladders; uses other firefighting techniques such as ventilating burning buildings (chopping holes in floors or roofs); administers first aid to injured persons; performs salvage operations; and inspects assigned district to assure knowledge or access, fire hazards, etc.~~

~~(B) Trains for, and participates in the protection of life and property by firefighting and rescue activities. Participates in fire drills and attends training classes in firefighting, first aid and related subjects.~~

~~(C) Handles routine custodial maintenance of the fire department equipment (such as oxygen breathing equipment, resuscitation equipment, etc.), apparatus and quarters.~~

~~(D) Conforms to the safety requirements of the department.~~

~~(2) Essential working conditions/physical requirements. Such essential functions of a firefighter are performed in and affected by the following environmental factors:~~

~~(A) Operate both as a member of a team and independently at incidents of uncertain duration.~~

~~(B) Spend extensive time outside exposed to the elements.~~

~~(C) Tolerate extreme fluctuations in temperature while performing duties. Must perform physically demanding work in hot (up to 400°), humid (up to 100%) atmospheres while wearing equipment that significantly impairs the body cooling mechanisms.~~

~~(D) Experience frequent transition from hot to cold and from humid to dry atmospheres.~~

~~(E) Work in wet, icy, or muddy areas.~~

~~(F) Perform a variety of tasks on slippery, hazardous surfaces such as on roof tops or from ladders.~~

~~(G) Work in areas where sustaining traumatic or thermal injuries are possible.~~

~~(H) Face exposure to carcinogenic dusts such as asbestos, toxic substances such as hydrogen cyanide, carbon monoxide, or organic solvents either through inhalation or skin contact.~~

~~(I) Face exposure to infectious disease agents such as hepatitis B or HIV.~~

~~(J) Wear personal protective equipment that weighs approximately 50 pounds while performing these tasks.~~

~~(K) Perform physically demanding work while wearing positive pressure breathing equipment with 1.5 inches of water column resistance to exhalation of a flow of 40 liters per minute.~~

~~(L) Perform complex tasks during life-threatening emergencies.~~

~~(M) Work for long periods of time, requiring sustained physical activity and intense concentration.~~

~~(N) Face life or death decisions during emergency conditions.~~

~~(O) Exposed to grotesque sights and smells associated with major trauma and burn victims.~~

~~(P) Make rapid transitions from rest to near maximal exertion without warm up periods.~~

~~(Q) Operate in environments of high noise, poor visibility, limited mobility, at heights, and in enclosed or confined spaces.~~

~~(R) Use manual and power tools in the performance duties.~~

~~(S) Rely on speech, as well as senses of sight, hearing, smell and touch to help determine nature of the emergency, maintain personal safety, and make critical decisions in a confused, chaotic, and potentially life threatening environment throughout the duration of the operation.~~

~~(T) Lift varying weights and carry said weights, without stopping, for various distances.~~

To be eligible for entrance into the System as a paid firefighter, a candidate must meet minimum medical requirements which reflect the ability of the candidate to perform the essential functions of fire suppression, prevention and life safety as set forth in O.S. §49 100.1, et seq. The essential job functions reflect the physical, physiological, intellectual, psychological demands of the occupation including,

(1) Performing firefighting functions (e.g., hoseline operations, extensive crawling, lifting and carrying heavy objects, ventilating roofs or walls using power or hand tools, forcible entry), rescue operations, and other emergency response actions under stressful conditions while wearing personal protective ensembles (PPE) and self-contained breathing apparatus (SCBA), including working in extremely hot or cold environments for prolonged periods of time.

(2) Wearing an SCBA, which includes a demand valve-type positive pressure facepiece or HEPA filter masks, which requires the ability to tolerate increased respiratory workloads.

(3) Exposure to toxic fumes, irritants, particulates, biological (infectious) and nonbiologicial hazards, and/or heated gases, despite the use of PPE including SCBA.

(4) Climbing 6 or more flights of stairs while wearing fire protective ensemble weighing at least 50 lb or more and carrying equipment/tools weighing an additional 20 to 40 lb.

(5) Wearing fire protective ensemble that is encapsulating and insulating. Wearing this clothing will result in significant fluid loss that frequently progresses to clinical dehydration and can elevate core temperature to levels exceeding 102.2°F (39°C).

(6) Searching, finding, and rescue-dragging or carrying victims ranging from newborns up to adults weighing over 200 lb to safety despite hazardous conditions and low visibility.

(7) Advancing water-filled hoselines up to 2.5 in. in diameter from fire apparatus to occupancy (approximately 150 ft.); can involve negotiating multiple flights of stairs, ladders, and other obstacles.

(8) Climbing ladders, operating from heights, walking or crawling in the dark along narrow and uneven surfaces, and operating in proximity to electrical power lines and/or other hazards.

(9) Unpredictable emergency requirements for prolonged periods of extreme physical exertion without benefit of warm-up, scheduled rest periods, meals, access to medication(s), or hydration.

(10) Operating fire apparatus or other vehicles in an emergency mode with emergency lights and sirens.

(11) Critical, time-sensitive, complex problem solving during physical exertion in stressful, hazardous environments (including hot, dark, tightly enclosed spaces), further aggravated by fatigue, flashing lights, sirens and other distractions.

(12) Ability to communicate (give and comprehend verbal orders) while wearing PPE and SCBA under conditions of high background noise, poor visibility, and drenching from hoselines and/or fixed protection systems (sprinklers).

(13) Functioning as an integral component of a team, where sudden incapacitation of a member can result in mission failure or in risk of injury or death to civilians or other team members (e.g., two in, two out as described in NFPA 1500.

270:10-1-8. Standard operating procedures

(a) **Benefits.**

(1) All pension benefits are paid in arrears the last working day of the month.

(2) In determining a paid member's normal retirement date, fractional round-up of months and days shall not be used even if the member has volunteer credited service.

(3) If a member serves the majority of the final month of service, the final month will count as a full month of credited service.

(4) Where longevity pay or other salary which requires contributions is paid in a lump sum to a member, only

the amount which would have been paid for a member's last thirty (30) months of credited service will be used for determining final average salary.

(5) Retirement pursuant to 11 O.S. § 49-106 has at times included reemployment of a member by a participating municipality in a position which is not covered by the System. Thus, in-service distributions from the System to such a member are permitted. If a retired member is reemployed by a participating municipality in a paid position which is covered by the System, such member's monthly retirement payments shall cease during such period.

(b) **Clerks and fire chiefs.**

(1) The clerk and/or the fire chief of a participating municipality, fire protection district, county fire department or developmental authority are responsible for the administration of local retirement issues affecting all members of the System, including but not limited to enrollment of eligible members, assisting members in making application for benefits, and collection and payment of employer and member contributions.

(2) The clerk and/or the fire chief shall notify the System of any changes regarding active members such as termination, mailing addresses, and deaths. The fire chief will assist the clerk in obtaining necessary information concerning active members. Notices of termination must be provided on the System's Form 8 and shall be signed by the fire chief.

(c) **Volunteer firefighters.**

(1) A member of the System changing status from a paid member to a volunteer member is not entitled to combine the paid credited service and the subsequent volunteer credited service towards a paid or a volunteer pension. If a paid member has completed ten (10) years but less than twenty (20) years of credited service, the member would be eligible for a paid vested benefit. The member would need to complete ten (10) or more years as a volunteer member to be eligible to receive a vested volunteer benefit.

(2) Volunteer members are deemed to be employees of a fire department of a participating municipality for the purposes of the administration of the System.

(d) **State Board.**

(1) Applications for pension benefits will not be considered by the State Board until the applicant terminates employment with the fire department of a participating municipality on or before the date of the meeting of the State Board in which the application is considered.

(2) Applications for pension benefits, entrance into the system, refunds of contributions, etc. will be placed on the State Board Agenda when all paper-work has been properly completed and received by the State Office. All necessary paper-work should be filed with the State Office no later than the Friday preceding the State Board's regular meeting so as to allow sufficient time to process the application.

(e) **Member deaths and beneficiaries.**

(1) Guardian checks will be addressed with the Guardian's name and the statement: "Guardian of _____" on the face of the check.

(2) The Estate of the retiree or beneficiary shall be entitled to the benefit check written for the month a retiree or beneficiary dies.

(3) To continue monthly benefits on a child who has reached eighteen (18) years of age, verification that the child is enrolled full-time in an accredited school of learning must be received by the System. Documentation is required each semester until the child reaches twenty-two (22) years of age or marries at which time the benefits will cease.

(4) Step children and grandchildren of members are not beneficiaries unless they are adopted by the member.

(5) Children adopted prior to January 1, 1981, are considered beneficiaries even though the child(ren) may have been adopted after the member's retirement date.

(6) A valid marriage certificate or other necessary proof of marriage is required before an Application of Surviving Spouse for Pension can be considered by the State Board.

(f) **Membership.**

(1) A part-time firefighter shall not belong to the System.

(2) All firefighters must be members of the System if their employer is a participating municipality in the System.

(3) A candidate for a paid firefighter position must first complete a required State Board approved pre-employment physical performance/agility test and physical examination in order to participate and receive any benefits from the System. The physical examination will be reviewed by the State Board's physician to determine if the applicant meets the required medical standards. When the System receives all the information necessary for entrance into the System, including the written notice from the System's physician that the candidate has met the minimum requirements for entrance, the Executive Director shall have the authority to approve an entrance date for the candidate no earlier than the date all the necessary information is received or the actual hire date whichever is later, provided that the date between the time of the administration of the physical examination and the approval for membership in the System by the Executive Director and the candidates actual hire date by the participating municipality is less than six (6) months. The State Board shall have the authority to deny or revoke the membership of a candidate submitting false information in such candidate's membership application and shall have the final authority in determining eligibility for membership in the System.

(4) An applicant for a paid firefighter position, who is an active volunteer firefighter with the same fire department, and who has passed the physical performance/agility test approved by the State Board as a condition for entrance as a volunteer firefighter shall only be required to pass the physical examination upon being employed as a paid firefighter if employed by the same fire department.

(5) A terminated paid firefighter who returns to work as a paid firefighter within six (6) months of his or her termination date will not be required to complete another physical examination.

(6) The classification of paid firefighter shall be a firefighter who is carried on the city payroll as a paid firefighter and who receive a salary which is more that twice the amount of the minimum pension of a volunteer firefighter. Any firefighter making more than this amount will need to complete the required physical performance/agility test and physical exam and his or her employer must remit both employee and employer contributions to the System.

(g) **Credited Service.**

(1) If a firefighter is off the payroll for a period of time and is not contributing to the System, that period of time will not count towards retirement.

(2) New volunteer cities joining the System may purchase up to five (5) years of credited service for each member of the department at the annual rate in effect as of the date of the purchase, provided verifiable evidence of active firefighter service for the purchased years for each individual is provided to the System. Even though a city is exempt from contributions, contributions must be paid for a volunteer firefighter to receive purchased credit.

(3) If a question arises concerning a member's correct amount of service time, the member must submit to the State Board three (3) affidavits, based upon the actual knowledge of the member's correct service time, and all other necessary documentation, as may be required by the State Board. The Chairman of the State Board may direct a member of the State Board or an employee of the System to visit the member and the city in question for further verification. Service time may be corrected to allow not more than twenty (20) years of service.

(4) Volunteer firefighters changing to paid firefighters.

(A) Pursuant to Subsection B of Section 49-108 of Title 11, any volunteer firefighter who is appointed as a paid firefighter on or after May 15, 1992, and serves ten (10) or more years as a paid firefighter, shall be entitled to credit not more than five (5) years of volunteer time toward twenty (20) years of credited service to qualify to receive a paid service pension. The volunteer firefighter shall be entitled to credit to the amount of credited service time, over and above the five (5) years of volunteer time, computed at one-twentieth (1/20) of a volunteer pensions of each additional volunteer year, but not to exceed thirty (30) years of credited service.

(B) Pursuant to Subsection B of Section 49-108 of Title 11, any volunteer firefighter who is appointed as a paid firefighter before May 15, 1992, and serves ten (10) or more years as a paid firefighter, shall be entitled to credit all of the firefighter volunteer time as paid credited service to receive a paid service pension.

(h) **Disability.**

(1) Applications for disability pensions shall provide medical evidence certifying the disability, proof of injury unless otherwise provided, and that the applicant can no longer perform the duties of a firefighter. The proof of injury must be proof of the specific injury that prevented the disability pension applicant from continuing the duties of a firefighter from the time of injury until present. In a case where the disability applicant returned to performing the duties of a firefighter at any time following the injury, the proof of injury must be accompanied by proof that certifies cumulative evidence of a continuing condition relating to that specific injury until the time of filing of the disability application. In a case where a firefighter returned to a "light duty" or "restricted duty" only status, proof certifying the disability applicant's work status from the injury time until present shall be submitted along with the disability application. The application shall be filed with the Local Board, if the Local Board exists, or the Executive Director of the System. The existing Local Board or the Executive Director of the System will determine if additional medical evidence is required. If additional medical evidence is required, the State Board shall be responsible for payment of any physical examinations and certifications.

(2) If any additional medical evidence is produced concerning a disability pension application, said medical evidence must be presented to the Local Board, if the Local Board exists, or the Executive Director before the State Board considers the application. If an applicant requests a hearing before the State Board, all evidence concerning the application may be presented providing all parties affected by the hearing agree.

(3) A stroke condition that has been medically certified to be caused by heart disease shall be categorized as heart disease for the purpose of applying the line of duty presumption pursuant to 11 O.S. §49-110.

(4) Any medical testing requested by a physician for the purpose of certification of a disability at the request of an existing Local Board shall be approved by the Executive Director of the System prior to the medical testing.

(5) A volunteer member who completed more than ten (10) years of credited service shall be eligible for consideration of a disability in line of duty pension pursuant to the provisions of 11 O.S. §49-110 provided that competent medical evidence is presented to support the certification of said disability request.

(6) A participating municipality may make an application for a disability pension on behalf of a member provided that medical evidence is presented supporting the existence of a disability. The member may present medical evidence to the contrary.

(7) If there are physician's statements presented which disagree or there is only one physician statement presented, then the Local Board, if one exists, or the Executive Director shall have the medical records examined by a physician of their choosing. If the participating municipality has made the application request and the member presents contrary medical evidence it shall be the responsibility of the existing Local Board or the Executive Director

to obtain an authorization of release of medical records from the member prior to the third physician examination.

(i) **Local Boards.**

(1) If an existing Local Board desires to have a member, who is receiving a disability pension, re-examined by a physician for the purposes of certifying if a disability still exists, the request shall be approved by the State Board.

(2) An existing Local Board meets when necessary to review applications for benefits and disability benefits. The Local Board minutes must show action taken by roll call vote. In cities and towns where the city clerk and city treasurer hold both positions the local board becomes a five (5) member board. The board members shall elect a vice-chairman from among all board members who shall assume the duties of the mayor/chairman in that person's absence.

(3) Any action taken by the local board must be documented. The local board must present objective evidence to the State Board regarding its recommendation. The State Board will consider only the evidence actually presented. The State Board will act upon the evidence presented and render a final decision.

(4) If the city charter provides, the city council or similar authority, in the absence of the mayor, city clerk or the treasurer, may designate an authorized official as a replacement member of the local board, such as the vice-mayor if he or she has the responsibilities of the mayor. A firefighter member of a local board cannot send a replacement. Only local board members present at a local board meeting may vote. The chairman shall have a casting vote with the members only when necessary to avoid a tie vote among local board members. All local board meetings are subject to the Oklahoma Open Meeting Act.

(j) **Contributions.**

(1) ~~If a paid firefighter terminates employment and receives a refund of contributions and then subsequently returns to work for a fire department in Oklahoma, all withdrawn contributions must be paid back to the pension system plus ten percent (10%) interest per annum within ninety (90) days of re-employment in order to receive credit for the missed credited service time. Effective January 1, 2002, lump-sum payments with interest my be repaid by a trustee-to-trustee transfer from an 403(b) annuity or a 457 plan.~~

~~(2)~~ There shall be a sixty (60) day waiting period on refund of contributions. If the firefighter requesting the refund of contributions was terminated from service which resulted in litigation or administrative action, the refund of contributions will not be made until there is a final judgement or conclusion to the litigation or administrative action.

(~~3~~2) Gross salary shall include but not be limited to base salary, longevity pay, fire service training and other education pay, scuba pay, out of class pay, one time bonus pay earned during the current twelve (12) month period of employment, and buy back pay when paid on an annual basis and available to all firefighters. Gross salary shall not include payment for unscheduled overtime, payment for accumulated sick, annual or any other similar leave upon termination of employment, any uniform or clothing allowance, car allowance or any other compensation for reimbursement of out-of-pocket expenses. All other compensation not specifically mentioned must have contributions paid on them. Contributions shall be deducted from gross salary prior to federal and state income tax withholdings deductions.

(~~4~~3) Volunteer pension contributions are due on July 1 of each year. Cities, towns or fire protection districts subject to the statutory exemption from payment of volunteer contributions shall file for exemption with the System on an annual basis.

(~~5~~4) Workers Compensation benefits shall not be considered a part of gross salary for the purpose of determining pension benefits. The System will not accept member contributions related to workers compensation

(~~6~~5) If a paid member terminated employment prior to January 1, 1981, and the subsequently returns to work as a paid member after January 1, 1981 and then again terminates, contributions paid in prior to January 1, 1981 would not be refundable.

(~~7~~6) Salary means a predetermined sum payable at specified and regular times for services rendered including benefits accumulated and paid as salary; furthermore, any salary received that is to be used in computing a "final average salary" shall be reduced or pro-rated to a monthly amount. It shall be a violation of this section to establish a special pay plan for the purpose of evading the intent of this section.

(k) **Reinstatement of Prior Service.**

(1) If a paid firefighter terminates employment and receives a refund of contributions and then subsequently returns to work for a fire department in Oklahoma, all withdrawn contributions must be paid back to the System plus ten percent (10%) interest per annum (from the date the member received his or her accumulated contributions to the date of repayment) in order for the member to receive credit for the missed credited service time.

(2) The member's payment must be made to the System within ninety (90) days following acceptance of the member's application for reinstatement of prior service.

(3) The member may pay for reinstatement of prior service by a lump-sum payment by check or money order. Effective January 1, 2002, the member may also pay for reinstatement of prior service by a lump-sum payment (with interest) made with a trustee-to-trustee transfer from a Code Section 403 (b) annuity, a governmental 457 plan within Oklahoma or a Code Section 401 (a) qualified plan.

(l) **Deferred Option Plan (Plan B).**

(1) Upon termination of employment, a member participating in the Deferred Option Plan ~~B~~(Plan B) pursuant to 11 O.S. Section 49-106.1 A, B, C, D, E and F shall have the following options:

(A) Receive a lump sum payment or installment payments of the member's accumulated Plan B balance including interest.

(B) The State Board retains custody of the member's remaining accumulated Plan B balance until the member receives a complete and final payout. No more than once a quarter of any one year the member may elect with fifteen (15) working days advance written notice, to change such payout period or amount.

(C) In addition, a member may elect, with seven (7) working days written notice, a withdrawal, but no more than one such withdrawal may be made per quarter in any one year and each withdrawal must be as of the first day of a month. If such withdrawal is made after payments have commenced under (B) above, appropriate adjustments may be made in the payout period under (B) above to reflect such withdrawal.

(D) If the member dies with a balance in the account, such balance will be paid in a lump sum or will continue to be paid in the same manner as was applicable to the member, as elected by the surviving spouse. If there is no surviving spouse, any remaining beneficiaries shall receive a lump sum payment(s) from the account equal to the balance in the account of the member or any other approved method of payment. If there are no surviving beneficiaries, a lump sum payment from the account equal to the balance in the account shall be paid to the member's estate.

(E) The interest earned annually on the Plan B account balances shall be calculated based on the return of the investment portfolio of the fund on June 30 of each year. The determined annual interest rate shall be applied on a pro rata account balance in the year the rate is established. If a member withdraws all or a portion of his or her account balance prior to June 30 of a given plan year, the member shall receive at the time of withdrawal interest earnings on the withdrawn amount equal to the actuarial assumed interest rate as certified by the actuary in the yearly valuation report of the actuary on a pro rata basis. If the annual interest earnings calculated on June 30 of a given year exceed the actuarial assumed interest rate as certified by the actuary in the yearly valuation report of the actuary, a member who withdraws all or a portion of his or her account balance prior to June 30 of said plan year shall receive additional interest earnings equal to the difference between the minimum actuarial interest rate and the calculated interest rate on a pro rata basis.

(F) At the conclusion of a member's participation in Plan B, the member must terminate employment and shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality but only in a position not covered under the System, and receive in-service distributions of such member's accrued monthly retirement benefit from the System

(2) Participation in the Oklahoma Firefighters Deferred Option Plan must begin the first day of a month.

(~~l~~m) **Deferred Option Plan Under the Back DROP Provision.**

(1) For purposes of this subsection, the definitions as stated in 11 O.S. Section 49-106. (H)(1) shall apply.

(2) In lieu of participating in the Deferred Option Plan (Plan B) pursuant to subsections A, B, C, D, E and F of 11 O.S. Section 49-106.1 (referred to herein as an election under Plan B), a member may elect to participate in the Deferred Option Plan pursuant to 11 O.S. Section 491-106.1H (referred to herein as an election under the Back DROP provision) and this subsection.

(A) The applicant must submit his or her completed application for participation in the Deferred Option Plan under the Back DROP provision on the form provided by the System.

(B) The application must be received by no later than seven (7) working days from the end of the month to receive a payment at the end of that month. All distributions shall be paid on the last day of a month.

(C) Upon the member's election to participate in the Deferred Option Plan under the Back DROP provision, the member's account balance shall remain in the System under the same conditions as while an active member, unless the member requests a withdrawal.

(D) A member may receive a withdrawal as a lump sum payment or monthly installment payments. A member may also elect, with seven (7) working days written notice, a withdrawal, but no more than one such withdrawal may be made per quarter in any one year and each withdrawal must be as of the first day of a month.

(E) If the member dies with a balance in the account, such balance will be paid in a lump sum of will continue to be paid in the same manner as was applicable to the member, as elected by the surviving spouse. If there is no surviving spouse, any remaining beneficiaries shall receive a lump sum payment(s) from the account equal to the balance in the account of the member, or any other approved method of payment. If there are no surviving beneficiaries, a lump sum payment from the account equal to the balance in the account shall be paid to the member's estate.

(3) At the member's termination date, his or her monthly pension benefit shall be determined based on earlier attained credited service and on the final average salary as of the back drop date. The member's individual deferred option account shall be credited with an amount equal to the deferred benefit balance, and the member shall terminate employment with all participating municipalities as a firefighter and the member shall start receiving the member's accrued monthly retirement benefit from the System. Such member may be reemployed by a participating municipality but only in a position not covered under the System, and receive in-service distributions of such member's accrued monthly retirement benefit from the System. On the member's back drop

date, the member's retirement benefit will be frozen, and at no time will the member be able to increase his or her benefit due to additional years of service, salary or other promotional increases.

(4) The member's credit of his or her deferred benefit balance shall be as follows:

(A) An amount equal to the accumulated contributions the member made to the System from his or her back drop date to termination date with interest based on how the benefit would have accumulated on a compound basis as if the member had participated in the Deferred Option Plan (Plan B) pursuant to the 11 O.S. Section 49-106.1 A-E from his or her back drop date to termination date;

(B) An amount equal to all monthly retirement benefits that would have been payable had the member elected to cease employment on the back drop date and receive a service retirement from the back drop date to the termination date with applicable cost of living adjustments and with interest based on how the benefit would have accumulated on a compound basis as if the member had participated in the Deferred Option Plan pursuant to the O.S. 11 Section 49-106.1 A-E from his or her back drop date to termination date: and

(C) An amount equal to one-half (1/2) of the employer contributions from the back drop date to the termination date, with interest based on how the benefit would have accumulated on a compound basis as if the member had participated in the Deferred Option Plan pursuant to 11 O.S. Section 49-106.1 A-E form his or her back drop date to termination date.

(5) The provisions of 11 O.S. Section 49-106.1 B, C, E, F and G shall apply to this subsection.

(6) A member shall not participate in the Deferred Option Plan pursuant to the Back DROP provision if the member has elected to participate in Plan B pursuant to subsections A, B, C, D, E and F of 11 O.S. Section 49-106.1.

(n) **Vested Rights.**

(1) A paid firefighter who terminated active service with more than ten (10) years of credited service with the System prior to July 8, 1985, must return to active service as a paid firefighter in order to establish vested rights.

(2) A volunteer firefighter who terminated active service with ten (10) years of credited service with the System prior to July 20, 1987, must return to active service as a volunteer firefighter in order to establish vested rights.

[OAR Docket #04-901; filed 5-13-04]

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

[OAR Docket #04-1013]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
317:2-1-2. [AMENDED]
317:2-1-2.2. [AMENDED]
(Reference APA WF # 03-54A and 03-55A)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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Grievance Procedures and Process, rules are in need of revision to remove references to the SoonerCare plus program which ended effective January 1, 2004 and reflect current procedures in the SoonerCare Choice program.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004.

317:2-1-2. Grievance hearings

(a) **Overview.** The grievance procedure allows a recipient to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints~~, or HMO contract disputes~~. Appealable reviews are listed at Section 317:2-1-2(b). Recipient appeals are first reviewed by a three person program panel that may or may not contact the recipient [Section OAC 317:2-1-2.2(a)]. The recipient appeal next goes to the ALJ. The recipient must appear at this hearing and it is conducted according to Section

OAC 317:2-1-2(c). The recipient may then appeal to the CEO, which is a record review at which the recipient does not appear (Section OAC 317:2-1-4). Provider appeals generally go to the ALJ (see Section OAC 317:2-1-2.1) and generally follow the procedure at OAC 317:2-1-2(c).

(b) **Receipt of grievances.**

(1) The Appellant (Appellant is the person or provider who files a grievance) shall file an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-1 forms are for recipient complaints, LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.) In the case of tax warrant intercept appeals, the Appellant shall file a LD form requesting a grievance hearing within 30 days of written notice sent by the OHCA according to Title 68, Oklahoma Statutes, Section 205.2.

(2) If the LD form is not received within 20 days of the triggering event, OHCA shall send Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD form is not received within 30 days of written notice sent by OHCA according to Title 68, Oklahoma Statutes, Section 205.2, OHCA shall send the Appellant a letter stating the appeal will not be heard because it is untimely.

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

~~(4) If the Appellant is a member or a contract provider of a Health Maintenance Organization (HMO) and the HMO appeal process has not been used, the Appellant will be referred to the HMO. Appellant must exhaust the HMO appeals process, except in cases where it appears that a danger to life or health exists, then the appeal will be handled directly by OHCA. Any tax warrant intercept appeal will be handled directly by the OHCA.~~

(~~5~~ 4) The docket clerk will send the Appellant~~, the HMO,~~ and any other necessary party notice which states the hearing location, date, and time. ~~If the Appellant is a provider, Appellant must serve the HMO, if involved, a copy of Appellant's LD form.~~

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

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

(2) Disputes involving the ~~SoonerCare Plus or~~ SoonerCare Choice ~~contracts~~ contracts and all contracts or subcontracts with health care providers;

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

(4) Petitions for Rulemaking;

(5) Discrimination complaints regarding the Medicaid program;

(6) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5, 317:10-1-13, 317:25-1-5, and 317:25-1-12, and other appeal rights granted by contract;

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

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

(9) Nursing home contracts which are terminated, denied, or nonrenewed;

(10) Drug rebate appeals;

(11) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority;

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

(13) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7.

(d) **Hearing, ALJ, and Burden of Proof.**

(1) Hearings shall be conducted in an informal manner without formal rules of evidence or procedure.

(2) No party is required to be represented by an attorney. Recipients may represent themselves or be represented by another party. Corporate entities must authorize a representative to represent a corporation in a hearing.

(3) The OHCA Administrative Law Judge or designee may:

(A) Rule on any requests for extension of time;

(B) Hold pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end in the expeditious disposition of the proceeding;

(C) Require the parties to state their positions concerning the various issues in the proceeding;

(D) Require the parties to produce for examination those relevant witnesses and documents under their control;

(E) Rule on motions and other procedural items;

(F) Regulate the course of the hearing and conduct of the participants;

(G) Establish time limits for the submission of motions or memoranda;

(H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this Chapter which may include:

(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;

(ii) Excluding all testimony of an unresponsive or evasive witness; or

(iii) Expelling the person from further participation in the hearing;

(I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;

(J) Administer oaths or affirmations;
(K) Determine the location of the hearing;
(L) Require the parties to be present and tape record the proceedings. In the event of the failure of a party to appear, the ALJ shall determine if good cause exists for the failure to appear. If good cause does not exist the ALJ may find in favor of the party who was present;
(M) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, shall be given to the ALJ with a copy to be given to the requesting party;
(N) Recess and reconvene the hearing;
(O) Set and/or limit the time frame of the hearing;
(P) Reconsider or rehear a matter for good cause shown; and
(Q) Send a copy of the decision by the ALJ to both parties outlining their rights to appeal the decision. The decision letter need not contain findings of fact or conclusions of law.

(4) The burden of proof during the hearing shall be upon the appellant and the ALJ shall decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court.
(5) A copy of the decision will be forwarded to the docket clerk.

317:2-1-2.2. Recipient appeals

(a) Hearings will be by a Program Panel, except in the case of tax warrant intercept appeals and proposed administrative sanction appeals (refer to OAC 317:35-13-7).

(1) The Program Panel will be composed of three or more members selected by the ALJ.
(2) The Program Panel may conduct a paper review of the complaint, or, at their option, hold a personal interview with the appellant to discuss the complaint. The Panel has the power to gather information it finds necessary from any available source, and thereafter, render a decision.
(3) The Panel must complete their paper review or conduct their formal personal interview and issue a majority decision within 25 days of the date stamped on the request for hearing.
(4) The Panel's decision shall be in writing and shall be signed by each of the Panel members. The decision shall contain a summary of the complaint and an explanation of the reasoning of the Panel in making their decision. ~~If the decision of the Panel is adverse to the Managed Care Provider, a letter detailing the remedial actions to be taken by the Provider to correct the deficiency will be sent to the Provider.~~ A copy of the decision will be sent to the member outlining the right to appeal the decision. ~~The letter shall also be mailed to the Managed Care Provider.~~ Any appeal of the Panel decision must be instituted within 15 days of the mailing of the adverse ruling, excepting recipient denials which are automatically appealed to the ALJ.
(5) A copy of the decision shall be forwarded to the docket clerk.

(b) Appeal from a decision of the Program Panel will be heard by the Administrative Law Judge. A decision will be rendered by the Administrative Law Judge within twenty (20) days of the appeal to the ALJ.
(c) Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within twenty (20) days of the hearing before the ALJ.
(d) Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions.

[OAR Docket #04-1013; filed 5-24-04]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE

[OAR Docket #04-1016]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Health Plan Competitive Bid Requirements
317:25-1-1. through 317:25-13. [REVOKED]
Subchapter 3. Health Maintenance Organizations
317:25-3-1. through 317:25-3-2. [REVOKED]
317:25-3-2.2. through 317:25-3-3. [REVOKED]
Subchapter 5. SoonerCare Plus
Part 1. General Provisions
317:25-5-1. through 25-5-5. [REVOKED]
Part 3. Enrollment Criteria
317:25-5-10. through 317:25-5-14. [REVOKED]
Part 5. Enrollment Process
317:25-5-25. through 317:25-5-32. [REVOKED]
Part 7. Plan Requirements
317:25-5-40. through 317:25-5-41.1.[REVOKED]
Subchapter 7. SoonerCare Choice
Part 1. General Provisions
317:25-7-1. through 317:25-7-3. [AMENDED]
317:25-7-5. through 317:25-7-6. [AMENDED]
Part 3. Enrollment Criteria
317:25-7-10. through 317:25-7-11. [AMENDED]
317:25-7-13. [AMENDED]
Part 5. Enrollment Process
317:25-7-25. through 317:25-7-30. [AMENDED]
(Reference APA WF 03-13C, 03-54B and 03-55B)
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Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution; 42 CFR 435.301
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Subchapter 5. SoonerCare Plus
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Subchapter 7. SoonerCare Choice
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ANALYSIS:
Agency rules are revised to eliminate the Oklahoma Medicaid Medically Needy Program. States have the option under the Medicaid program to extend coverage to individuals categorized as Medically Needy. Due to state government budget constraints, the OHCA Board voted on December 12, 2002, to eliminate coverage of medically needy individuals effective February 1, 2003. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to eliminate the Medically Needy Program.

SoonerCare rules are in need of revision to remove references to the SoonerCare Plus program which ended effective January 1, 2004 and reflect current procedures in the SoonerCare Choice program.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004.

SUBCHAPTER 1. HEALTH PLAN COMPETITIVE BID REQUIREMENTS

317:25-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to describe the rules governing the procurement requirements of the Oklahoma Health Care Authority (Authority) for Health Plans contracting to deliver health services to persons served under the Medicaid program. The Purchasing Department is an internal Department of the Oklahoma Health Care Authority. It provides the mechanism for the acquisition of goods, equipment and services for the operation of the ***SoonerCare Plus and SoonerCare Choice*** programs through the Oklahoma Health Care Authority. Health Plan services are purchased under guidelines approved by the Oklahoma Health Care Authority and in compliance with all applicable state statutes.~~

317:25-1-2. Definitions [REVOKED]

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

~~"**Agency**" means the Oklahoma Health Care Authority.~~

~~"**Authority**" means the Oklahoma Health Care Authority which administers the ***SoonerCare*** contracts, issues any notices regarding the failure to meet performance requirements, and assesses any damages.~~

~~"**Authority Board**" means the board designated by the Oklahoma legislature to establish policies and adopt and promulgate rules for the Oklahoma Health Care Authority.~~

~~"**Award**" means when the Authority Board, Chief Executive Officer, a Department, the Purchasing Manager, the Business and Contracts Manager or other person authorized to make the acquisition, agree on a suitable Health Plan for a competitive bid and the Chief Executive Officer, Purchasing Manager, Business and Contracts Manager or designee notifies the successful Health Plan.~~

~~"**Business and Contracts Manager**" means the Business and Contracts Manager for the Authority.~~

~~"**CEO**" means the Chief Executive Officer.~~

~~"**Chief Executive Officer**" means the highest ranking administrator at the Oklahoma Health Care Authority.~~

~~"**Contract services**" means the services to be delivered by the Contractor which are so designated in a Request for Proposal (RFP).~~

~~"**Department**" means a department within the Oklahoma Health Care Authority.~~

~~"**EEOC**" means Equal Employment Opportunity Commission.~~

~~"**Health Plan**" means any organization that is licensed as an HMO by the Oklahoma Department of Health or that otherwise meets the definition of an HMO as delineated in the Oklahoma State Medicaid Plan, and contracts with the State to provide services to ***SoonerCare*** enrollees.~~

~~"**Medicaid**" means the medical assistance program authorized by 42 U.S.C., Section 1396a. The program provides medical benefits for certain low income persons. It is jointly administered by the Federal and state governments.~~

~~"**Professional services**" means services which are predominantly advisory or intellectual in character, or involve support rather than supplying equipment, supplies or other merchandise. Professional services include those services requiring special, usually advanced, education or skill.~~

~~"**Purchasing**" means the Purchasing Department of the Oklahoma Health Care Authority.~~

~~"**Purchasing Manager**" means the Purchasing Manager of the Oklahoma Health Care Authority.~~

~~"**RFP**" means the ***SoonerCare*** Health Plan Request for Proposals, a document prepared by the Authority which describes the terms and services required for successful bid and which instructs prospective bidders how to prepare a response.~~

~~"**Services**" means labor rendered by a person to another as distinguished from providing tangible goods. It shall include any type of personal or professional service, employment or undertaking except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly used.~~

~~***"SoonerCare Plus"*** means the fully capitated, health care delivery program through which the State of Oklahoma serves the Temporary Assistance to Needy Families (TANF), the TANF related, and the Aged, Blind and Disabled (ABD) portions of its Medicaid population.~~

~~***"SoonerCare Choice"*** means the partially capitated, primary care case management health care delivery program through which the State of Oklahoma serves the Temporary Assistance to Needy Families (TANF), the TANF related, and the Aged, Blind and Disabled portions of its Medicaid population.~~

~~"**State**" means the State of Oklahoma, acting by and through the Health Care Authority or its designee.~~

~~***"TANF"*** means the Temporary Assistance to Needy Families program.~~

317:25-1-3. General purchasing provisions [REVOKED]

~~(a) The Authority has the statutory authority to directly purchase Health Plan services for the Medicaid population.~~

~~(b) In general all contracts of the Authority shall be acquired by one of the following methods and in accordance with the statutes of the State of Oklahoma:~~

~~(1) Direct purchase order for products and/or services to the Authority within the authorized dollar amounts and other limitations contained in OAC 317:10-1-1, et seq.~~

~~(2) Acquisition of products and/or services through organized buying groups such as General Services Administration contracts, state-wide Department of Central Services contracts ("00 contracts")~~

~~(3) Competitive bid of products and services by the Authority.~~

~~(4) Competitive bid of products or services by the State Department of Central Services.~~

~~(5) Sole source acquisitions according to the procedures in the State Department of Central Services and for services or goods necessary for implementation of the Medicaid Health Care Options System under OAC 317:10-1-15.~~

~~(6) Donations to the Authority.~~

~~(7) Purchases from other governmental agencies.~~

~~(8) Procurement of Health Plans to provide services to Medicaid recipients under OAC 317:25-1-1, et seq.~~

~~(c) The goods, services and equipment shall meet the specifications required, be cost effective, and be the best product for the best price.~~

317:25-1-4. Health Plan registration [REVOKED]

~~(a) Any Health Plan wishing to do business with the Authority should be on the Agency's Health Plan bidder list maintained by the Agency's Purchasing Department. Notice of a pending Health Plan bid will be posted in the Office of Central Purchasing at the Department of Central Services not less than 15 days prior to the issuance of the RFP. Any Health Plan which wants to be on the bidder list must register with Purchasing to receive copies of bids. In addition, Purchasing shall include all Health Plans on its Health Plan bidder list which are certified or have made application for certification as Health Maintenance Organizations (HMOs) with the Oklahoma State Department of Health not less than seven (7) days prior to the release of the RFP. Organizations that are not yet licensed or certified may respond to this RFP as long as they are actively engaged in seeking a license or certification. However, the Authority will not award contracts to any organizations prior to their becoming licensed or certified.~~

~~(b) Health Plans wishing to be added to the bidder list should request in writing to be added to the bidder list. Health Plans will be given a packet with registration information.~~

~~(c) The Health Plan shall complete the information requested in the packet and return the information to Purchasing. Registration of Health Plans shall be received by the Authority not less than seven (7) days before the issuance of the RFP. Upon receipt, Purchasing will review the registration for completeness. Purchasing may return the registration form for additional information if necessary.~~

317:25-1-5. Health Plan retention and removal from bidder list [REVOKED]

~~(a) To ensure that Health Plans will perform in the best interest of the Authority, it is necessary to address problems in a swift and equitable manner for all concerned. In addition, varying degrees of Health Plan misconduct can cause irreparable harm to the Authority and its Departments. It is therefore recognized that penalties for poor Health Plan performance and/or violation of state statutes must be addressed.~~

~~(b) Removal from the bidder's list may be considered for the following infractions:~~

~~(1) Financial insolvency or inaccurate financial reporting, either in the current proposal or under a previous contract.~~

~~(2) A failure to respond to an RFP three consecutive times. (A bid submitted and marked NO BID is a response).~~

~~(3) Repeated failure on the part of the Health Plan to provide promised and/or required services or failure to comply with RFP procedures, contract requirements or State or Federal laws or regulations, including those related to Medicaid.~~

~~(4) Failure on the part of the Health Plan to meet EEOC and other requirements mandated by public legislation or the Authority Board.~~

~~(5) Problems created by the Health Plan regarding incorrect or inappropriate capitation adjustments, service provision or enrollment or disenrollment information.~~

~~(6) Failure to supply or provision of inaccurate required service, patient or program documentation and data.~~

~~(7) A conviction or plea of guilt to a felony involving fraud, bribery, corruption or sales to the state or to any of its political subdivisions.~~

~~(c) If any person authorized to award a contract pursuant to OAC 317:25-1-2 believes a Health Plan has committed any act constituting grounds for removal from the bid list, the Purchasing Manager shall promptly notify the bidder in writing of a date and time to appear and show cause why the Health Plan should not be removed from the list. In addition the Purchasing Manager shall notify the Managed Care Director of the Authority. The notice shall state the allegations or facts which serve as the basis for such removal. The Purchasing Manager shall select a date not less than seven (7) days from the date the notice is mailed, at which time the Health Plan may appear or provide a written response to the Managed Care Director to rebut the allegations. The Purchasing Manager or Managed Care Director may extend this date for good cause. After the Health Plan has been given the opportunity to respond, the Managed Care Director shall decide either that grounds do not exist for removal, or shall decide to remove the Health Plan from the bidder list. The Managed Care Director may, in his or her discretion, remove a Health Plan from the bidder list for up to three (3) years, depending on the severity of the Health Plan's conduct. If the grounds for removal are for a felony or other conviction under (b)(7) of this Section, the removal shall be for an indefinite duration. Appeals based on decisions of the Managed Care Director shall be conducted pursuant to OAC 317:2-1. Any Health Plan may petition the Managed Care Director or CEO for reinstatement. Such a Health Plan has the burden of demonstrating that it has the capability to responsibly do business with the State, and that the conditions leading to its removal have been remedied. In the case of removals based on criminal convictions, a Health Plan may only be placed back on the bidder's list if it can show the Health Plan has disassociated itself from the individuals responsible for the acts giving rise to the conviction.~~

317:25-1-6. Submission of bids [REVOKED]

~~(a) If a Health Plan wishes to bid to provide services to the Medicaid population, the Health Plan shall complete the bid via the instructions provided with the RFP. It is the Health Plan's responsibility to read and understand the instructions and terms and conditions provided with the RFP. Failure to comply with the instructions and terms and conditions in the RFP may disqualify the bid as per OAC 317:25-1-10. Any questions regarding the RFP or contract-related items, except questions related to the bidder list, must be directed to the Authority's Business and Contracts Manager.~~

~~(b) If the Health Plan does not wish to bid on the items, the Health Plan should fill in the Health Plan name, address, and write "No Bid" in the unit price column and return the bid to Purchasing.~~

~~(c) It is the responsibility of the Health Plan to ensure delivery of a bid to Purchasing at or prior to the designated time on the RFP. The Agency will not be responsible for late bids.~~

317:25-1-7. SOONERCARE Bid openings [REVOKED]

~~(a) All sealed bids will be stamped with the time and date upon receipt at Purchasing. The bids will be placed in a secured bid file until time for the scheduled bid opening. Access to the file is limited to the Purchasing Manager or Business and Contracts Manager, or their designees, until the bid opening.~~

~~(b) Bids will be opened at the designated date and time of closing by Authority purchasing personnel. A bid opening record will be completed and maintained in the bid file.~~

~~(c) Award recommendations are made in writing upon conclusion of the bid evaluation.~~

317:25-1-8. Award of bid [REVOKED]

~~(a) The bid will be forwarded to the Business and Contracts Manager. The Business and Contracts Manager will review the information to determine compliance with the bid specifications and compliance with all Authority rules, policies and procedures. The Authority will establish an evaluation process for a comprehensive and impartial evaluation of all proposals. The Authority will be the sole judge in reviewing proposals and awarding contracts.~~

~~(b) The Authority will identify criteria within the RFP for final selection and award of bids. The process may reflect provisions for multiple bid awards to ensure that a sufficient number of contracts have been awarded to assure adequate freedom of choice for all ***SoonerCare*** enrollees.~~

~~(c) The Business and Contracts Manager has the right to waive minor deficiencies or informalities in a bid provided that the best interest of the State would be served without prejudice to the rights of the other bidder.~~

~~(d) The Authority reserves the right to reject in part or whole any bid.~~

~~(e) No award will be made if the Authority determines the lowest bid totals more than the money available for purchase or if the lowest bid exceeds the actuarily-established rate ranges.~~

~~(f) The Authority will send a notice of award as acceptable notification to a Health Plan.~~

~~(g) All awards will be made under the terms and conditions as outlined in OAC 317:25-1-10 and any additional terms and conditions as described in the RFP.~~

~~(h) All ethics rules and laws related to conflicts of interest and doing business with public officials apply to any contract with the Authority.~~

317:25-1-9. Best and final offer (BFO) or additional negotiation processes [REVOKED]

~~(a) In the RFP, the Authority will identify specific population groups for which Health Plans will submit capitation bids. Bids will be evaluated against confidential capitation rate ranges established by actuaries. Only bidders who satisfy the minimum technical proposal standards described in the RFP will be allowed to participate in any bid negotiation process. The Authority also reserves the right to accept or reject any or all bids within the rate ranges.~~

~~(b) In the sole discretion of the Authority, if it is considered by the Authority to be in the best interest of the State,~~

~~a best and final offer process or other negotiation process will be conducted to allow offerors an opportunity to resubmit bids for capitation ranges not previously within an acceptable rate range as defined by the State. The Authority will issue a written request to all offerors for a best and final offer. Best and final offer procedures or negotiation processes, if applicable, will be established in the RFP.~~

317:25-1-10. Terms and conditions for acceptable bids [REVOKED]

~~(a) All bids submitted are subject to the Authority's policies and procedures and/or any special conditions and specifications listed in this Subchapter or made part of the RFP.~~

~~(b) Sealed bids will be opened by Purchasing at the time and date shown.~~

~~(c) Bids received after the closing time will not be considered. Envelopes must contain only one bid, be sealed and the name and address of the bidder inserted in the upper left hand corner. The requisition number and closing date must appear on the face of the envelope.~~

~~(d) The bid shall be in strict conformity with the instructions to the bidder and shall be submitted on the approved form. The quotations must be typewritten or written in ink, and corrections must be initialed by a representative of the Health Plan prior to the submission of the bid. Corrections made by correction fluid or by correctable typewriter ribbons will not be accepted unless initialed. Penciled bids will not be accepted.~~

~~(e) All bidders must guarantee that the bid is correct.~~

~~(f) Any questions pertaining to the clarification of the bid shall be directed to the Business and Contracts Manager.~~

~~(g) The RFP must be made out in the name of the bidder and must be fully and properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions.~~

~~(h) Upon the award of successful bids, the bidder will execute a contract with the Authority incorporating all terms and conditions set out in the RFP and bid.~~

~~(i) In executing a contract with the Authority, the bidder must agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the bidder relevant to the contract are subject to examination by the Authority, the State Auditor and Inspector and such other entities as may be specified in the RFP.~~

~~(j) Failure to comply with the terms and conditions will subject the bid to disqualification.~~

317:25-1-11. Challenge of award [REVOKED]

~~(a) Any bidder may challenge the award of a bid. A challenge may be based on the following grounds:~~

~~(1) Error in the calculation of price;~~

~~(2) The bid of the successful Health Plan(s) did not meet the bid specifications in a material way;~~

~~(3) The bidding procedure was done in violation of the Authority's rules; or~~

~~(4) Authority personnel handling the bidding procedure acted in a willful or capricious manner.~~

~~(b) After the award is made, the protesting bidder will deliver a written explanation of the reason for the challenge to the office of the Business and Contracts Manager, within five (5) working days of the time the Authority selects a successful bidder(s).~~

~~(c) The Managed Care Director or a designee will review the protesting bidder's challenge of award, as well as the Agency's selection process, and rule on the challenge. The decision will be in writing and shall address each ground raised by the bidder challenging the bid, specifically referring to the facts and documents supporting his or her decision.~~

~~(d) Any bidder may also request that the Business and Contracts Manager delay the implementation of the contract being protested pending the outcome of the protest. This request must also be in writing and the decision to delay implementation of a contract shall be left to the discretion of the Managed Care Director or a designee.~~

317:25-1-12. Administrative review [REVOKED]

~~If the protesting bidder does not agree with the decision on the challenge of award (see OAC 317:25-1-11), the protesting bidder may request an administrative review. Any protesting bidder may appeal a decision by the Managed Care Director or designee pursuant to OAC 317:2-1. In order for the claim to be eligible for administrative review, the appeal must have been conducted after completion of the process challenging the award, as per OAC 317:25-1-11.~~

317:25-1-13. Confidentiality [REVOKED]

~~In accordance with 63 O.S., Section 5018, State determined rates ranges established for the purpose of negotiating contract awards with qualified Health Plans shall remain confidential. Initial and subsequent bid offers made by the Health Plans prior to the bids on which the final contract awards are based shall also remain confidential.~~

~~(1) **State-determined rates ranges.** State determined rate ranges are determined by the Authority to be actuarialy sound.~~

~~(2) **Bids on which the final contract award are based.** Bids on which the final contract award are based are final weighted, blended bid rates calculated from the bids submitted by managed care Health Plans for all age/sex categories.~~

SUBCHAPTER 3. HEALTH MAINTENANCE ORGANIZATIONS

317:25-3-1. Health Maintenance Organizations [REVOKED]

~~The statutory definition of a Health Maintenance Organization (HMO) as identified in Oklahoma State Statute Title 63, Section 2503 is used by the Oklahoma Health Care Authority (OHCA). Licensure by the Oklahoma Department of Health is the indication of compliance with the statutory definition. The State Medicaid Agency further requires that the HMO minimally include the following:~~

~~(1) Be organized primarily for the purpose of providing health care services;~~

~~(2) Make the services it provides to its Medicaid enrollees as accessible to them (in terms of timeliness, amount, duration and scope) as those services are to non-enrolled Medicaid recipients within the area served by the HMO; and~~

~~(3) Make provision, satisfactory to the State Medicaid Agency, against the risk of insolvency and assure that Medicaid enrollees will not be liable for the HMO's debts if it does become insolvent.~~

317:25-3-2. Public managed care plans [REVOKED]

~~A public managed care plan will meet all the requirements listed in OAC 317:25-3-1, including all the requirements for licensure. Licensure will not, however, be required for a public managed care plan. Public managed care plans will be certified by the Authority for Medicaid services only. Public managed care plans are reviewed for compliance with the requirements of licensure by the Oklahoma State Department of Health. The State Medicaid Agency further requires that a public managed care plan minimally include the following additional requirements:~~

~~(1) Operate, or contract for the operation of, a public inpatient hospital facility;~~

~~(2) Operate, or contract for the operation of, a public medical pathology laboratory;~~

~~(3) Operate, or contract for the operation of, a public x-ray laboratory;~~

~~(4) Operate, or contract for the operation of, a public outpatient clinic;~~

~~(5) Operate, or contract for the operation of, at least a public marginal level two trauma center as determined by the State Department of Health, which provides enhanced pediatric trauma services; and~~

~~(6) Be owned and provider operated by the State of Oklahoma, a county in the State of Oklahoma, or an Oklahoma municipal health department or hospital.~~

317:25-3-2.2. Health Care Authority Risk Control Program [REVOKED]

~~(a) All Health Plans participating in ***SoonerCare*** are required to maintain reinsurance for Temporary Assistance to Needy Families enrollees. Reinsurance may be purchased from any reinsurance carrier licensed in Oklahoma by the Oklahoma State Insurance Department or the Oklahoma Health Care Authority sponsored reinsurance program authorized by Title 63 O.S. 5021.~~

~~(b) All Health Plans participating in ***SoonerCare*** and covering recipients categorized as Aged, Blind or Disabled (ABD) are not required to purchase reinsurance for its ABD members.~~

~~(1) The Authority shall provide stop-loss coverage for individual ABD members based upon the following:~~

~~(A) For those ABD members with any primary ICD-9 diagnosis code of 286.0 through 286.9 (hemophilia) stop-loss coverage shall occur as follows:~~

~~(i) the Health Plan is responsible for the first $10,000.00 of medical expenses;~~

~~(ii) from $10,001.00 to $200,000.00 of medical expenses, the Authority will reimburse the Health Plan 80% of these medical expenses. The Health Plan is responsible for 20% of the medical expenses of the member from $10,001.00 to $200,000.00; and~~

~~(iii) from $200,001.00 to the actual medical expenses incurred, the Authority will reimburse the Health Plan 100% of these medical expenses.~~

~~(B) For all ABD members other than those referenced in section (A), stop-loss coverage shall occur as follows:~~

~~(i) the Health Plan is responsible for the first $50,000.00 of medical expenses;~~

~~(ii) from $50,001.00 to $200,000.00 of medical expenses, the Authority will reimburse the Plan 80% of these medical expenses;~~

~~(iii) the Health Plan is responsible for the 20% of the medical expenses of the member from $50,001.00 to $200,000.00; and~~

~~(iv) from $200,001.00 to the actual medical expenses incurred, the Authority will reimburse the Health Plan 100% of these medical expenses.~~

~~(c) For purposes of this Section, the term medical expenses or medical expenses incurred shall mean all medical care paid for by the Health Plan for an individual ABD member from the time of enrollment in a Plan to the time of disenrollment in the Plan and paid for during the contract period from July 1, 1999 to June 30, 2000. Medical expenses will be valued using the Authority's Medicaid fee-for-service schedule at the time of its review of Health Care encounters. Medical expenses will not be valued if an encounter claim has not been submitted to the Authority.~~

~~(d) The Health Care Authority shall prorate the stop-loss amounts found in subsection (b) of this Section when ABD members are enrolled in a Health Plan for less than the 12 month period from July 1, 1999 to June 30, 2000, except that the $200,000.00 amount will not be prorated. Proration will occur based on the date of the member's enrollment. If the member is enrolled in the first quarter, their stop-loss limit is 100%; for the second quarter, 75%; for the third quarter, 50%; and for the fourth quarter, 25%. (For example: an ABD member is enrolled in the Plan on October 10. This ABD member does not have a primary diagnosis of hemophilia and the Plan has paid for $26,000.00 in medical expenses [fee-for-service value]. In this case, the stop-loss is prorated as follows: Because the member was enrolled in the second quarter, the stop-loss threshold is 75%. Seventy five percent of $50,000.00 equals $37,500.00. In this example, since the threshold is $37,500.00 and $26,000.00 was incurred, no risk is shared and the Plan's liability is $26,000.00.)~~

~~(e) At any time during the contract term referenced in subsection (d) of this Section or within six months following June 30, 2000, the Health Plan shall notify the Authority that it believes a stop-loss threshold has been reached. The notification~~

~~must provide the name of the ABD member, and all supporting documentation of the medical expenses, including the dates of services, incurred by the Plan. The Authority shall review the information, validate the provision of medical care and the value of the medical care.~~

~~(f) All decisions of the Health Care Authority regarding a Health Plan reaching stop-loss coverage are appealable to the Authority under OAC 317:30-2-1-1.~~

317:25-3-3. Quality Assurance credentialing and recredentialing requirements [REVOKED]

~~HMOs and public managed care plans are monitored for compliance with the Quality Assurance Reform Initiative (QARI). The State monitors the credentialing and recredentialing process as identified in QARI for compliance with 42 CFR 434.67, subpart E(i). In addition, the State informs Health Plans of any sanctioned providers as soon as the information is available to the State. Health Plans not in compliance are subject to intermediate sanctions as recommended in 42 CFR 434.67, subpart E(a).~~

SUBCHAPTER 5. SOONERCARE PLUS

PART 1. GENERAL PROVISIONS

317:25-5-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to describe the rules governing Health Plans in selected service areas of the State, including Oklahoma City and surrounding areas, Tulsa and surrounding areas, and Lawton and surrounding areas. These selected areas shall be designated as ***SoonerCare Plus***. The rules provide assurances that Medicaid clients have adequate access to primary care, while reducing costs and preventing unnecessary and inappropriate utilization.~~

317:25-5-2. *SoonerCare Plus* overview [REVOKED]

~~(a) The Oklahoma Health Care Authority (OHCA) operates a managed care program for eligible individuals. The program enrolls Medicaid recipients in managed care Health Plans which provide and/or authorize all primary care services and all medically necessary Medicaid-covered specialty services.~~

~~(b) For provision of health care services, the OHCA contracts with organizations that are licensed by the State as HMO's or that are otherwise certified as public managed care plans pursuant to the Oklahoma Medicaid State Plan. In exchange for a fixed, periodic rate, the contractors provide, or otherwise assure the delivery of, a comprehensive set of health maintenance and medically necessary treatment services for an enrolled group of eligible individuals in defined service areas.~~

~~(c) Health Plans are responsible for assisting clients in selecting a primary care physician (PCP). The PCP assists the client in gaining access to the health care system and monitors the client's condition, health care needs and service delivery. Except to the extent this provision is inconsistent with federal or State law, the Health Plan is responsible for providing primary care and for locating, coordinating, providing and monitoring other medically necessary medical, behavioral health and rehabilitation services unless OHCA has authorized a different referral mechanism or self-referral for those services. Health Plans are required to provide 24 hour a day, seven day a week, service delivery, as well as consultation and referral services.~~

~~(d) Except for certain provisions outlined in this Subchapter, clients are excluded from the fee-for-service Medicaid program. Health Plans are responsible for authorizing and reimbursing all medically necessary services for clients enrolled under this subchapter. The agency does not make Medicaid payments for services delivered outside the ***SoonerCare Plus*** program.~~

317:25-5-3. Definitions [REVOKED]

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

~~**"Administrator"** means the chief executive officer of the Oklahoma Health Care Authority.~~

~~"**Authority**" means the Oklahoma Health Care Authority.~~

~~"**Board**" means the board designated by the Oklahoma legislature to establish policies and adopt and promulgate rules for the Oklahoma Health Care Authority.~~

~~**"Custody"** means under the charge and control of the State of Oklahoma, another state operating under an interstate compact or a tribal authority, as reported by the Department of Human Services.~~

~~**"DHS"** means the Department of Human Services.~~

~~**"Health Plan"** or "plan" means any organization that is licensed as an HMO by the Oklahoma State Department of Health or that is otherwise certified as a Public Managed Care Plan as delineated in the Oklahoma State Medicaid Plan, and contracts with the State to provide services to ***SoonerCare Plus*** enrollees pursuant to 42 U.S.C. Section 1396a.~~

317:25-5-4. Health Plan proposals to the Oklahoma Health Care Authority and the DUR for modifying medication coverage [REVOKED]

~~Coverage of medications that is not the same or exceeding the coverage of the Oklahoma Health Care Authority fee-for-service program will be reviewed by the Drug Utilization Review Board (DUR) for its approval/disapproval recommendation to the Authority. Health Plans must present, in written text the information listed in OAC 317:1-3-3.2. Final approval or modifications will be made by the OHCA administrator or a designee.~~

317:25-5-5. Contractor payments to providers [REVOKED]

~~(a) The SoonerCare Health Plan is responsible for making timely payment or adjudication for medically necessary, covered services rendered by network providers when:~~

~~(1) services are rendered to treat an emergency medical condition; or~~

~~(2) services are rendered under the terms of a contract; or~~

~~(3) services are prior authorized.~~

~~(b) The SoonerCare Health Plan is also responsible for making timely payment or adjudication to non-network providers for medically necessary, covered services rendered when services are provided to an enrolled SoonerCare Plus recipient with knowledge of the SoonerCare Health Plan. Payments made by a SoonerCare Plus Health Plan are considered Medicaid payments and are subject to the payment in full requirements of the Medicaid program. Providers who render services to SoonerCare Plus members will be paid the Medicaid Fee for Service allowable amount unless there is a participation agreement between the provider and the Health Plan.~~

~~(c) For purposes of subsection (a) and (b) of this Section, the words timely payment or adjudication mean that the SoonerCare Health Plan must pay or deny a claim within 30 days of presentation of the claim to the SoonerCare Health Plan.~~

~~(d) In the event a subcontractor of a SoonerCare Health Plan provides services to an enrolled recipient and holds a fee-for-service contract with the Health Care Authority and provides services within the scope of the SoonerCare Plus Contract, then the subcontractor may only bill and collect the monies due for the service from the SoonerCare Health Plan. In this case, the subcontractor may not bill the SoonerCare recipient until:~~

~~(1) it has unsuccessfully appealed to the Health Plan, and~~

~~(2) it has appealed to the OHCA under OAC 317:2-1-2.1, and~~

~~(3) OHCA permits the subcontractor to bill the recipient.~~

~~(e) A violation of subsections (a), (b) or (d) of this Section may result in contract sanctions or penalties.~~

~~(f) The term subcontractor as used in this section means any and all medical providers, professionals, health care suppliers for other practitioners or providers who assist the SoonerCare Health Plan in the delivery of services to Medicaid recipients.~~

PART 3. ENROLLMENT CRITERIA

317:25-5-10. Enrollment in *SoonerCare Plus* [REVOKED]

~~(a) Except to the extent a client is otherwise authorized to obtain services outside the Health Plan under federal or State law, clients enrolled under the ***SoonerCare Plus*** program are restricted to receive services from the plan or from another qualified provider to whom the client is referred by the plan. To ensure appropriate utilization of specialty services, primary care physicians control referral of most medical services they are unable to provide.~~

~~(b) New ***SoonerCare Plus*** recipients will receive a period of six months of continuous guaranteed eligibility from the certification date for the current eligibility period. The guaranteed period of eligibility is linked to the recipient and ends if any of the conditions listed in (1)-(15) of this subsection occur:~~

~~(1) An individual receives services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver.~~

~~(2) An individual becomes privately enrolled in a Health Plan.~~

~~(3) An individual would be required to travel more than 25 miles or an average of 45 minutes to obtain primary care services, as determined by the State.~~

~~(4) An individual lives in or moves to an area excluded from the ***SoonerCare Plus*** program.~~

~~(5) An individual is in custody.~~

~~(6) A child is in a subsidized adoption.~~

~~(7) An individual is deceased.~~

~~(8) The State is unable to locate an individual.~~

~~(9) A determination is made that an individual has committed fraud related to the Medicaid program.~~

~~(10) An error has been made in determining eligibility and the person is not eligible for Medicaid services.~~

~~(11) An individual's categorical relationship changes and he or she is no longer in a group which is included in the ***SoonerCare Plus*** program.~~

~~(12) A woman has gained Medicaid eligibility solely due to a period of presumptive eligibility;~~

~~(13) An individual is an illegal or ineligible alien.~~

~~(14) An individual's case has been closed due to failure to cooperate with an eligibility determination.~~

~~(15) An individual is excluded or terminated from the ***SoonerCare Plus*** program for any reason.~~

~~(c) Individuals losing and regaining eligibility within a 90 day period are not entitled to a new period of six months guaranteed eligibility.~~

317:25-5-11. Geographic Coverage Areas [REVOKED]

~~*SoonerCare Plus* Health Plans provide coverage to eligible individuals in service areas of the State in which networks are sufficiently developed to meet the standards established by the Medicaid program. These individuals must reside in one of the following geographic locations, as determined by the county or residential postal Zip Code in the Central Service Area (Oklahoma City and surrounding areas), Northeast Service Area (Tulsa and surrounding areas), and the Southwest Service Area (Lawton and surrounding areas). Geographic coverage areas are established for each future year by the Board.~~

~~(1) The Central Service Area includes Oklahoma, Cleveland, Canadian, Grady, Lincoln, Logan, McClain and Pottawatomie counties.~~

~~(2) The Northeast Service Area includes the following counties and zip Codes:~~

~~(A) all of Tulsa, Creek, Rogers and Wagoner counties and;~~

~~(B) portions of Osage County with zip codes 74063, 74126 and 74127.~~

~~(3) The Southwest Service Area includes all zip codes in Comanche, Kiowa, Tillman and Jackson counties.~~

317:25-5-12. Enrollment requirements [REVOKED]

~~(a) ***SoonerCare Plus*** enrollment is limited to groups of state or federally mandated categories of eligible persons.~~

~~(b) New eligibles living in households in which some members are already enrolled in a Health Plan must enroll in the same Plan as the other members of the household, unless that member is designated as a Special Behavioral Health Needs (SBHN) recipient or an Aged, Blind, or Disabled (ABD) recipient. The SBHN or ABD recipient may enroll in a Health Plan different from the rest of the family. However, if the SBHN or ABD recipient does not select a Health Plan, he/she will be assigned one.~~

317:25-5-13. Enrollment ineligibility [REVOKED]

~~Clients in certain categories are excluded from participation in the SoonerCare Plus program. All other clients are enrolled in Health Plans and subject to the provisions of this subchapter. Clients excluded from participation in SoonerCare Plus include:~~

~~(1) Individuals receiving services in a nursing facility or an intermediate care facility for the mentally retarded (ICF-MR) for a period in excess of 30 days.~~

~~(2) Individuals receiving services through a Home and Community-Based Waiver.~~

~~(3) Individuals privately enrolled in a Health Plan if that enrollment is not through the SoonerCare Plus program.~~

~~(4) Individuals who would be required to travel more than 25 miles or an average of 45 minutes to obtain primary care services, as determined by the State.~~

~~(5) Individuals living in an area excluded from the program.~~

~~(6) Individuals with a retroactive eligibility period only.~~

~~(7) Children who are known to OHCA to be in custody. If such children are already enrolled in a Health Plan when they are taken into or found to be in custody, as reported by DHS, they are disenrolled by the OHCA effective on the day in which the action is documented by OHCA. Until such time as these children are disenrolled from a Health Plan, the Plan is fully responsible for all covered benefits under the terms of their contract.~~

~~(8) Individuals who are eligible for Medicaid solely due to presumptive eligibility.~~

~~(9) Illegal aliens.~~

~~(10) Children in subsidized adoptions.~~

~~(11) Individuals eligible for Medicaid services because they are aged, blind or disabled and dually eligible for Medicare and Medicaid.~~

317:25-5-14. Availability of plan choices [REVOKED]

~~A description of ***SoonerCare Plus*** and Health Plan options are provided by OHCA to DHS for distribution to DHS county offices. These materials are then given, at the time of the Medicaid application or re-determination, to the recipient by a case worker trained in presenting Health Plan material. The informational material must be available in English and should also be available in other languages, such as Spanish, which are spoken by a large number of recipients. Interpreter services are provided when necessary.~~

~~(1) Notices and letters of explanation are mailed to clients;~~

~~(2) Client Assistance Information Service providing additional Health Plan information and clarification of questions and problems are available from the State through a toll-free telephone line operated by OHCA.~~

PART 5. ENROLLMENT PROCESS

317:25-5-25. Recipient enrollment process [REVOKED]

~~(a) Medicaid eligible individuals residing in any of the areas defined in OAC 317:25-5-11 whose eligibility is based on the requirements found at OAC 317:25-5-12(a) must enroll in a ***SoonerCare Plus*** health care plan. Eligible household members must choose or will be assigned to a Health Plan through an assignment mechanism to be determined by the Administrator. Parents or guardians will choose on behalf of minor clients in the household.~~

~~(1) New applicants for Medicaid, as part of the eligibility process, are given information about the ***SoonerCare Plus*** program. Applicants are provided a brochure explaining the program, the plans available and are given an enrollment form for completion containing a list of available plans.~~

~~(2) The applicant must notify either the caseworker or the Authority by mail or telephone as to their choice of plan within a time to be established by the Administrator or a plan will be assigned to them according to the assignment mechanism, as defined by the Authority. For purposes of determining the client's choice of plan, the most recent notification received by the Authority determines the plan in which the client is enrolled as long as capacity is available within the plan. If capacity is not available then the client is auto assigned according to the assignment mechanism as defined by the Authority.~~

~~(3) The applicant is provided a client information packet. The packet contains a detailed description of services covered, client rights and responsibilities, services excluded from coverage, where to receive services, instructions on how to contact the plan, instructions on emergency and family planning services, and the mechanisms for contacting appropriate entities for obtaining answers to questions.~~

~~(b) Health Plans may not refuse a member's assignment, seek to disenroll a member, or otherwise discriminate against a member on the basis of age, sex, race, physical or mental disability, national origin or type of illness or condition, except with OHCA approval when that condition can be better treated by another provider type. In addition, IHS, tribal or urban Indian programs may provide services to IHS beneficiaries consistent with federal law.~~

~~(c) Literature on the client's rights and responsibilities in relation to the Health Plan they select is sent to the client at the time of enrollment.~~
~~(d) Until Health Plan enrollment is effective, Medicaid eligible individuals receive services on a fee-for-services basis.~~
~~(e) Children born to Health Plan members are enrolled in that same Health Plan effective from the time of birth.~~

317:25-5-26. Automatic re-enrollment. [REVOKED]

~~Medicaid recipients who become disenrolled from a plan solely by virtue of becoming temporarily (for 90 days or less) ineligible for Medicaid services, are automatically re-enrolled into their previously selected plan, subject to Plan capacity. The client is notified of the automatic re-enrollment and any right to disenroll from a plan.~~

317:25-5-27. Primary care provider selection or assignment [REVOKED]

~~(a) In addition to selecting a Health Plan, the client is provided an opportunity to select a PCP within their plan.~~
~~(b) If the client does not select a PCP, the plan will assign them to a PCP.~~

317:25-5-28. Disenrollment from a Health Plan by the client [REVOKED]

~~(a) **Client request.** Clients may disenroll from one Health Plan into another Health Plan within the first 30 days of membership in a Plan. If a client disenrolls on or before the 15th day of the month, their disenrollment is effective the first day of the next month. If the client disenrolls after the 15th day of the month, disenrollment is effective the first day of the second month after the month in which the client requests disenrollment. Clients who request disenrollment from their Health Plan may be restricted from re-enrolling with that Health Plan for a time to be determined at the beginning of each Health Plan contract year by the Administrator. The client is notified of their disenrollment rights at the time of the request.~~
~~(b) **Involuntary enrollment and disenrollment.** If a client moves from one SoonerCare Plus service area to another, he/she is disenrolled from the existing Health Plan the day in which the move is confirmed by OHCA and placed in the fee for service system. For the entire month immediately following the disenrollment, the client remains in the fee-for-service system. On the first day of the next month, the client is re-enrolled into the same Plan, if that plan exists in the new service area. However, if that Plan does not exist in the new service area, the client is auto assigned to a different Plan. The client may change Health Plans within the first 30 days should they desire to do so.~~

317:25-5-29. Termination of a client's enrollment by the Health Plan [REVOKED]

~~(a) Each Health Plan is responsible for providing all Health Plan covered services to clients who have been enrolled in their Plan unless the Health Plan has been notified by the State that a client's enrollment has been terminated.~~
~~(b) Health Plans may not cancel any client's enrollment because of adverse changes in the client's health.~~
~~(c) Health Plans must request and receive approval from the OHCA before canceling a client's enrollment. The Administrator establishes criteria at the beginning of each Health Plan contract year by which Health Plans may request the disenrollment of a client.~~

317:25-5-30. Plan benefit package [REVOKED]

~~Health Plans are responsible for providing medically necessary health related services to their members as described in the State's Health Plan contracts and are reimbursed on a per member per month pre-determined capitated rate. Medically necessary Health related services may include but are not limited to:~~

~~(1) Inpatient hospital services;~~
~~(2) Outpatient hospital services;~~
~~(3) Physician services;~~
~~(4) Family planning services and supplies;~~
~~(5) Free-standing dialysis center services;~~
~~(6) Free-standing ambulatory surgery center services;~~
~~(7) Extended services for pregnant women;~~
~~(8) Organ transplants;~~
~~(9) Prescription Drugs;~~
~~(10) Laboratory and X-Ray services;~~
~~(11) Mammograms;~~
~~(12) Outpatient behavioral health and substance abuse services;~~
~~(13) Inpatient psychiatric services;~~
~~(14) Speech and language and hearing services;~~
~~(15) EPSDT services, including non-State Plan EPSDT services unless those services have been prior authorized by the primary care provider pursuant to an Individual Family Service Plan, an Individual Education Plan, an Individual Health and Support Plan, or a 504 Accommodation Plan;~~
~~(16) Home Health services;~~
~~(17) Dental services for individuals under age 21;~~
~~(18) Eye Care services for individuals under age 21;~~
~~(19) Maternity Clinic services;~~
~~(20) Federally Qualified Health Center (FQHC) services;~~
~~(21) Institution for mental disease for individuals under 21;~~
~~(22) Birthing Center services;~~
~~(23) Nurse Midwife services;~~
~~(24) Medical care and any other type of remedial care recognized under state law (Other Practitioner Services):~~
~~(A) Podiatrist services,~~
~~(B) Chiropractor services,~~
~~(C) Optometrist services,~~
~~(D) Psychologist services, and~~
~~(E) Certified Registered Nurse Anesthetist services;~~
~~(25) Blood, blood bank services;~~
~~(26) Case Management services;~~
~~(27) Advanced Practice Nurse services;~~
~~(28) Durable Medical Equipment; and~~

~~(29) Medically necessary emergency and non-emergency transportation, including transportation for wraparound services.~~

317:25-5-31. Obtaining Medicaid services not covered under the plan [REVOKED]

~~Covered medical services which are not included in the ***SoonerCare Plus*** program are obtained in the same manner as under the regular Medicaid fee-for-service program. These services include long-term care services after the 30th day, tuberculosis follow-up and management, personal care services, and school-based and Early Intervention services ordered through an Individual Family Service Plan, Individual Health and Support Plan, 504 Accommodation Plan, or an Individual Education Plan. Not withstanding the previous provision, school-based and Early Intervention services must be prior authorized by the PCP. During the eligibility determination or re-determination process, applicants are given information identifying the services not covered by ***SoonerCare Plus*** and the process for obtaining those services.~~

317:25-5-32. Emergency and family planning services [REVOKED]

~~(a) **Emergency services.** If a recipient of ***SoonerCare Plus*** experiences an emergency medical condition, as defined in OAC 317:30-3-57(a)(2), the client may obtain services from any appropriate provider/facility (including non-network providers), without penalty. However, follow-up care must be provided or approved by the Plan, pursuant to the Health Plan policies and procedures.~~

~~(b) **Family planning services.** Individuals 18 years of age and older must obtain family planning services from any appropriate Health Plan family planning network provider, pursuant to the Health Plan policies and procedures. Individuals under 18 years of age are permitted to obtain family planning services from any qualified provider, whether or not the provider is a part of the Health Plan's provider network.~~

PART 7. PLAN REQUIREMENTS

317:25-5-40. Health Plan Qualifications for Participation [REVOKED]

~~(a) Health Plan participation in the ***SoonerCare Plus*** program is limited to organizations that meet the requirements of OAC 317:25-3-1 or OAC 317:25-3-2.~~

~~(b) Health Plans must be awarded a bid to provide services in accordance with OAC 317:25-1.~~

~~(c) Health Plans must have a current signed Medicaid contract on file with the Oklahoma Health Care Authority before receiving payment.~~

317:25-5-41. Primary Care Provider (PCP) [REVOKED]

~~(a) Each Health Plan member must have a PCP who is responsible for delivering medically necessary, primary care services, referring clients to specialty care and maintaining patient medical records. During each contract year, a specified PCP to patient ratio is determined, consistent with the operable waiver.~~

~~(b) The OHCA defines the categories of Medical and Osteopathic physicians which may act as PCPs within networks.~~

~~(c) Health Plans may use advanced practice nurses and physician assistants, consistent with their legal scope of practice, as Health Plan providers in a coordinated system of care with a primary care physician. Health Plans may assign additional members for each advanced practice nurse, physician assistant or medical resident associated with the PCP.~~

~~(d) Health Plans that include teaching institutions in their networks may use medical residents as PCPs under criteria established in OAC 317:25-5-41.1.~~

317:25-5-41.1. Medical residents serving as primary care providers [REVOKED]

~~(a) Health Plans that include teaching institutions in their networks may use medical residents as Primary Care Providers (PCP). In order for the resident to participate, the resident must be a network provider for participating Health Maintenance Organizations or Managed Care Plans and have a Medicaid fee-for-service contract with the OHCA to provide services for any Medicaid ***SoonerCare Plus*** recipient. Additionally, the resident must:~~

~~(1) be licensed to practice in the State of Oklahoma;~~

~~(2) be at least at the Post-Graduate 2 (PG-2) level;~~

~~(3) serve as a PCP/CM only within his or her continuity clinic setting (for example, Family Practice residents may only serve as the PCP/CM within the Family Practice Residency clinic setting); and~~

~~(4) work under the supervision of a licensed attending physician.~~

~~(b) Medical residents practicing in ***SoonerCare Plus*** service areas may also serve as Primary Care Providers/Case Managers (PCP/CM) for ***SoonerCare Choice*** Medicaid patients.~~

~~(c) Medical residents practicing in ***SoonerCare Plus*** service areas as PCP/CMs must specify a minimum patient capacity of 50 patients.~~

~~(d) Medical residents practicing in ***SoonerCare Plus*** service areas as PCP/CMs may not specify a maximum patient capacity of more than 250 patients. The medical resident may, however, specify a lower number.~~

~~(e) Medical residents practicing in ***SoonerCare Plus*** service areas as both PCPs and PCP/CMs may serve up to 875 ***SoonerCare Plus*** Medicaid patients and 250 ***SoonerCare Choice*** Medicaid patients.~~

SUBCHAPTER 7. SOONERCARE ~~CHOICE~~

PART 1. GENERAL PROVISIONS

317:25-7-1. Purpose

The purpose of this Subchapter is to describe the rules governing the statewide SoonerCare ~~Choice operating in areas in which managed care Health Plans do not deliver services~~ program. ~~Areas excluded from SoonerCare Choice include the densely populated SoonerCare Plus areas as defined at OAC 317:25-5-1.~~ The rules provide assurances that ~~Title XIX~~ Medicaid clients ~~will~~ have adequate access to primary care, while reducing costs and preventing unnecessary and inappropriate utilization.

317:25-7-2. SoonerCare ~~Choice~~: overview

(a) The Oklahoma Health Care Authority (OHCA) operates a Primary Care Case Management (PCCM) system for SoonerCare ~~Choice~~ eligible individuals. The program enrolls Medicaid recipients with Primary Care Provider/Case Managers PCP/CMs who provide and/or authorize all primary care services and all necessary specialty services, with the exception of services described in subsection (c) of this Section for which authorization is not required.

(b) In exchange for a fixed, periodic rate, which is paid per member per month, the Primary Care Provider/Case Manager (PCP/CM) provides, or otherwise assures the delivery of~~,~~ medically-necessary primary care medical services, including ~~a basic package of laboratory and radiology services, and~~ referrals for specialty services for an enrolled group of eligible individuals. The ~~primary care case manager~~ PCP/CM assists the client in gaining access to the health care system and monitors the client's condition, health care needs and service delivery.

(c) Services which do not require a referral from the ~~Primary Care Provider/Case Manager~~ PCP/CM include behavioral health services, vision for refraction services, dental services, child abuse/sexual abuse examinations, prenatal and obstetrical services, family planning services for clients under age 18, ~~and~~ emergency physician and hospital services, and services delivered to Native Americans at IHS, tribal, or urban Indian clinics.

(d) Non-capitated Medicaid covered services delivered by the ~~Primary Care Provider/Case Manager~~ PCP/CM are reimbursed at the Medicaid fee-for-service rate under the procedure code established for each individual service. To the extent services are provided or authorized by the Primary Care Provider/Case Manager, the ~~agency~~ OHCA does not make Medicaid payments for services delivered outside the scope of coverage of the Medicaid program, thus a referral by the Primary Care Provider/Case Manager does not guarantee payment.

317:25-7-3. Definitions

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

~~**"Administrator"** means the chief executive officer of the Oklahoma Health Care Authority.~~

"Aged, Blind and Disabled" means the Medicaid covered populations under 42 U.S.C., Section 1396a (a)(10)(A)(i) and (F).

~~**"Authority"** means the Oklahoma Health Care Authority.~~

"Board" means the board designated by the Oklahoma legislature to establish policies and adopt and promulgate rules for the Oklahoma Health Care Authority.

"CEO" means the Chief Executive Officer of the Oklahoma Health Care Authority.

"Custody" means the custodial status, as reported by the Department of Human Services.

~~**"DHS"** means the Department of Human Services.~~

"Medicaid" means the medical assistance program authorized by 42 U.S.C., Section 1396a et seq. The program provides medical benefits for certain low-income persons. It is jointly administered by the federal and state governments.

"Medicare" means the program defined at 42 U.S.C. '1395 et seq.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"PCCM" means Primary Care Case Management.

"PCP/CM" means Primary Care Provider/Case Manager, including a Provider or Physician Group.

"Primary Care Case Management" means a ~~model of~~ managed care health service delivery system ~~in areas of the State of Oklahoma not served by Health Plans~~ in which health services are delivered and coordinated by Primary Care Provider/Case Managers.

"Primary Care Provider/Case Manager" means a provider under contract to the Oklahoma Health Care Authority to provide primary care services and case management, including all medically-necessary referrals~~, to Medicaid recipients enrolled with a provider in an area of the State of Oklahoma not served by Health Plans~~.

"Provider or Physician Group" means a partnership, limited partnership, limited liability company, corporation or professional corporation composed of doctors of medicine and/or doctors of osteopathy and/or advanced nurse practitioner, and/or physician assistants who provide health care of the nature provided by independent practitioners and is permitted by state and federal law and regulations to receive Medicaid provider payments.

317:25-7-5. Primary care provider/case managers

For provision of health care services, the OHCA contracts with qualified Primary Care Provider/Case Managers. All providers serving as PCP/CMs must have a valid Medicaid Fee-for Service contract as well as a SoonerCare ~~Choice~~ contract. Additionally, all PCP/CMs, excluding Provider or Physician Groups, must agree to accept a minimum capacity of ~~150~~ patients, however this does not guarantee PCP/CMs a minimum patient volume. Primary Care Provider/Case Managers are limited to:

(1) **Physicians.** Any physician licensed to practice medicine in the state in which he or she practices who is engaged in a general practice or who is board eligible or certified in family medicine, general internal medicine or

general pediatrics may serve as a PCP/CM. In addition, physicians who meet all requirements for employment by the Federal Government as a physician, are employed by the Federal Government in an IHS facility, and practice in one of the four designated primary care specialties may serve as a PCP/CM. The ~~Administrator~~ Chief Executive Officer (CEO) of the OHCA may designate physicians to serve as PCP/CMs who are licensed to practice medicine in the state in which ~~he or she~~ they practices who are specialized in areas other than those described above ~~to serve as PCP/CMs~~. In making this determination, the ~~Administrator~~ CEO may consider such factors as the percentage of primary care services delivered in the physician's practice, the availability of primary care providers in the geographic area of the state in which the physician's practice is located, the extent to which the physician has historically provided services to Medicaid clients, and the physician's medical education and training.

(A) For physicians serving ~~exclusively~~ as SoonerCare ~~Choice~~ PCP/CMs, the State caps the number of members per physician at ~~1,750~~ 2,500. However, the ~~Administrator~~ CEO in his/her discretion may increase this number in under served areas ~~to 2,500 to one,~~ based on a determination that this higher cap is in conformance with usual and customary standards for the community.

(i) Physicians may expand their capacity if they practice in conjunction with physician assistants or with advanced practice nurses. Physicians are eligible to serve an additional 875 members for each full-time equivalent physician assistant or advanced practice nurses with which he or she practices, up to a maximum of 1750 additional members.

(ii) If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed 1 FTE, and the number of physician assistants or advanced practice nurses in practice at each site. Thus, the physician cannot exceed a maximum total capacity of 4250 members.

(B) In areas of the State where cross-state utilization patterns have developed because of limited provider capacity in the State, the ~~Administrator~~ CEO may authorize contracts with out-of-state providers for PCP/CM services. Out-of-State PCP/CMs are required to comply with all access standards imposed on Oklahoma physicians ~~and the Authority strongly encourages these providers to use Oklahoma specialists and hospitals when available~~. ~~Primary care providers in Health Plan networks who practice on the border of Health Plan/PCCM areas who wish to serve as PCP/CMs may accept up to 250 SoonerCare Choice members, subject to the distance and time standards for the PCCM model. SoonerCare Choice members may also enroll with out-of state PCP/CM's.~~

(2) **Advanced Practice Nurses.** Advanced Practice Nurses who have prescriptive authority may serve as PCP/CMs for the Primary Care Case Management system if licensed to practice in the state in which he or she practices. Additionally, Advanced Practice Nurses who meet all requirements for employment by the Federal Government as an advanced practice nurse, and is employed by the Federal Government in an Indian Health Service facility, may serve as a PCP/CM. Advanced Practice Nurses who have prescriptive authority may serve as primary care case managers for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

(3) **Physician Assistants.** Physician Assistants may serve as PCP/CMs if licensed to practice in the state in which he or she practices. Additionally, Physician Assistants who meet all requirements for employment by the Federal Government as a Physician Assistant, and ~~is~~ are employed by the Federal Government in an Indian Health Service facility, may serve as a PCP/CM. Physician Assistants may serve as primary care case managers for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

(4) **Medical Residents.**

(A) Medical residents may serve as PCP/CMs ~~for the SoonerCare Choice program~~ when the following conditions are met:

(i) The resident is licensed to practice in the state in which he or she practices.

(ii) The resident is at least at the Post-Graduate 2 (PG-2) level.

(iii) The resident serves as a PCP/CM only within his or her continuity clinic setting (for example, Family Practice residents may only serve as the PCP/CM within the Family Practice Residency clinic setting).

(iv) The resident works under the supervision of a licensed attending physician.

(v) The resident specifies the residency program or clinic to which payment will be made.

(B) Medical residents practicing ~~in SoonerCare Choice areas~~ as a PCP/CM may not exceed a capacity of more than 875 ~~SoonerCare Choice~~ members. ~~Medical residents practicing in SoonerCare Plus service areas shall not exceed a capacity of 250 SoonerCare Choice members.~~ However, the CEO in his/her discretion may increase this number.

(5) **Provider or physician group.**

(A) ~~For provider~~ Provider or physician groups ~~serving SoonerCare Choice providers, the~~ must agree to accept a minimum enrollment capacity ~~shall not be less than 200 members~~ and ~~shall~~ may not exceed 2,500 members per provider participating in the provider group.

(B) Enrollment capacity may be increased if the participating group practices in conjunction with a licensed physician assistant or advanced practice nurse.

317:25-7-6. Primary Care Provider/Case Manager Payment to Subcontractors

(a) Under the provisions of the SoonerCare ~~Choice~~ Contract, the contractor is responsible for providing all capitated ~~laboratory and x-ray~~ services contained in the ~~service~~ benefit package. In the event that the PCP/CM orders a capitated ~~lab and/or x-ray~~ service ~~contained in the service package for his/her own evaluation of the patient~~, the PCP/CM is responsible to make timely payment to the subcontractor or other provider.

(b) For purposes of subsection (a) of this Section timely payment or adjudication means payment or denial of a claim within 30 days of presentation to the PCP/CM.

(c) No subcontractor of the PCP/CM may charge more than the Medicaid fee-for-service schedule for these services in the benefit package. The subcontractor may not bill the recipient for the services to the SoonerCare ~~Choice~~ recipient until the PCP/CM has refused payment and the subcontractor/medical provider has appealed under OAC 317:2-1-2.1 and the ~~Health Care Authority~~ OHCA permits the subcontractor to bill the recipient.

PART 3. ENROLLMENT CRITERIA

317:25-7-10. Enrollment with a Primary Care Provider/Case Manager

(a) All Medicaid clients described in OAC 317:25-7-12 ~~who do not reside in areas of the State in which services are provided through Health Plans shall be~~ are enrolled with a PCP/CM. Medicaid applicants ~~are offered~~ have the opportunity to select a PCP/CM during the ~~certification interview~~ application process ~~with the DHS case worker~~. ~~Clients who do not select a PCP/CM prior to the date the certification is entered into the DHS computer system are autoassigned.~~ Enrollment with a PCP/CM for clients determined to be eligible on or before the fifteenth day of the month are effective on the first day of the following month. Enrollment with a PCP/CM for clients determined to be eligible after the fifteenth day of the month are effective on the first day of the second month following determination.

(1) The ~~Authority~~ OHCA ~~shall offer~~ offers all beneficiaries the opportunity to choose a PCP/CM from a ~~roster listing~~ directory which lists available PCP/CMs ~~within 45 miles or 45 minutes driving time from their place of residence~~. ~~At his/her discretion, the Administrator may determine a distance/driving time which is greater or less upon an assessment of available providers in any area or at any time the Administrator determines it is in the best interest of the State or Medicaid beneficiaries.~~

(2) If a ~~Medicaid beneficiary enrolled with a PCP/CM~~ SoonerCare member moves more than the authorized distance/driving time from their current PCP/CM ~~within the PCCM area~~, ~~they~~ that member will be disenrolled and ~~autoassigned~~ assigned to ~~a~~ an appropriate PCP/CM. ~~If the client moves from a rural area to a managed care health plan service area they will be disenrolled from the PCP/CM and autoassigned to a Health Plan.~~ When a notice of ~~autoassignment~~ PCP/CM assignment is sent to a client, the client is advised of the right to change the PCP/CM, at any time, or after the effective date of enrollment with the PCP/CM pursuant to OAC 317:25-7-27.

(b) Clients ~~enrolled under the PCCM program~~ are restricted to receive services from the PCP/CM or from a provider to which the client has been referred by the PCP/CM. Notwithstanding this provision, subject to limitations which may be placed on services by the Medicaid agency, clients may self refer ~~without authorization of the PCP/CM~~ for behavioral health services, vision for refraction services, dental services, child abuse/sexual abuse examinations, prenatal and obstetrical services, family planning services for clients under age 18, services delivered to Native Americans at IHS, tribal, or urban Indian clinics, and emergency physician and hospital services. ~~Medical providers who provide x-rays, laboratory procedures and anesthesia services are not required to obtain a referral number from the PCP/CM.~~

(c) New SoonerCare ~~Choice~~ members will receive a period of six months of continuous guaranteed Medicaid eligibility following completion of the eligibility and enrollment process. The guaranteed period of eligibility is retroactive to the ~~date~~ first day of the month in which they were determined eligible for Medicaid. The guaranteed period of eligibility is linked to the member and not the PCP/CM. The guaranteed period of eligibility ends if any of the conditions listed in (1)-(16) of this subsection occur:

(1) An individual receives services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver.

(2) An individual becomes privately enrolled in ~~a managed care plan~~ an HMO.

(3) An individual would be required to travel more than 45 miles or an average of 45 minutes to obtain primary care services, or a greater or lesser distance/driving time as determined pursuant to OAC 317:25-7-10(a).

~~(4) An individual lives in or moves to an area excluded from SoonerCare.~~

(~~5~~ 4) An individual is in custody.

(~~6~~ 5) A child is in a subsidized adoption.

(~~7~~ 6) An individual is deceased.

(~~8~~ 7) The State is unable to locate an individual.

(~~9~~ 8) A determination is made that an individual has committed fraud related to the Medicaid program.

(~~10~~ 9) An error has been made in determining income or resources and the person is not eligible for Medicaid services.

(~~11~~ 10) An individual's categorical relationship changes and he or she is no longer in a group eligible for SoonerCare.

(~~12~~ 11) A woman has gained Medicaid eligibility solely due to a period of presumptive eligibility;

(~~13~~ 12) An individual is an ~~illegal~~ unqualified or ineligible alien.

(~~14~~ 13) An individual's Medicaid case has been closed ~~due to failure to cooperate with the eligibility determination~~.

(~~15~~ 14) An individual is excluded or terminated from SoonerCare for any reason.

(~~16~~ 15) An individual becomes dually-eligible for Medicare and Medicaid.

317:25-7-11. Geographic coverage areas

~~(a) The PCCM system will be established in any area of the State in which SoonerCare Health Plans are not delivering fully capitated services. Notwithstanding this requirement, the Administrator may establish pilot projects or demonstration models involving one or more counties or other geographic areas prior to full implementation of the PCCM system or may seek to explore alternative SoonerCare delivery models in targeted areas after implementation of the PCCM system.~~

The PCCM managed care program is statewide.

~~(b) Recipients residing in any geographic area unable to support a SoonerCare Choice model will remain fee for service unless the recipient chooses to enroll in the program. These areas will be re-evaluated on at least a yearly basis. If the area is found to have sufficient resources to support SoonerCare Choice, the area will be brought into an appropriate SoonerCare Choice model as soon as possible after a determination is made.~~

~~(c) The SoonerCare Choice will operate only in areas not served by SoonerCare Plus health plans.~~

317:25-7-13. Enrollment ineligibility

Clients in certain categories are excluded from participation in the SoonerCare ~~Choice~~ program. All other clients are enrolled in the SoonerCare ~~Choice~~ program and subject to the provisions of this Subchapter. Clients excluded from participation in SoonerCare ~~Choice~~ include:

(1) Individuals receiving services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver.

(2) Individuals privately enrolled in ~~a Health Plan or in a pilot project or demonstration model other than a PCCM system~~ an HMO.

(3) Individuals who would be traveling more than 45 miles or an average of 45 minutes to obtain primary care services, or a greater or lesser distance/driving time as determined pursuant to OAC 317:25-7-10(a).

~~(4) Individuals living in an area excluded from the program.~~

~~(5) Medically needy individuals and individuals with a retroactive eligibility period only.~~

(~~6~~ 4) Children who are known to the ~~Authority~~ OHCA to be in custody, as reported by the Department of Human Services.

(~~7~~ 5) Individuals who are eligible for Medicaid solely due to presumptive eligibility.

(~~8~~ 6) ~~Illegal~~ Non-qualified or ineligible aliens.

(~~9~~ 7) Children in subsidized adoptions.

(~~10~~ 8) Individuals who are dually-eligible for Medicaid and Medicare.

PART 5. ENROLLMENT PROCESS

317:25-7-25. Recipient enrollment process

(a) ~~Title XIX~~ Medicaid eligible individuals residing in any of the areas defined in OAC 317:25-7-11 whose eligibility is based on one of the aid categories included in the program as defined in OAC 317:25-7-12 must enroll with a PCP/CM. Parents or guardians will choose on behalf of minor clients in the household. Families with more than one beneficiary may choose a different PCP/CM for each family member. If a beneficiary does not select a PCP/CM, the ~~Authority~~ OHCA will assign the member to one, from the pool of providers within the established distance/driving time who have available ~~slots~~ capacity.

(b) ~~Hospitals receiving reimbursement for Title XIX services are responsible for notifying DHS of birth when a Title XIX eligible woman or woman for whom application for Title XIX certification is being made, within five days of delivery.~~ Until the effective date of enrollment with a PCP/CM, services for ~~the~~ a newborn are reimbursed at a fee-for-service rate. Upon eligibility determination, newborns may enroll with a PCP/CM or are assigned to a PCP/CM who is in general practice, family practice or general pediatrics. Enrollment materials will advise the parent or guardian of the right to change the PCP/CM after the effective date of enrollment.

(c) A description of the PCCM ~~system~~ program and the PCP/CM ~~options~~ directory is provided by the ~~Authority~~ OHCA to ~~DHS~~ OKDHS for distribution to ~~DHS~~ OKDHS county offices. ~~New applicants for TANF or Title XIX, as part of the eligibility interview, are given a brief explanation and information about the PCCM system by a DHS case worker trained in the PCCM program. Applicants are provided an enrollment packet explaining the program, the PCP/CMs available and are given an enrollment form to select a PCP/CM. Persons who are Title XIX eligible at the time the PCCM system is implemented receive an enrollment packet and an enrollment form through the mail. Enrollment packets contain a detailed description of services covered, client rights and responsibilities, services excluded from coverage, where to receive services, instructions on how to contact the PCP/CM, instructions on emergency, self-referral options and family planning services. The material contains a toll-free telephone number for clients to call with questions, to enroll, or for more information.~~

~~(d) New applicants may notify either the caseworker at the time of the interview or the Authority by mail or telephone of their choice of PCP/CM within a time to be established by the Administrator, or a PCP/CM will be assigned to them through a mechanism defined by the Authority.~~

(~~e~~ d) For purposes of determining the client's choice of PCP/CM, the most recent ~~notification~~ PCP/CM selection received by the ~~Authority~~ OHCA determines the PCP/CM which the client is enrolled with as long as capacity is available. If capacity is not available then the client is ~~auto~~ assigned according to the assignment mechanism as defined by the ~~Authority~~ OHCA.

(~~f~~ e) PCP/CMs may not refuse an assignment, seek to disenroll a client, or otherwise discriminate against a client on the

basis of age, sex, race, physical or mental disability, national origin or type of illness or condition, unless that condition can be better treated by another provider type, except that IHS, tribal or urban Indian programs may provide services to Native American IHS beneficiaries consistent with federal law.

(~~g~~ f) PCP/CMs must provide access to medical care twenty-four hours per day, seven days per week, either directly or through coverage arrangements made with other providers, clinics, and/or local hospitals.

(~~h~~ g) Until PCP/CM enrollment is effective, ~~Title XIX~~ Medicaid eligible individuals receive all services on a fee-for-services basis.

317:25-7-26. Automatic re-enrollment

~~Title XIX~~ Medicaid recipients who are not in the six-month period of guaranteed eligibility who become disenrolled from a PCP/CM solely by virtue of becoming temporarily (for ~~90~~ 180 days or less) ineligible for ~~Title XIX~~ Medicaid services, are automatically re-enrolled with their previously-selected PCP/CM, subject to capacity. The client is notified of the automatic re-enrollment and any right to disenroll from ~~the~~ that PCP/CM.

317:25-7-27. Changing PCP/CMs

(a) The ~~Authority~~ OHCA shall be responsible for changing a member's enrollment from one PCP/CM to another:

(1) without cause up to 4 times per year, upon the member's request; or

(2) upon demonstration of good cause. Good cause shall mean:

(A) those members who are habitually non-compliant with the documented medical directions of the provider; or

(B) those members who pose a threat to employees, or other patients of the PCP/CM; or

(C) as a result of a grievance determination by the ~~Authority~~ OHCA; or

(D) in those cases where reliable documentation demonstrates that the physician-patient relationship has so deteriorated that continued service would be detrimental to the member, the provider or both; or

(E) the member's illness or condition would be better treated by another type of provider.

(b) A written request by the PCP/CM to change the enrollment of a member shall be acted upon by the ~~Authority~~ OHCA within thirty (30) days of its receipt. The decision to change PCP/CMs for cause will be made at the discretion of the ~~Authority~~ OHCA, subject to appeals policies delineated at OAC 317:2-1. The effective date of change shall be set so as to avoid the issue of ~~doctor~~ abandonment.

(c) In the event a SoonerCare ~~Choice~~ PCP/CM contract is terminated by OHCA for any reason, or the PCP/CM terminates participation in the SoonerCare ~~Choice~~ program the ~~Administrator~~ CEO may, at his or her discretion, assign members to a participating PCP/CM when it is determined to be in the best interests of the client whose PCP/CM has terminated.

317:25-7-28. Disenrolling a client from SoonerCare ~~Choice~~

(a) The ~~Authority~~ OHCA may disenroll a member from SoonerCare ~~Choice~~ if:

(1) the member is no longer eligible for Medicaid services; or

(2) the member has been incarcerated; or

(3) the member dies; or

(4) disenrollment is determined to be necessary by the OHCA; or

(5) the status of the member changes, rendering him/her ineligible for SoonerCare; or

(6) the member is already enrolled in the SoonerCare ~~Choice~~ Program, when they are taken or found to be in custody as reported by Department of Human Services; ~~the member is disenrolled by the Authority effective on the day in which the action is documented by OHCA. Until such time as these children are disenrolled from the SoonerCare Choice program, the PCP/CM is fully responsible for all covered benefits under the terms of their contract;~~ or

(7) the member is authorized to receive services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver; or

~~(8) the member moves to a non-PCCM area; or~~

(~~9~~ 8) the member becomes dually-eligible for Medicaid or Medicare.

(b) The ~~Authority~~ OHCA may disenroll the member at any time if the client is disenrolled for good cause, as it is defined in OAC 317:25-7-27. The ~~Authority~~ OHCA will inform the PCP/CM of any disenrollments from his or her member roster.

317:25-7-29. Plan benefit package

(a) The PCP/CM is responsible for delivering primary care and case management services defined in a benefit package developed by the ~~Authority~~ OHCA to all ~~Title XIX~~ Medicaid beneficiaries enrolled with him/her and is reimbursed for these services on a per-member-per-month pre-determined capitated rate. The PCP/CM benefit package will be determined by the Medical Director, with the approval of the ~~Administrator~~ CEO, and will be included with the PCP/CM contract.

(b) Services which are not included in the PCP/CM capitated rates will be reimbursed at a fee-for-service rate under the procedure code established for each individual service.

(c) School and health department clinics may conduct EPSDT screening examinations on children who have not been screened by their PCP/CM pursuant to the EPSDT periodicity schedule. If it is ascertained that a child is not current, the school or health department clinic must first contact the PCP/CM and attempt to set up an appointment for the child within ~~a period of time established by the Medical Director, but not less than ten business days~~ three weeks. If the PCP/CM cannot meet this condition, the clinic will be permitted to conduct the screen and bill ~~the State~~ fee-for-service. ~~The State will deduct the cost of the screen from the PCP/CMs capitation payment at a rate not to exceed one month's capitation~~

~~payment for that individual.~~ The State considers the cost of these screens in the rate setting process.

(1) The school or health department clinic must submit a claim for reimbursement ~~to the State~~, as well as documentation that:

(A) the PCP/CM was contacted and an examination could not be conducted by the PCP/CM within the specified guidelines; and

(B) ~~a guarantee that~~ the PCP/CM ~~will receive~~ has forwarded information for the patient file regarding the diagnosis, services rendered and need for follow-up. This documentation must be ~~submitted~~ returned to the child's record ~~to the Medical Director who will use it verify~~ for verification that PCP/CMs have first been contacted and that school and health department clinics are providing PCP/CMs with the information necessary to ensure continuity of care.

(2) The school-based clinic or health department must obtain a referral number from the PCP/CM and conduct the screening examination within 3 weeks from the date the determination was made that the PCP/CM could not conduct the exam within the specified guidelines.

~~(3) If documentation is not submitted, the request for reimbursement will be pended and a letter will be sent to the school or health department clinic requesting information. If the service has been provided without notification of the PCP/CM, the Authority OHCA will not pay the claim.~~

(d) PCP/CM providers ~~shall be~~ are protected from excessive losses incurred through the provision of services to ~~Title XIX~~ Medicaid clients with conditions which result in costs to the provider which greatly exceed the average cost of a ~~Title XIX~~ Medicaid client through a stop-loss mechanism. ~~In the event the fee for service equivalent cost of capitated covered services performed by the PCP/CM in a contract year exceeds a dollar amount to be specified by the Administrator for that contract year for a single enrolled member, the Authority shall pay for all additional covered services performed by the PCP/CM on a fee for service basis. Proper documentation of the services performed must be submitted to the Authority.~~

(e) The PCP/CM is prohibited from charging a co-payment for services provided to SoonerCare ~~Choice~~ recipients.

(f) For capitated ~~lab and x ray~~ services purchased by the PCP/CM from a Medicaid contracted provider, the provider is prohibited ~~by the State~~ from charging the PCP/CM more than the current Medicaid fee-for-service schedule for these services, but may charge less.

(g) The PCP/CM is not obligated to provide ~~true~~ emergency ~~care~~ services, and is not responsible for authorization or approval for payment for recipients seen in the emergency room. The PCP/CM may not require recipients to seek prior authorization for emergency services ~~in a true medical emergency~~. However, the PCP/CM may provide emergency care in an emergency room setting, within his/her legal scope of practice. The PCP/CM may receive reimbursement for Medicaid covered emergency services at the fee-for-service rate. ~~If a recipient presents in the emergency room for services that are not determined by OHCA to be a true medical emergency, OHCA will only pay the facility an assessment fee at the rate established by OHCA.~~

317:25-7-30. Obtaining ~~Title XIX~~ Medicaid services not covered by the PCP/CM

(a) Medical services which are not included as capitated primary care services or which are not the responsibility of the PCP/CM to authorize under the case management component of SoonerCare ~~Choice~~, as described in OAC 317:25-7-2(d) and OAC 317:25-7-10(b), are obtained in the same manner as under the regular ~~Title XIX~~ Medicaid fee-for-service program. ~~During the eligibility determination or re-determination interview, applicants are provided with information identifying the services not covered by SoonerCare Choice and the process for obtaining those services.~~

(b) Authorization for out-of-state transportation for primary care and specialty care is determined by the OHCA Medical Director.

(c) ~~Every Title XIX eligible client who is an IHS eligible American Indian must enroll with a PCP/CM. However, IHS eligible clients may obtain services from an IHS, tribal or SoonerCare Plus Indian provider without authorization from the PCP/CM.~~ An eligible SoonerCare member may choose a PCP/CM from the provider directory, including the IHS, tribal and Urban Indian clinics that participate as SoonerCare PCP/CMs. The member needs to have the Certified Degree of Indian Blood information in order to enroll. An American Indian member in SoonerCare may enroll with a PCP/CM who is not an IHS, tribal, or urban Indian clinic and still use the IHS, tribal or urban Indian clinic for medical care. A referral from the PCP/CM is needed for services that the clinic cannot provide, except for self-referred services. Except ~~for~~ services delivered through an Indian facility for which the State receives 100% Federal reimbursement, services are reimbursed at the Medicaid fee-for-service rate under the procedure code established for each individual service.

(d) If an IHS, tribal or ~~SoonerCare Plus~~ urban Indian ~~provider~~ clinic is unable to deliver a service to a ~~Title XIX client~~ SoonerCare enrollee and must refer the client for the service to a non-IHS, tribal or ~~SoonerCare Plus~~ urban Indian ~~provider~~ clinic, ~~Title XIX~~ Medicaid reimbursement is made only when the service is ~~authorized referred~~ by the PCP/CM, unless PCP/CM authorization is not required under OAC 317:25-7-2(d) and OAC 317:25-7-10(b).

(e) ~~Aggregate adjustments are made in PCP/CM capitation rates during the next contract year to reflect capitated~~ Capitated services delivered at IHS, tribal, and urban Indian clinics during the preceding year to SoonerCare clients enrolled ~~in SoonerCare Choice at~~ with non-Indian PCP/CMs ~~IHS, tribal facilities, and urban Indian clinics~~ are considered during the rate setting process.

(f) For non-capitated covered Medicaid compensable services provided for individuals enrolled in SoonerCare ~~Choice~~, reimbursement is made at the Medicaid fee-for-service rate under the procedure code established.

[OAR Docket #04-1016; filed 5-24-04]

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

[OAR Docket #04-1017]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-47. [AMENDED]
(Reference APA WF # 03-54C and 03-55C)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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ANALYSIS:
Medical Providers-Fee for Service rules are in need of revision to remove references to the SoonerCare plus program which ended effective January 1, 2004 and reflect current procedures in the SoonerCare Choice program.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004.

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5. Assignment and Cost Sharing

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

(1) **"Fee-for-service contract"** means the provider agreement specified in OAC 317:30-3-2. This contract is the contract between the Oklahoma Health Care Authority and medical providers which provides for a fee with a specified service involved.

~~(2) **"Managed care health plan"** means those entities defined at OAC 317:25-5-2, 317:25-3-1 and 317:25-3-2.~~

(3) **"Within the scope of services"** means the set of covered services defined at ~~OAC 317:25-5-30~~ OAC 317:25-7 and the provisions of the ~~Health Plan contracts in the SoonerCare Plus program or~~ Primary Care Case Manager contracts in the SoonerCare Choice Program.

(4) **"Outside of the scope of the services"** means all medical benefits outside the set of services defined at ~~OAC 317:25-5-30~~ OAC 317:25-7 and the provisions of the ~~Health Plan contracts in the SoonerCare Plus program or~~ Primary Care Case Manager contracts in the SoonerCare Choice Program.

(b) **Assignment in fee-for-service.** The Authority's Medicaid State Plan provides that participation in the medical program is limited to providers who accept, as payment in full, the amounts paid by OHCA plus any deductible, coinsurance, or copayment required by the State Plan to be paid by the recipient and make no additional charges to the patient or others. ~~Payments made by a SoonerCare Plus Health Plan are considered Medicaid payments and are subject to the payment in full requirements of the Medicaid program. Providers who render services to SoonerCare Plus members will be paid the Medicaid Fee-for-Service allowable amount unless there is a participation agreement between the provider and the Health Plan.~~

(1) OHCA presumes acceptance of assignment upon receipt of an assigned claim. This assignment, once made, cannot be rescinded, in whole or in part by one party, without the consent of the other party.

(2) Once an assigned claim has been filed, the patient must not be billed and the patient is not responsible for any balance except the amount indicated by OHCA. The only amount a patient may be responsible for is the personal participation as agreed to at the time of determination of eligibility, or the patient may be responsible for services not covered under the medical programs. The amount of personal participation will be shown on the OHCA notification of eligibility. In any event, the patient should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Customer Services.

(3) When potential assignment violations are detected, the Authority will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the Authority is required to suspend further payment to the provider.

(c) **Assignment in ~~a managed care plan~~ SoonerCare.** Any provider who holds a fee for service contract and also executes a contract with a ~~Medicaid Managed Care Health Plan or with the Authority to serve as a~~ provider in the Primary Care Case Management program shall adhere to the rules of this subsection regarding assignment. ~~Payments made by a SoonerCare Plus Health Plan are considered Medicaid payments and are subject to the payment in full requirements of the Medicaid program. Providers who render services to SoonerCare Plus members will be paid the Medicaid Fee for Service allowable amount unless there is a participation agreement between the provider and the Health Plan.~~

(1) If the service provided to the recipient ~~in the Managed Care Health Plan~~ is within the scope of the services outlined in the ~~SoonerCare Plus Contract or the~~ SoonerCare Choice Contract, the recipient shall not be billed for the service. In this case, the provider shall pursue collection from ~~the Managed Care Health Plan in the case of the SoonerCare Plus Program or~~ the Primary Care Physician in the case of the SoonerCare Choice Program.

(2) If the service provided to the recipient ~~in the Managed Care Health Plan~~ is outside of the scope of the services outlined in the ~~SoonerCare Plus Contract or the~~ SoonerCare Choice Contract, then the provider may bill or seek collection from the recipient.

(3) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) and (2) of this subsection, the Oklahoma Health Care Authority shall be the final authority for this decision. ~~The provider shall be required to appeal the denial of payment to the Managed Care Health Plan in the case of the SoonerCare Plus Program. After appeal to the Managed Care Health Plan, the provider may appeal to OHCA under the provisions of OAC 317:2-1-2.1.~~ The provider seeking payment under the SoonerCare Choice Program may appeal to OHCA under the provisions of OAC 317:2-1-2.1.

(4) Violation of this provision shall be grounds for a contract termination in the fee-for-service and SoonerCare ~~program and all managed care~~ programs.

(d) **Cost Sharing-Copayment.** Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar cost sharing charges. OHCA requires a copayment of some Medicaid recipients for certain medical services provided through the fee for service program. A copayment is a charge which must be paid by the recipient to the service provider when the service is covered by Medicaid. Section 1916(e) of the Act requires that a provider participating in the Medicaid program may not deny care or services to an eligible individual based on such individual's inability to pay the copayment. A person's assertion of their inability to pay the copayment establishes this inability. This rule does not change the fact that a recipient is liable for these charges and it does not preclude the provider from attempting to collect the copayment.

(1) Copayment is not required of the following recipients:

(A) Individuals under age 21. Each recipient's date of birth is available on the REVS system or through a commercial swipe card system.

(B) Recipients in nursing facilities and intermediate care facilities for the mentally retarded.

(C) Pregnant women.

(D) Home and Community Based Waiver service recipients except for prescription drugs.

(2) Copayment is not required for the following services:

(A) Family planning services. Includes all contraceptives and services rendered.

(B) Emergency services provided in a hospital, clinic, office, or other facility.

(3) Copayments required include:

(A) $3.00 per day for inpatient hospital services.

(B) $3.00 per day for outpatient hospital services.

(C) $3.00 per day for ambulatory surgery services including free-standing ambulatory surgery centers.

(D) $1.00 for each service rendered by the following providers:

(i) Physicians,

(ii) Optometrists,

(iii) Home Health Agencies,

(iv) Rural Health Clinics,

(v) Certified Registered Nurse Anesthetists, and

(vi) Federally Qualified Health Centers.

(E) Prescription drugs.

(i) $1.00 for prescriptions having a Medicaid allowable of $29.99 or less.

(ii) $2.00 for prescriptions having a Medicaid allowable of $30.00 or more.

(F) Crossover claims. Dually eligible Medicare/Medicaid recipients must make a copayment of $.50 per service for all Part B covered services. This does not include dually eligible HCBW service recipients.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-47. Reimbursement for inpatient hospital services

Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. Reimbursement for inpatient care includes services provided to the patient within 72 hours of admission. This includes diagnostic testing, emergency room, observation room, and outpatient surgery charges. The per diem includes all non-physician services furnished either directly or under arrangements. When a patient is taken to another facility with

a Medicaid contract for treatment not available at the admitting facility, reimbursement to the treating facility by the admitting facility will be limited to the Medicaid fee schedule. This does not include reimbursement for services in Residential Psychiatric Treatment Facilities.

(1) **Components.** There are two distinct payment components under this system. Total per diem reimbursement under the reimbursement system will equal the sum of:

(A) Level of care per diem; plus

(B) Fixed capital per diem.

(2) **Level of care per diem rates.** The level of care per diem rates are payments for operating costs and movable capital costs. Hospitals with actual costs above the statewide median level of care will be limited to reimbursement of the statewide median level of care rate. The median was calculated by level of care using FY 1988 base year operating and moveable capital costs trended forward to the beginning of the third quarter FY 1991. Beginning July 1, 1993, when a hospital's actual costs are less than the statewide median level of care, 25 percent of the difference between the statewide median level of care rate and the hospital's specific level of care cost will be added to each level of care rate.

(A) **Levels of care.** There are eight levels of care:

(i) Burn Care (Level 1). Presence of burn unit revenue code charges (Revenue code 207);

(ii) Neonatal intensive Care Unit (NICU) (Level 2). Presence of neonatal intensive care unit revenue code charges on NICU claims from Level III providers (Revenue code 174);

(iii) Maternity care (Level 3). Diagnosis codes;

(iv) Surgical care (Level 4). Presence of surgical revenue code charges (Revenue codes 360 - 369 including C-Sections). (See (B)(ii) of this paragraph for exception to payment of minor surgical procedures);

(v) Rehabilitation care (Level 5). Range of primary and secondary diagnosis codes (Diagnosis codes V57xx - V5799);

(vi) Psychiatric care (Level 6). Range of primary diagnosis codes (Diagnosis codes 290 - 316);

(vii) Intensive Care Unit/Coronary Care Unit (ICU/CCU) (Level 7). Presence of Intensive Care Unit/Coronary Care Unit revenue code charges (Revenue codes 200-206, 208-219);

(viii) Routine care (Level 8). All remaining days (Revenue codes 101, 110 - 179, 186 - 189).

(B) **Claims.** Claims will be classified into each of the eight levels of care based on the hierarchy shown in (A)(i) through (A)(viii) of this paragraph, with claims potentially classifying into Level 1 first, then Level 2, and so forth. Payment of claims classified into Levels 1 - 6 and Level 8 is made at a single level of care rate. For example, if a claim is classified into Level 3, the Maternity level of care, then all covered days submitted on that claim will be made at the Level 3 per diem rate. There are two exceptions to this rule:

(i) Payment of claims classified into Level 7 may be made at two level of care rates. This would occur if a claim is submitted for payment with both ICU/CCU revenue code charges and routine revenue code charges; payment is split between Levels 7 and 8. For example, if a claim is submitted with three covered ICU/CCU days and seven covered routine days, the claim shall be paid three days at the ICU/CCU per diem rate and seven days at the routine per diem rate. However, if a claim is submitted with ten covered ICU/CCU days and no routine days, ten days will be made at the ICU/CCU level of care rate. Claims for a single stay shall not be split and submitted as two claims solely for the purpose of obtaining two different level of care payment rates (except when patients receiving psychiatric care in acute care hospitals are transferred to medical units because their non-psychiatric medical needs become the primary cause of hospitalization). There are two restrictions on these levels of care:

(I) Only Level III neonatal units will be paid the NICU level of care per diem rate. For rate setting purposes a hospital is considered eligible to receive the level III NICU rate if it meets the criteria used by the Health Planning Commission (now part of the Oklahoma Department of Health) in its 1988 Hospital Utilization and Plan Survey.

(II) All claims from free-standing inpatient psychiatric hospitals will be paid at the Level 6, Psychiatric, level of care rate. (Psychiatric claims from acute care hospitals will also be paid at the Level 6 rate).

(ii) Certain surgical procedures are paid at a lower level of care than the surgery rate. These procedures do not require the same resources as most procedures paid at a surgical rate and are classified as minor surgeries and paid at a routine level of care. When a minor surgery is involved, but a level of care other than routine is indicated, payment will be made at the appropriate level of care. Minor procedures include:

(I) 03.31 Spinal Tap

(II) 03.90 Insertion of catheter into spinal canal for infusion of palliative or therapeutic substance

(III) 03.91 Injection of anesthesia into spinal canal

(IV) 03.92 Injection of other agent into spinal canal

(V) 04.80 Injection of peripheral nerve, NOS

(VI) 04.81 Injection of anesthetic into peripheral nerve for analgesia

(VII) 04.89 Injection of other agent (except neurolytic)

(VIII) 06.11 Closed (percutaneous) (needle) biopsy of thyroid gland
(IX) 08.81 Linear repair of laceration of eyelid
(X) 14.21 Destruction of chorioretinal lesion by diathermy
(XI) 14.22 Destruction of chorioretinal lesion by cryotherapy
(XII) 14.23 Destruction of chorioretinal lesion by xenon arc photocoagulation
(XIII) 14.24 Destruction of chorioretinal lesion by laser photocoagulation
(XIV) 14.25 Destruction of chorioretinal lesion, unspecified
(XV) 14.26 Destruction of chorioretinal lesion by radiation therapy
(XVI) 14.29 Destruction of chorioretinal lesion, NOS
(XVII) 16.21 Ophthalmoscopy
(XVIII) 18.02 Incision of external auditory canal
(XIX) 18.11 Otoscopy
(XX) 18.12 Biopsy of external ear
(XXI) 18.19 Other diagnostic procedure on external ear
(XXII) 18.4 Suture of laceration of external ear
(XXIII) 20.1 Removal of tympanostomy tube
(XXIV) 20.31 Electrocochiliography
(XXV) 21.00 Control of epistaxis NOS
(XXVI) 21.01 Control of epistaxis by anterior nasal packing
(XXVII) 21.02 Control of epistaxis by posterior and anterior nasal packing
(XXVIII) 21.03 Control of epistaxis by cauterization and packing
(XXIX) 21.22 Biopsy of nose
(XXX) 21.29 Other diagnostic procedure on nose
(XXXI) 21.71 Closed reduction of nasal fracture
(XXXII) 21.81 Suture of laceration of nose
(XXXIII) 22.11 Closed (endoscopic) (needle) biopsy of nasal sinus
(XXXIV) 22.19 Other diagnostic procedure on nasal sinus
(XXXV) 23.2 Restoration of tooth by filling
(XXXVI) 23.3 Restoration of tooth by inlay
(XXXVII) 23.41 Dental restoration by application of crown
(XXXVIII) 23.42 Dental restoration by fixed bridge
(XXXIX) 23.43 Dental restoration by removable bridge
(XL) 23.49 Dental restoration, other
(XLI) 24.11 Biopsy of the gum
(XLII) 24.12 Biopsy of the alveolus
(XLIII) 24.19 Other diagnostic procedures on teeth, gums, alveoli
(XLIV) 24.7 Application of orthodontic appliance
(XLV) 24.8 Other orthodontic operation
(XLVI) 25.01 Closed (needle) biopsy of tongue
(XLVII) 25.09 Other diagnostic procedure on tongue
(XLVIII) 25.51 Suture of laceration of tongue
(IL) 25.91 Lingual frenotomy
(L) 26.11 Closed (needle) biopsy of salivary gland or duct
(LI) 26.19 Other diagnostic procedures on salivary glands and ducts
(LII) 26.91 Probing of salivary duct
(LIII) 27.21 Biopsy of bony palate
(LIV) 27.22 Biopsy of uvula and soft palate
(LV) 27.23 Biopsy of lip
(LVI) 27.24 Biopsy of mouth, unspecified structure
(LVII) 27.29 Other diagnostic procedures on oral cavity
(LVIII) 27.51 Suture of laceration of lip
(LIX) 27.52 Suture of laceration of other part of mouth
(LX) 27.91 Labial frenotomy
(LXI) 31.41 Tracheoscopy through artificial stoma
(LXII) 31.42 Laryngoscopy and other tracheoscopy
(LXIII) 31.43 Closed (endoscopic) biopsy of larynx
(LXIV) 31.44 Closed (endoscopic) biopsy of trachea
(LXV) 33.21 Bronchoscopy through artificial stoma
(LXVI) 33.22 Fiberoptic bronchoscopy
(LXVII) 33.23 Other bronchoscopy
(LXVIII) 33.24 Closed (endoscopic) biopsy of bronchus
(LXIX) 33.91 Bronchial dilation
(LXX) 34.04 Insertion of intercostal catheter for drainage
(LXXI) 34.25 Closed (percutaneous) (needle) biopsy of ediastinum
(LXXII) 34.91 Thoracentesis
(LXXIII) 34.92 Injection into thoracic cavity
(LXXIV) 37.70-37.73 Insertion of leads: NOS, atrium, ventricle, atrium and ventricle
(LXXV) 37.74-37.77 Replacement/revision of leads
(LXXVI) 37.78 Insertion of temporary pacemaker
(LXXVII) 38.91 Arterial catheterization
(LXXVIII) 38.92 Umbilical vein catheterization
(LXXIX) 38.93 Venous catheterization, NOS

(LXXX) 38.94 Venous cutdown
(LXXXI) 38.95 Venous catheterization for renal dialysis
(LXXXII) 38.98 Other puncture of an artery
(LXXXIII) 38.99 Other puncture of vein
(LXXXIV) 39.95 Hemodialysis
(LXXXV) 42.22 Esophagoscopy through artificial stoma
(LXXXVI) 42.23 Other esophagoscopy
(LXXXVII) 42.24 Closed (endoscopic) biopsy of esophagus
(LXXXVIII) 42.92 Dilation of esophagus
(LXXXIX) 44.12 Gastroscopy through artificial stoma
(XC) 44.13 Other gastroscopy
(XCI) 44.14 Closed (endoscopic) biopsy of stomach
(XCII) 44.22 Endoscopic dilation of pylorus
(XCIII) 45.12 Endoscopy of large intestine through artificial stoma
(XCIV) 45.13 EGD
(XCV) 45.14 Closed (endoscopic) biopsy of small intestine
(XCVI) 45.16 EGD with biopsy
(XCVII) 45.22 Endoscopy of large intestine through artificial stoma
(XCVIII) 45.23 Colonoscopy
(IC) 45.24 Flexible sigmoidoscopy
(C) 45.25 Colonoscopy with biopsy
(CI) 45.42 Endoscopic polypectomy of large intestine
(CII) 48.22 Proctosigmoidoscopy through artificial stoma
(CIII) 48.23 Rigid proctosigmoidoscopy
(CIV) 48.24 Closed (endoscopic) biopsy of rectum
(CV) 54.91 Percutaneous abdominal paracentesis
(CVI) 54.98 Peritoneal dialysis
(CVII) 56.31 Ureteroscopy
(CVIII) 56.32 Closed percutaneous biopsy of ureter
(CIX) 56.33 Ureteroscopy with biopsy (endoscopic)
(CX) 57.31 Cystoscopy through artificial stoma
(CXI) 57.32 Other cystoscopy
(CXII) 58.22 Other urethroscopy
(CXIII) 58.31 Urethroscopy with biopsy
(CXIV) 58.6 Dilation of urethra
(CXV) 60.11 Closed (percutaneous) biopsy of prostate
(CXVI) 62.11 Closed (percutaneous) biopsy of testis
(CXVII) 70.0 Culdocentesis
(CXVIII) 70.12 Culdotomy
(CXIX) 70.21 Vaginoscopy
(CXX) 71.3 Other local excision or destruction of vulva and perineum
(CXXI) 79.00-79.09 Closed reduction of fracture (various sites)
(CXXII) 79.70-79.79 Closed reduction of dislocation (various sites)
(CXXIII) 81.91 Arthrocentesis
(CXXIV) 81.92 Injection of therapeutic substance into joint or ligament
(CXXV) 83.21 Biopsy of soft tissue
(CXXVI) 84.41 Fitting of prosthesis, upper arm and shoulder
(CXXVII) 84.42 Fitting of prosthesis, lower arm and hand
(CXXVIII) 84.43 Fitting of prosthesis, arm, NOS
(CXXIX) 84.45-84.47 Fitting of prosthesis, above knee, below knee, leg, NOS
(CXXX) 85.11 Closed (percutaneous) (needle) biopsy of breast
(CXXXI) 85.19 Other diagnostic procedure on breast
(CXXXII) 85.91 Aspiration of breast
(CXXXIII) 85.92 Injection of therapeutic agent into breast
(CXXXIV) 86.01 Aspiration of skin and subcutaneous tissue
(CXXXV) 86.03 Incision of pilonidal sinus or cyst
(CXXXVI) 86.04 Other incision with drainage of skin and subcutaneous tissue
(CXXXVII) 86.07 Insertion of VAD (infusaport)
(CXXXVIII) 86.09 Other incision of skin and subcutaneous tissue
(CXXXIX) 86.11 Biopsy of skin and subcutaneous tissue
(CXL) 86.19 Other diagnostic procedure on skin and subcutaneous tissue
(CXLI) 86.26 Ligation of dermal appendage
(CXLII) 86.28 Non-excisional debridement of wound
(CXLIII) 86.59 Suture of skin and subcutaneous tissue, other sites
(CXLIV) 87.01-99.99 Miscellaneous diagnostic and non-surgical procedures

(iii) ICU/CCU (level 7) and routine (level 8) care are peer grouped based on hospital teaching and nonteaching status. These two levels of care are peer grouped because a statistically significant difference in cost was found between teaching and nonteaching hospitals in these categories. Therefore, for payment purposes, hospitals that either belong to the Council on Teaching Hospitals or have a medical school affiliation qualify for the teaching peer grouped rate for Levels 7 and 8. All other hospitals shall receive the nonteaching rate for Levels 7 and 8.

(C) **Adjustments.** Level of care per diem rates will be reviewed periodically and adjusted as necessary through a public process.

(3) **Fixed capital per diem.** The second rate component is the per diem capital component. Fixed capital per diem is calculated separately for acute care inpatient hospitals and freestanding inpatient psychiatric hospitals using different methodologies.

(A) **Fixed capital per diem methodology for freestanding psychiatric hospitals.** Inpatient psychiatric hospitals fixed rate capital cost will be reimbursed using the average fixed rate capital cost of all Medicaid enrolled freestanding psychiatric inpatient hospitals from calendar year 1991 cost reports.

(B) **Fixed capital per diem methodology for acute care inpatient hospitals.** Inpatient hospital fixed capital per diem cost will be reimbursed using a peer group fixed capital weighted payment method.

(i) There are five peer groups based on level of care of the services offered:

(I) Teaching hospitals with burn and NICU units.

(II) Teaching hospitals with NICU units, but no burn unit.

(III) Teaching hospitals without NICU or burn unit.

(IV) Non-teaching hospitals with NICU units, but no burn unit.

(V) Non-teaching hospitals with no burn or NICU unit.

(ii) A value factor for each level of care within a peer group is determined by dividing each level of care per diem rate (peer group statewide level of care rate per diem) by the average of all the level of care rates within a peer group.

(iii) The peer group fixed capital per diem weighted payment component for each level of care is then determined by multiplying the statewide median fixed capital of all inpatient hospitals by the level of care value factor derived in (ii) of this subparagraph.

(C) **Adjustments.** The statewide fixed capital per diem average of all freestanding psychiatric hospitals and the statewide fixed capital per diem median of all inpatient hospitals will be reviewed periodically and adjusted as necessary through a public process.

(4) **Disproportionate share hospitals (DSH).**

(A) **Eligibility.** A hospital shall be deemed a disproportionate share hospital, as defined by Section 1923 of the federal Social Security Act, if the hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state or if the hospital's low-income utilization rate exceeds 25%.

(i) Eligibility for disproportionate share hospital payments will be determined annually by the OHCA before the beginning of each federal fiscal year based on cost and revenue survey data completed by the hospitals. The survey must be received by OHCA each year by April 30. The information used to complete the survey must be extracted from the hospital's financial records and fiscal year cost report ending in the most recently completed calendar year, for entities that meet the Medicare Provider designation (refer to Medicare Program Memorandum No. A-96-7 for requirements). A hospital may not include costs or revenues on the survey which are attributable to services rendered in a separately licensed/certified entity. Hospitals found to be ineligible for disproportionate share status upon audit shall be required to reimburse the Authority for any disproportionate share payment adjustments paid for the period of ineligibility.

(ii) Beyond meeting either of the tests found in (i) of this subparagraph, there are three additional requirements which are:

(I) Any hospital offering non-emergency obstetrical services must have at least two obstetricians with staff privileges who have agreed to provide services to Medicaid beneficiaries. This requirement does not apply to children's hospitals.

(II) In the case of an urban hospital, a hospital located in an MSA, an "obstetrician" is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the hospital. In the case of a rural hospital, an "obstetrician" is defined to include any physician with staff privileges who performs non-emergency obstetrical services at the hospital.

(III) A hospital must have a Medicaid inpatient utilization rate of at least one percent.

(B) **Payment adjustment.**

(i) Beginning federal fiscal year 1993 and each year thereafter, DSH payment adjustments will be capped by the federal government. Financial participation from the federal government will not be allowed for expenditures exceeding the capped amount. Eligible DSH hospitals will be assigned to one of the three following categories:

(I) public-private acute care teaching hospital which has 150 or more full-time equivalent residents enrolled in approved teaching programs (using the most recently completed annual cost report) and is licensed in the state of Oklahoma. Public-private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;

(II) other state hospitals; or

(III) private hospitals and all out-of-state hospitals.

(ii) Payment adjustments will be made on a quarterly basis for federal fiscal year 1994 and thereafter using the following formula that determines the hospital's annual allocation:

(I) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.

(II) Step 2. A weight is assigned to each qualifying hospital by dividing each hospital's revenue total (Medicaid and charity) by the revenue total of the public-private acute care teaching hospital, which has the assigned weight of 1.0.

(III) Step 3. A weighted value is then determined for each hospital by multiplying the hospital's assigned weight by the hospital's total Medicaid and charity revenue.

(IV) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.

(V) Step 5. The percentage of the public-private acute care teaching hospital's weighted value is determined in relation to the weighted values of all qualifying disproportionate share hospitals.

(VI) Step 6. The weighted values of all state hospitals (except public-private acute care teaching hospital) are totaled.

(VII) Step 7. The weighted values of all private and out-of-state hospitals qualifying for disproportionate share adjustments are totaled.

(VIII) Step 8. The percentage of the total weighted values of the hospitals included in Step 6 (State hospitals except public-private acute care teaching hospital) is calculated in relation to the total weighted values (sum of Step 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

(IX) Step 9. The percentage of weighted values of the hospitals included in Step 7 (private hospitals and all out-of-state hospitals) is calculated in relation to the total weighted values (sum of Steps 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.

(X) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by HCFA for the federal fiscal year. The amount of disproportionate share to be paid to the public-private acute care teaching hospital is determined by multiplying the state disproportionate share allotment by the weighted percentage of the public-private acute care teaching hospital. Beginning FFY 96, the weighted percentage amount to be paid will not exceed 82.82%. Payment of disproportionate share funds to public/private hospitals will be made to the public entity that is organizationally responsible for indigent care. The weighted percentage amount is then subtracted from the state disproportionate share allotment. Once the public-private acute care teaching hospital's share of the state disproportionate share allotment has been subtracted, the state hospitals' weighted percentage is applied to the remainder. Beginning FFY 96, the State hospital's weighted percentage (from VIII of this subunit) will not be less than 75.3%. The balance of the disproportionate share allotment is distributed to private hospitals and all out-of-state hospitals. Distribution of funds within each group will be made according to the relationship of each hospital's weighted value to the total weighted value of the group.

(iii) Payment adjustments to individual hospitals will be limited to 100 percent of the hospital's costs of providing services (inpatient and outpatient) to Medicaid recipients and the uninsured, net of payments received from Medicaid (other than DSH) and uninsured patients.

(5) **Critical Access Hospitals.** Critical Access Hospitals (CAHs) are rural public or non-profit hospitals which provide 24 hour emergency care services, are limited to 15 inpatient beds (can have 10 additional swing beds) and inpatient stays are limited to 96 hours. A payment adjustment will be made to hospitals certified by the Oklahoma State Department of Health as Critical Access Hospitals.

(6) **Indirect medical education (IME) adjustment.**

(A) Effective February 11, 1999, acute care hospitals that qualify as major teaching hospitals will receive an indirect medical education (IME) payment adjustment, which covers the increased operating, or patient care, costs that are associated with approved intern and resident programs.

(B) In order to qualify as a major teaching hospital and be deemed eligible for an IME adjustment, the hospital or hospitals of common ownership must:

(i) belong to the Council on Teaching Hospitals or have a medical school affiliation; and

(ii) be licensed by the State of Oklahoma; and

(iii) have 150 or more full-time equivalent (FTE) residents enrolled in approved teaching programs.

(C) Eligibility for an IME adjustment will be determined by the OHCA, using the provider's most recently received annual cost report or the application [see paragraph (7) of this subsection] for the quarterly Direct Medical Education Supplemental payment adjustment.

(D) An annual fixed IME payment pool will be established based on the State matching funds made available by transfers from other State agencies. The pool of funds will be distributed annually each State

fiscal year. The total pool of monies made available by funds transferred by any State agency will be limited to $10,038,714, the 1999 base year amount. The base year payment amount will be updated annually each July 1 using the first quarter publication of the DRI PPS-type Hospital market basket forecast for the midpoint of the upcoming fiscal year, if funds are available.

(E) The payments will be distributed equally. For hospitals that have public-private ownership, or have entered into a joint operating agreement, payment will be made to the public entity that is organizationally responsible for the public teaching mission.

(F) If payment causes total payments to exceed Medicare upper limits as required by 42 CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit.

(7) **Direct medical education supplemental incentive payment adjustment.**

(A) Effective July 1, 1999, in-state hospitals that qualify as teaching hospitals will receive a supplemental payment adjustment for direct medical education (DME) expenses. These payments will be made in order to encourage training in rural hospital and primary care settings and to recognize the loss of support for GME due to the advent of Managed Care capitated programs.

(B) In order to qualify as a teaching hospital and be deemed eligible for DME supplemental incentive payment adjustments, the hospital must:

(i) be licensed by the State of Oklahoma;

(ii) have costs associated with approved or certified Oklahoma medical residency programs in medicine, osteopathic medicine, and associated specialties and sub-specialties. An approved medical residency program is one approved by the Accrediting Council for Graduate Medical Education of the American Medical Association, by the Bureau of Professional Education of the American Osteopathic Association, or other professional accrediting associations. A resident is defined as a Post-Graduate Year 1 (PGY1) and above resident who participates through hospital or hospital-based rotations in approved medical residency/internship programs in Family Medicine, Internal Medicine, Pediatrics, Surgery, Ophthalmology, Psychiatry, Obstetrics/Gynecology, Anesthesiology, Osteopathic medicine, or other Certified Medical Residencies, including specialties and sub-specialties as required in order to become certified by the appropriate board; and

(iii) apply for certification by the OHCA prior to receiving payments for any quarter during a State Fiscal year. To qualify, a hospital must have a contract with the Oklahoma Health Care Authority (OHCA) to provide Medicaid services and belong to The Council on Teaching Hospitals or otherwise show proof of affiliation with an approved Medical Education Program. Affiliation means an agreement to support the costs of medical residency education in the approved programs. ~~In addition to the OHCA contract, hospitals located in a SoonerCare Plus service area must have a participation agreement with at least one SoonerCare Plus Health Plan.~~

(iv) Federal and state hospitals, including Veteran's Administration, Indian Health Service/Tribal and Department of Mental Health Hospitals are not eligible for supplemental DME payments. Major teaching hospitals as defined in (5)(B)(i)(I) of this subsection are eligible.

(C) Determination of a hospital's eligibility for a DME supplemental payment adjustment will be done quarterly by the OHCA based on reports designed by the OHCA. The reports will detail the resident-months of support provided by the hospital and the total eligible Medicaid days of service from the paid claims for the same quarter and be attested to by the hospital Administrator, or designated personnel. The annual application must be attested to by the hospital administrator and by the residency program director. All reports will be subject to audit and payments will be recouped for inaccurate or false data. The amount of resident-months will also be compared to the annual budgets of the schools, the annual HCFA form 2552 (Cost Report) and the monthly assignment schedules.

(D) An annual fixed DME payment pool will be established based on the State Matching funds made available by the University Hospitals Authority or other State agencies.

(E) The payments will be distributed based on the relative value of the weighted resident-months at each participating hospital. A resident-month is defined as a PGY1 and above resident full-time equivalent (FTE) for that month. Resident is defined in (B)(ii) of this paragraph. An FTE is defined as a resident assigned by the residency program to a rotation that is hospital or hospital-based. The resident must be assigned to a specific hospital for a supervised hospital-based residency experience. Required residency clinical or educational experience will be allowed. The time residents spend in non-provider settings such as freestanding clinics, nursing homes and physicians' offices in connection with approved programs may be included in determining the number of FTE's in the count if the following conditions are met:

(i) The resident spends his or her time in patient care activities.

(ii) The written agreement between the hospital and the non-hospital site must indicate that the hospital will incur the cost of the resident's salary and fringe benefits while the resident is training in the non-hospital site and the hospital is providing

reasonable compensation to the non-hospital site for supervisory teaching activities.

(iii) The hospital must incur all or substantially all of the costs for the training program in the non-hospital setting, which means the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education.

(F) Training outside the formal residency program (moonlighting) is not eligible for this payment. The pool of available funds will be distributed quarterly based on the relative value of the eligible hospitals' resident-months weighted for Medicaid services rendered.

(i) The weighted relative value is determined as follows:

(I) Annually (prior to each state fiscal year) the OHCA will determine each participating hospital's individual acuity factor from data taken from the Oklahoma MMIS system (or reported claims data) by using the days of services and weights determined for the levels of care.

(II) Determine the total resident-months from the quarterly reports in (7)(C) of this subsection for each hospital.

(III) Determine the total eligible patient days for the quarter from the quarterly reports in (7)(C) of this subsection for each hospital reporting.

(IV) Determine the relative value for each hospital. The relative value is defined as the product of the individual acuity factor [see (I) of this unit] times the total resident-months [see (II) of this unit] times the eligible patient days [see III of this unit].

(ii) The pool of available funds will be allocated quarterly based on the prior quarter's relative value as determined in (i)(IV) of this subparagraph. The per resident-month amount will be limited to $11,000 and the total payments will be limited to and not exceed the upper payment limits described in (G) of this paragraph.

(G) If payment in (D) of this paragraph causes total payments to exceed Medicare upper limits as required by CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit.

(8) **Non-State Public Hospital Payment Adjustment.** Effective July 1, 2002, all Oklahoma non-state publicly owned hospitals (i.e., City, County or Title 60 Trust hospitals within the state of Oklahoma that are neither owned nor operated by the state of Oklahoma) shall qualify for a public hospital rate adjustment. The adjustment shall be equal to each eligible hospitals's pro rata share of a funding pool, based on the hospital's Medicaid utilization in the base year. The amount of the total pool will not be in excess of the aggregate Medicare-related upper payment limit. The amount of the funding pool shall be determined by OHCA annually as follows:

(A) Using data from the most recently completed cost reports and Medicaid Management Information System data, the OHCA shall determine each non-state publicly owned hospital's Medicaid cost (using Medicare allowable cost reimbursement principles) and Medicaid payments.

(B) The base Medicaid cost will be trended forward using an annual DRI PPS-type hospital market basket index. Base year Medicaid payments will be trended by applicable updates to the payment rates.

(C) Once the Medicaid costs have been trended forward, the base Medicaid payments will be subtracted from the allowable costs. This difference for each hospital is their portion of the total available funding pool.

(D) The amount of each eligible hospital's payment adjustment shall be its pro rata percentage multiplied by the amount of the funding pool.

(E) Payment will be made on a quarterly basis.

(9) **Transplants.** In addition to the normal level of care per diem rate, an additional reimbursement amount may be negotiated, subject to the availability of services. The negotiated rate for the inpatient hospital charges associated with the transplant surgery shall not exceed 75 percent of the billed charges with a maximum payment of $150,000.

(10) **Prosthetic devices.** Payment for prosthetic devices implanted during surgery is included within the level of care per diem rates except for: Cochlear Implants, Vagus Nerve Stimulator, and implantable medication pumps. Additional payment will be considered on a case by case basis. A prior authorization from the Medical Professional Services Unit of the OHCA will be required.

(11) **Out-of-state hospitals.**

(A) Out-of-state hospitals, for which the Authority has on file a fiscal year 1989 or more recent cost report, shall be reimbursed as follows:

(i) the level of care per diem rate

(ii) a fixed capital per diem

(iii) a hospital-specific per diem direct medical education rate.

(B) Hospitals, for which the Authority does not have a fiscal year 1989 or more recent cost report on file, will also receive the level of care per diem rates; however, capital and direct medical education rate components will not be reimbursed on a hospital-specific basis. Instead, these hospitals shall receive the statewide median capital per diem amount. The statewide median direct medical education per diem rate will be paid to qualifying hospitals.

(C) In the absence of substantiating information verifying eligibility for the teaching hospital peer group, an out-of-state hospital will be presumed to be a non-teaching hospital and will be paid at the non-teaching rate for levels 7 and 8.

(D) In the absence of substantiating information verifying the presence of a burn unit or a level III NICU, an out-of-state hospital will be presumed to be ineligible for burn and NICU level of care payments.

(E) Out-of-state hospitals shall submit to the Authority the following documentation (as appropriate):

(i) Substantiating information verifying qualification as a teaching hospital

(ii) Substantiating information verifying presence of a burn unit

(iii) Substantiating information verifying presence of a NICU that meets Level III criteria established by the Health Planning Commission (now part of the Oklahoma Department of Health) in its 1988 Hospital Utilization and Plan Survey.

[OAR Docket #04-1017; filed 5-24-04]

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

[OAR Docket #04-1014]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-25. [AMENDED]
317:30-3-26. [REVOKED]
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-77.1. [AMENDED]
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ANALYSIS:
Medical Providers-Fee for Service, Pharmacists specific, rules are revised to modify the current dispensing limitation for compensable prescriptions. Revisions would: (1) set the default maximum dispensing quantity for pharmacy claims to a 34 day supply; (2) allow the Drug Utilization Review Board to set maximum dispensing quantities for individual drugs; and (3) authorize the Drug Utilization Review Board to create and maintain a list of drugs called a Maintenance List which are not subject to the 34 day supply limit.

Medical Providers-Fee for Service rules are revised to clarify current reimbursement of Medicare crossover claims. Deletions remove erroneous language regarding Hospital Part B reimbursement of co-insurance.
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 25, 2004.

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-25. Crossovers (coinsurance and deductible)

(a) **Medicare Part A.** Payment is made for Medicare Part A deductible and coinsurance on behalf of eligible individuals.

(~~a~~b) **Medicare Part B.** Payment is made ~~in~~ on behalf of eligible individuals for ~~the~~ Medicare Part B coinsurance and/or deductible due after payment has been made by ~~the~~ Medicare ~~carrier~~. Assigned claims from Oklahoma providers automatically cross over from the Medicare carrier. Payment is made utilizing the Medicaid allowable for comparable services. ~~For claims filed by Oklahoma providers, assigned claims will automatically cross over from the Medicare carrier. Out-of-state providers must file a properly completed HCFA-1500 and attach a copy of the Medicare Payment Report.~~

~~(b) Payment is also made for Hospital Part B coinsurance and deductible for eligible individuals at the same rate as physician coinsurance and deductible. Claims for Hospital Part B coinsurance and deductible will be filed on claim Form UB-92, attaching the Medicare Payment Report.~~

~~(c) The Part A deductible is paid for categorically needy individuals only.~~

317:30-3-26. Medicare Physician Payment Reform methodology [REVOKED]

~~The Oklahoma Medicaid program uses the Medicare Physician Payment Reform methodology to establish reimbursement rates for Medicaid services performed by physicians and other limited licensed practitioners, who bill the same as physicians. Reimbursement rates will be established at a percentage of the Medicare allowable. At this time, Physician Payment Reform does not apply to rates for anesthesia services, laboratory services and most services~~

~~billed under assigned HCPC codes. Also excluded from Physician Payment Reform are obstetrical services for delivery, antepartum and postpartum care and EPSDT screenings.~~

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACISTS

317:30-5-77.1. Dispensing ~~limitation~~ Quantity

(a) Prescription quantities are to be limited to a 34 day supply ~~or 100 dosage units, whichever is greater, except in instances where the manufacturer recommends a lessor amount.~~ except in the following situations:

(1) The Drug Utilization Review Board has recommended a different day supply or quantity limit based on published medical data, including the manufacturer's package insert, provided the Chief Executive Officer of the OHCA has approved the recommendation;

(2) The product is included on the Maintenance List of medications which are exempt from this limit and may be dispensed up to 100 units;

(3) The manufacturer of the drug recommends a dispensing quantity less than a 34 day supply;

(b) Refills are to be provided only if authorized by the prescriber, allowed by law, and should be in accordance with the best medical and pharmacological practices.

(c) The Drug Utilization Review Board shall develop a Maintenance List of medications which are used in general practice on a continuing basis. These drugs shall be made available through the vendor drug program in quantities up to 100 units when approved by the prescriber. The Drug Utilization Review Board shall review the Maintenance List at least annually. The Maintenance List shall be approved by the Chief Executive Officer of OHCA. When approved by the prescriber, ~~All~~ all maintenance medications must be filled at the maximum quantity allowed~~, except when determined medically imprudent~~ after a sufficient stabilization period when dispensed to Medicaid clients who do not reside in a long term care facility. For clients residing in a long term care facility, chronic medications, including all products on the Maintenance List, must be dispensed in quantities of not less than a 28 day supply.

(d) For products covered by the Oklahoma Vendor Drug Program the metric quantity shown on the claim form must be in agreement with the descriptive unit of measure applicable to the specific NDC. Only numeric characters should be entered. Designations, such as the form of drug, i.e., Tabs, Caps, Suppositories, etc., must not be used. Products should be billed in a manner consistent with quantity measurements.

[OAR Docket #04-1014; filed 5-24-04]

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

[OAR Docket #04-1018]

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317:30-3-57. [AMENDED]
317:30-3-58. [REVOKED]
317:30-3-59. [AMENDED]
Part 5. Eligibility
317:30-3-70. [AMENDED]
317:30-3-71. [AMENDED]
317:30-3-72. [REVOKED]
317:30-3-84. [REVOKED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-9. [AMENDED]
317:30-5-11. [AMENDED]
317:30-5-15. [AMENDED]
317:30-5-22. [AMENDED]
317:30-5-24. [AMENDED]
Part 3. Hospitals
317:30-5-41. [AMENDED]
Part 5. Pharmacists
317:30-5-72. [AMENDED]
317:30-5-72.1. [AMENDED]
317:30-5-77. [AMENDED]
317:30-5-77.2. [AMENDED]
317:30-5-77.3. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
Part 63. Ambulatory Surgical Centers
317:30-5-566. [AMENDED]
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Part 5. Eligibility
317:30-3-70. [AMENDED]
317:30-3-71. [AMENDED]
317:30-3-72. [REVOKED]
317:30-3-84. [REVOKED]
Subchapter 5. Individual Providers and Specialties
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Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-77. [AMENDED]
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Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
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Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
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Part 63. Ambulatory Surgical Centers
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317:30-3-57. [AMENDED]
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Part 1. Physicians
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Part 5. Pharmacists
317:30-5-72. [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
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Subchapter 3. General Provider Policies
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317:30-3-59. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-9. [AMENDED]
317:30-5-11. [AMENDED]
317:30-5-15. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
(Reference APA WF # 03-42)
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04-67
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to add the drug Clopidigrel (Plavix) to list of scope-based prior authorized medications. The revision would allow the agency to better assess and review the utilization of the drug. Clopidigrel is used to prevent blood clotting which may lead to stroke or other circulatory events. The Federal Drug Administration has approved the drug for use in a relatively well-defined group of patients for specific indications. However, a utilization review showed a large number of Medicaid patients are receiving the drug without documented necessity. Use of this drug has increased 40% or more each fiscal year since fiscal year 1999. The desired outcome is to provide proper therapy to clients while conforming to medically accepted best practices. Due to state government budget constraints, the Agency Board voted on December 12, 2002, to require a prior authorization for Clopidigrel effective April 1, 2003. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget.

Other revisions change non-sedating antihistamine prior authorization requirements. The need for the revision was precipitated by the availability of Loratidine (Claritin™) without a prescription. The desired outcome is to provide proper therapy to clients with a diagnosis supporting the long-term use of a non-sedating antihistamine while conforming to medically accepted best practices for those conditions. In order to comply with 56 O.S. §1010.12, the non-prescription products would be covered drugs for children under 21 years of age. Due to state government budget constraints, the Agency Board voted on December 12, 2002, to require a prior authorization for non-sedating antihistamines effective January 1, 2003. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget.

Both of these revisions are needed in order for the Agency to maintain a balanced budget.

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to amend coverage of certain drug products which may be FDA approved for more than one indication or usage. These drugs may be subject to a scope-based prior authorization when at least one of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Recently, the asthma drug Singulair™ has been approved for the treatment of allergic rhinitis. Because other products for allergic rhinitis require prior authorization, it is necessary to determine the condition to be treated with this drug before payment is approved. By verifying the intended use of the drug, all drugs used to treat a specific condition will be subject to the same rules of coverage. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to require a prior authorization for certain multiple indication drugs.

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to remove the prior authorization requirement for smoking cessation products in order to assist Medicaid recipients with their smoking cessation efforts. Currently, Medicaid clients may receive a 90-day smoking cessation benefit consisting of Zyban, prescription nicotine patches, or Zyban/patch combination once in a twelve month period when prior authorized. Revisions would remove the need for a prior authorization for the first 90 days of therapy; however, coverage beyond that period would require a prior authorization and proof of enrollment in a behavior modification program. The smoking cessation benefits would also be enhanced to include coverage of prescription or non-prescription nicotine replacement products. Allowing recipients easier access to smoking cessation products should have a positive effect on public health and safety by encouraging these individuals who desire to stop using tobacco products. Medical Providers-Fee for Service, Pharmacists specific, rules are in need of revision in order to remove the prior authorization requirement for smoking cessation products.

Medical Providers-Fee for Service, Pharmacy specific, rules are revised to extend coverage of phenylketonuria (PKU) formula and amino acid bars to Medicaid eligible adults with a diagnosis of PKU. Phenylketonuria is a genetic metabolic disorder which involves a defect in a person's ability to metabolize protein. Current agency rules include coverage for PKU formula and amino acid bars for children; rule revisions are needed to extend the same benefit to adults with a diagnosis of PKU.

Medical Providers-Fee for Service, Pharmacy specific, rules are revised to reflect changes in the pharmacy program that have been approved by the agency's Drug Utilization Review Board and provide consistency in language regarding prior authorization of prescription medications.

Agency rules are revised to eliminate the Oklahoma Medicaid Medically Needy Program. States have the option under the Medicaid program to extend coverage to individuals categorized as Medically Needy. Due to state government budget constraints, the OHCA Board voted on December 12, 2002, to eliminate coverage of medically needy individuals effective February 1, 2003. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to eliminate the Medically Needy Program.

Medical Providers-Fee for Service, Physicians specific, rules are revised to correspond with other existing rule language regarding payment for ultrasounds for pregnant women.

Agency rules are revised to reflect current medical practice regarding the administration of blood and blood fractions. Revisions include a more practical application of blood and blood fractions in outpatient settings. Existing rules limit outpatient coverage for blood and blood fractions to individuals "suffering from a congenital or acquired disease of the blood" which does not reflect current standard medical practices. Other revisions remove duplicate language from agency rules.

Medical Providers-Fee for Service rules are revised to increase the number of compensable prescription drugs for adults under the fee for service program. For many years, pharmacy benefit rules have restricted fee for service adults to three monthly prescriptions which does not allow physicians to treat clients with chronic conditions according to best practices as described in current medical literature. Due to a shortfall in agency funding, at the June 12, 2003 Board meeting, rule revisions were approved and subsequently signed by the Governor to reduce compensable prescription medications to a total of five monthly for adults receiving services under the §1915(c) Home and Community Based Services Waivers effective July 1, 2003. These revisions would increase the three prescription limitation to a total of six monthly, with a limit of three brand name drugs per month. In addition, adults receiving services under the §1915(c) Home and Community Based Services Waivers could receive up to seven additional medically necessary generic prescriptions per month. Coverage of medically necessary prescriptions beyond the three brand name or thirteen total prescriptions for this group of adult waiver recipients would be compensable when prior authorized. Proposed revisions will have a positive effect on public health and safety by providing access to medications that potentially will decrease the complications of chronic diseases, treat acute conditions in a cost-effective manner, and decrease utilization of inpatient and emergency hospital visits. Rule revisions are needed in order to enhance the current pharmacy benefit by providing coverage for additional prescriptions for adult clients.

Medical Providers-Fee for Service rules are being revised to increase the monthly compensable number of outpatient physician visits for Medicaid eligible adults from two to four visits per month. On December 31, 2003, the SoonerCare Plus program will end and all current SoonerCare Plus recipients will be transferred to the Fee-for-Service program. The agency anticipates that the effected group of individuals will be moved into the SoonerCare Choice program by April 1, 2004. To ensure continued quality health care for these recipients, the agency is proposing to enhance the benefits available through the Fee-for-Service program by amending rules to increase the number of compensable physicians visits from two to four per month for adults.

Medical Providers-Fee for Service, Physicians specific, rules are revised to more appropriately describe psychiatric services that are necessary to Medicaid recipients. Current rules in the section state that only individual psychotherapy and family therapy are the only compensable services. Revisions will list and clarify the specific types of Medicaid compensable psychiatric services.

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to require a prior authorization for brand name medically necessary drug products when a generic equivalent is available. Establishing a prior authorization requirement mandates the prescriber and patient to justify the use of expensive brand name drugs when a less costly generic is available. The products that will be affected by this rule typically exhibit a cost differential of 70-90% between generic and brand name prices. If a patient has tried the generic product and has not have a therapeutic response or has had an adverse reaction, the brand name will be authorized. The prior authorization requirement will help ensure that public funds are expended appropriately in exchange for cost-effective pharmacotherapy. Pharmacy providers may see an increase in profit margins because generic products cost less to stock and dispense and generally have a higher rate of return than brand name products. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to require a prior authorization for brand name medically necessary drug products when a generic equivalent is available.

Medical Providers-Fee for Service, Pharmacists specific, rules are revised to establish a state supplemental drug rebate program within the existing Product Based Prior Authorization Program. Revisions also allow for a review and potential exception process for drugs not residing in the PBPA program. It helps ensure that public funds are expended appropriately in exchange for cost-effective pharmacotherapy. Pharmacists and physicians will be less burdened with paperwork if drug manufacturers are allowed to participate as partners with the agency in this program. Drug manufacturers may see a decrease in revenue from paying the supplemental rebates, but they may also see an increase in market share for products that would otherwise require prior authorization. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to establish a state supplemental drug rebate program.

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 25, 2004:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-46. Services for persons infected with tuberculosis

(a) Oklahoma Medicaid provides optional coverage of tuberculosis (TB) related services for certain TB infected individuals. Services covered under this program are not restricted to the Medicaid scope of coverage or limitations. Services for TB infected individuals that exceed the scope of Medicaid services must be prior authorized. Individuals eligible only under the optional TB-related services program can receive TB related services such as:

(1) Prescribed medications~~;~~ :

(A) Prescription drugs ~~covered and available through the Vendor Drug Program for persons infected with TB are:~~ indicated for the treatment of TB up to the Medicaid established prescription limit; and

~~(i) Cycloserine 250 mg Cap;~~
~~(ii) Ethambutol 100 mg Tab;~~
~~(iii) Ethambutol 400 mg Tab;~~
~~(iv) Ethionamide 250 mg Tab;~~
~~(v) Isoniazid 100 mg Tab;~~
~~(vi) Isoniazid 300 mg Tab;~~
~~(vii) Isoniazid Syrup 10 mg/ml;~~
~~(viii) Pyrazinamide 250 mg Tab;~~
~~(ix) Pyrazinamide 500 mg Tab;~~
~~(x) Rifampin 150 mg Cap.~~

(B) Other drugs~~, not listed in (A)(i)-(x) of this paragraph,~~ related to the treatment of TB beyond the ~~three~~ prescriptions covered under Medicaid, require prior authorization obtained from the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy".

(2) Physician services:

(A) Physician services include:

(i) ambulatory physician services;
(ii) office visits; and
(iii) ambulatory surgery and such, but not including inpatient services.

(B) Office visits are not limited for TB infected persons. However, prior authorization is required when the limit under Medicaid is exceeded;

(3) Outpatient hospital services;

(4) Rural Health Clinic services;

(5) Federally Qualified Health Clinic services;

(6) Laboratory and x-ray services. Necessary laboratory and x-ray services (including services to confirm presence of TB infection) are covered for infected persons. Screening tests to detect and confirm presence of TB do not require prior authorization;

(7) Tuberculosis Clinic services (See 317:30-5-911 for description of these services); and

(8) Targeted Case Management services (See 317:30-5-921 for a description of these services).

(b) Persons eligible for services only under optional TB coverage do not receive the full range of Medicaid benefits. Coverage is limited as set out in this Section.

(c) Persons eligible under Medicaid who are infected with TB may also be eligible for TB services and receive these extended benefits.

317:30-3-57. General Medicaid coverages - categorically needy

The following are general Medicaid coverages for the categorically needy:

(1) Inpatient hospital services other than those provided in an institution for mental diseases.

(A) Adult coverage limited to ~~24~~ the compensable inpatient hospital days ~~per State fiscal year (July 1 through June 30)~~ described at OAC 317:30-5-41.

(B) Coverage for persons under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.

(2) Emergency department services.

(3) Dialysis in an outpatient hospital or free standing dialysis facility.

(4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.

(5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with the Authority.

(6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities who are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity Clinic Services through the Oklahoma State Health Department.

(10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided adults, not specifically addressed, are covered only when prior authorized by the agency's Medical ~~Professional Services Units of the Oklahoma Health Care Authority~~ Authorization Unit.

(11) One screening mammogram ~~(76092)~~ and one follow-up mammogram ~~(76090 and 76091)~~ every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. Additional follow-up mammograms require a prior authorization from the agency's Medical ~~Professional Services Division of the Oklahoma Health Care Authority~~ Authorization Unit.

(12) Nursing facility services (other than services in an institution for tuberculosis or mental diseases).

(13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for each eligible individual under 21 years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening

whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. EPSDT services include payment for:

(A) Child health screening examinations for eligible children by a medical or osteopathic physician.

(i) Scheduled screenings include:

(I) ~~Six~~ six screenings during the first year of life

(II) two screenings in the second year;

(III) one screening yearly for ages 2 thru 5 years; and

(IV) one screening every other year for ages 6 thru 20 years.

(ii) Interperiodic screenings outside the periodicity schedule for screening examinations are allowed at necessary intervals when a medical condition is suspected.

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a physician.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services, including inpatient services in an eligible participating hospital, outpatient dental screening every 12 months, two bite wing x-rays, and/or oral prophylaxis one each 12 months; emergency services for relief of pain and/or acute infection; limited restoration, repair and/or replacement of dental defects after the treatment plan submitted by dentist has been authorized.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected.

(G) Hearing services include hearing evaluation at least once every 12 months, hearing aid evaluation if indicated and purchase of a hearing aid when prescribed by a state licensed audiologist who holds a certificate of clinical competence from the American Speech and Hearing Association and preauthorized. Interperiodic hearing examinations are allowed at intervals outside the periodicity schedule when a hearing condition is suspected.

(H) Prescribed drugs.

(I) Outpatient Psychological services for eligible individuals under 21 years of age must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice. Outpatient testing and diagnosis is limited to one hour per patient each 12 months. Additional hours may be prior authorized.

(J) Inpatient Psychotherapy Services. Payment is made to eligible psychologists and psychiatrists. Inpatient psychotherapy by a psychologist must be prior authorized.

(K) Inpatient psychological testing for eligible individuals under 21 years of age. Limited to one hour per recipient each 12 months. If medically necessary, additional hours must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice.

(L) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(M) Inpatient hospital services.

(N) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of Medicaid.

(O) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for individuals of child-bearing age, including counseling, insertion of intrauterine device and sterilization for persons 21 years of age and over who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim. The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.

(15) Family planning centers.

(16) Physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment will be made for up to ~~24~~ the limited number of compensable hospital days ~~paid on hospital claims during a state fiscal year for each individual recipient~~ described at OAC 317:30-5-41. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After ~~24~~ the limited number of hospital days have been captured, inpatient physician services will not be paid beyond the last compensable hospital day. Office visits for adults are limited to ~~two~~ four per month except when in connection with emergency medical conditions.

(17) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services

(B) Optometrists' services

(C) Psychologists' services

(D) Certified Registered Nurse Anesthetists

(E) Certified Nurse Midwives

(F) Advanced Practice Nurses

(18) Free-standing ambulatory surgery centers.

(19) Prescribed drugs not to exceed ~~three~~ a total of six prescriptions with a limit of three brand name prescriptions per month. ~~Medically necessary prescribed drugs for persons in nursing facilities, ICF/MR's, Home and Community Based Waivers, and the Advantage Program Waiver. Prescriptions are not limited for persons under 21 years of age.~~ Exceptions to the six prescription limit are:

(A) unlimited medically necessary monthly prescriptions for:

(i) individuals under the age of 21 years; and

(ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.

(B) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization.

(20) Rental and/or purchase of durable medical equipment.

(21) Adaptive equipment, when prior authorized, for persons residing in private ICF/MR's.

(22) Dental services for persons residing in private ICF/MR's in accordance with the scope of dental services for persons under age 21.

(23) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.

(24) Standard medical supplies.

(25) Eyeglasses under EPSDT for individuals under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.

~~(26) Payment to blood banks for blood when not included in the hospital per diem cost.~~

(~~27~~ 26) Blood and blood fractions for eligible persons ~~suffering from a congenital or acquired disease of the blood~~ when administered on an outpatient basis.

(~~28~~ 27) Inpatient services for individuals age 65 or older in institutions for mental diseases, limited to those persons whose Medicare, Part A benefits are exhausted for this particular service and/or those persons who are not eligible for Medicare services.

(~~29~~ 28) Nursing facility services, limited to individuals preauthorized and approved by OHCA for such care.

(~~30~~ 29) Inpatient psychiatric facility admissions for individuals under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.

(~~31~~ 30) Transportation and subsistence (room and board) to and from providers of medical services to meet patient's needs (ambulance or bus, etc.), to obtain medical treatment.

(~~32~~ 31) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.

(~~33~~ 32) Nursing facility services for patients under 21 years of age.

(~~34~~ 33) Personal care in recipient's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of an R.N.

(~~35~~ 34) Part A deductible and Part B medicare Coinsurance and/or deductible.

(~~36~~ 35) Home and Community Based Waiver Services for the mentally retarded.

(~~37~~ 36) Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits may be any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.

(~~38~~ 37) Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.

(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(C) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.

(D) Finally, procedures considered experimental or investigational are not covered.

(~~39~~ 38) Home and community-based waiver services for mentally retarded individuals who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).

(~~40~~ 39) Case Management services for the chronically and/or severely mentally ill.

(~~41~~ 40) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.

(~~42~~ 41) Services delivered in Federally Qualified Health Centers. Payment will be made on an encounter basis. An encounter is all medical or dental services provided by the center in one day.

(~~43~~ 42) Early Intervention services for children ages 0-3.

(~~44~~ 43) Residential Behavior Management in therapeutic foster care setting.

(~~45~~ 44) Birthing center services.

(~~46~~ 45) Case management services through the Department of Mental Health and Substance Abuse.

(~~47~~ 46) Home and Community-Based Waiver services ~~in limited geographic areas~~ for aged or physically disabled individuals.

(~~48~~ 47) Outpatient ambulatory services for persons infected with tuberculosis.

317:30-3-58. General Medicaid coverages - medically needy [REVOKED]

~~Medicaid coverage for the medically needy is the same as categorically needy except as follows:~~

~~(1) There is no coverage for nursing facility services.~~

~~(2) Prescribed drugs not to exceed three prescriptions per month, for medically needy adults suffering from a catastrophic illness.~~

~~(3) There is no coverage for durable medical equipment.~~

~~(4) There is no coverage for standard medical supplies.~~

~~(5) Blood and blood fractions for eligible persons suffering from a congenital or acquired disease of the blood provided the illness meets the criteria of a catastrophic illness.~~

~~(6) There is no coverage for Part A deductible.~~

~~(7) There is no coverage for home and community-based waiver services for the mentally retarded.~~

~~(8) There is no coverage for home health services.~~

~~(9) There is no coverage for home and community-based waiver services for aged or disabled individuals.~~

~~(10) There is no coverage for the medically needy under the Alternative Disposition Plan (ADP).~~

317:30-3-59. General program exclusions - adults

The following are excluded from Medicaid coverage for adults:

(1) Inpatient diagnostic studies that could be performed on an outpatient basis.

(2) Services or any expense incurred for cosmetic surgery, including removal of benign skin lesions.

(3) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(4) Refractions and visual aids.

(5) Separate payment for pre and post-operative care when payment is made for surgery.

(6) Reversal of sterilization procedures for the purposes of conception.

(7) Treatment for obesity.

(8) Non therapeutic hysterectomies. Therapeutic hysterectomies require that the following information to be attached to the claim:

(A) a copy of an acceptable acknowledgment form signed by the patient, or,

(B) an acknowledgment by the physician that the patient has already been rendered sterile, or,

(C) a physician's certification that the hysterectomy was performed under a life-threatening emergency situation.

(9) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest.

(10) Medical services considered to be experimental.

(11) Services of a Certified Surgical Assistant.

(12) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.

(13) Services of a Registered Physical Therapist.

(14) Services of a Psychologist.

(15) Services of a Speech and Hearing Therapist.

(16) Physician and hospital services in a general acute care hospital beyond the 24 day compensable hospital period per person per State fiscal year.

(17) Payment for more than ~~two~~ <u>four</u> outpatient visits per month (home, office, outpatient hospital) per patient, except those visits in connection with family planning or emergency medical condition.

(18) Payment for more than two nursing home visits per month.

(19) More than one inpatient visit per day per physician.

PART 5. ELIGIBILITY

317:30-3-70. Categorical relationship

(a) To be eligible for Medicaid benefits, an individual must be related to one of the following programs:

(1) Aid to the Aged

(2) Aid to the Disabled

(3) Aid to the Blind

(4) Pregnancy-Related Services

(5) Aid to Families With Dependent Children

(b) Categorical relationship for (a)(1) through (a)(3) above is established using the same criteria and definitions of age, disability and blindness as are used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is an aged, blind, or disabled SSA/SSI recipient in current payment status (including presumptive eligibility), or a TANF recipient, categorical relationship is already established.

(c) Categorical relationship to pregnancy-related services is established when the determination is made by medical evidence that the individual is or has been pregnant. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and post-partum periods.

(d) Categorical relationship to AFDC is established by determining deprivation due to absence, death or incapacity the same as for the TANF money payment.

(e) It is the responsibility of the OHCA Level of Care Evaluation Unit (LOCEU) to determine categorical relationship to incapacity or disability for an individual when appropriate. It is the responsibility of DHS to provide the necessary information to the LOCEU in order to make these determinations.
(f) Once categorical relationship has been determined, financial need must be established. ~~All cases are determined to be either categorically or medically needy.~~

317:30-3-71. Financial need
~~(a)~~ **Categorically needy.** An individual is categorically needy if income and resources are at or below the category of assistance to which he/she is related, i.e., Aid to the Aged, Aid to the Blind, Aid to the Disabled or Aid to Families with Dependent Children, during the month of medical service. These persons are issued a permanent plastic identification card.
~~(b)~~ ~~**Medically needy.** An individual is medically needy if income and resources exceed standards established for the category of assistance to which he/she is related but such income/resources are not sufficient to meet the cost of medical care.~~

317:30-3-72. Spenddown [REVOKED]
~~The excess income of medically needy individuals, referred to as "spenddown", will be applied to medical expenses on a first claim received basis which means that the amount payable by the Authority to the provider will be reduced by the amount of the spenddown that is applied to the claim. The provider will be notified of this action by "Detail of Remittance"; the recipient will receive an "Explanation of Spenddown Payments" from the local county Department of Human Services office informing him/her of the responsibility for payment to the provider.~~

317:30-3-84. Catastrophic illness [REVOKED]
~~The Authority's Vendor Drug Program is for the categorically needy only. A provision was made for coverage of drugs for the Medically Needy under the "Catastrophic Illness" program. An individual must be determined to be suffering from a catastrophic illness as defined below:~~
~~(1) A catastrophic illness includes a terminal illness which can be expected, with reasonable medical judgement, to result in death within six months. This includes malignancies which are inoperable or have widespread metastases and are unresponsive to palliative therapy. Catastrophic illness also includes an end stage illness, severe incapacitating burn or injury for which the duration of anticipated active treatment is six months or more, psychotic disorders, congenital or acquired disease of the blood which require the use of blood or blood products, and immunosuppressive drugs for transplant patients.~~
~~(2) Mental illness, other than psychotic disorders, Cerebral Vascular Accident (CVA), hormone dependent tumors, isotope sensitive tumors and malignancies with metastases which have been apparent for five years are excluded as catastrophic illnesses.~~
~~(3) Once the individual is determined to meet the catastrophic illness definition and is approved, a Medical Identification Card will be issued for coverage of drugs within the scope of the Vendor Drug Program.~~

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category
(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services may be based on a determination made by the medical consultant in individual circumstances.
(1) Coverages include the following:
(A) Effective August 1, 2000, all general acute care inpatient hospital services for all persons 21 years of age or older, will be limited to 24 days per person per state fiscal year (July 1 through June 30). This limitation does not apply to free-standing psychiatric facilities providing inpatient treatment to persons under 21 years of age and 65 years of age and older. The 24 days limitation applies to both hospital and physician services. Payment will be made for up to 24 hospital days paid on hospital claims during a state fiscal year for each individual recipient. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After 24 hospital days have been captured, no inpatient physician services will be paid beyond the last compensable hospital day. No exceptions or extensions will be made to the 24 day inpatient services limitation. All inpatient services are subject to post-payment review by the OHCA, or its designated agent. Effective October 1, 1993, for all persons ages 21 to 65 years, there is no coverage for inpatient chemical dependency treatment and inpatient detoxification is limited to a maximum of five days per admission and subject to post payment review.
(B) Inpatient psychotherapy by a physician.
(C) Inpatient psychological testing by a physician.
(D) One inpatient visit per day, per physician.
(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgicenter or a Medicare certified hospital that offers outpatient surgical services. Refer to the List of Covered Surgical Procedures.
(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of

treatments per month for persons with proven malignancies or opportunistic infections.

(G) Direct physicians' services are covered on an outpatient basis. A maximum payment of ~~two~~ four visits are covered per month per patient in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physicians' services in a nursing facility for those patients approved for nursing care. Payment is made for a maximum of two nursing facility visits per month. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/Medicaid patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Payment is made for medically necessary diagnostic x-ray and laboratory work.

(J) One screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms. This includes interpretation and technical component.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure. Payment is made based upon an invoice for the item.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the authorization, DHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician personally sees a patient on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(O) Family planning - including sterilization procedures for legally competent persons 21 years of age and over who voluntarily request such a procedure and, with their physician, execute the Federally mandated consent form (ADM-71). A copy of the consent form must be attached to the claim form. Separate payment is made for an I.U.D. inserted during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim. The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.

(P) Genetic counseling (requires special medical review prior to approval).

(Q) Blood count weekly for persons receiving the drug Clozaril.

(R) Complete blood count and platelet count prior to receiving chemotherapeutic agents or radiation therapy and for persons receiving medication such as DPA-D-Penacillamine on a regular basis for treatment other than malignancies.

(S) Payment of ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the patient in conformity with Federal regulations.

(U) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing patients without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma Medicaid provider number.

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(V) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and sign off on the billed encounter;

(ii) Attending physician present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(W) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The patient must be at least minimally examined and reviewed by the attending physician or a licensed physician under the supervision of the attending physician;

(ii) This contact must be documented in the medical record.

(X) Payment to a physician for supervision of CRNA services unless the CRNA bills directly.

(Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Z) Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.

(iv) Finally, procedures considered experimental or investigational are not covered.

(AA) Total parenteral nutritional therapy for certain diagnoses and when prior authorized.

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of persons with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy". Ambulatory services to persons infected with TB are not limited to the scope of the Medicaid program, but require prior authorization when the scope is exceeded.

(2) General exclusions include the following:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery including removal of benign skin lesions.

(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(D) Refractions and visual aids.

(E) Separate payment for pre and post-operative care when payment is made for surgery.

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of persons who are under 21 years of age, mentally incompetent or institutionalized. Reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomy.

(I) Medical services considered to be experimental or investigational.

(J) Payment for more than ~~two~~ four outpatient visits per month (home or office) per patient except those visits in connection with family planning, or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician supervision of hemodialysis or peritoneal dialysis.

(N) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out.

(Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)

(R) Night calls or unusual hours.

(S) Speech and Hearing services.

(T) Treatment for obesity, including weight reduction surgery.

(U) Mileage.

(V) Other than routine hospital visit on date of discharge unless patient expired.

(W) Direct payment to perfusionist as this is considered part of the hospital cost.

(X) Inpatient chemical dependency treatment.

(Y) Fertility treatment.

(Z) Routine immunizations.

(b) **Children.** Payment is made to physicians for medical and surgical services for persons under the age of 21 within

the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for patients under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services will be prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services will not be Medicaid compensable.

(A) Effective October 1, 1993, all residential and acute psychiatric services will be authorized based on the medical necessity criteria as described in OAC 317:30-5-46.

(B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for recipients in a particular border locality to use resources in another state. If a medical emergency occurs while a client is out of the state, treatment for medical services will be covered in the same way as they would be covered within the state. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for persons under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options.

(A) Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation which validates the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-46. Requests shall be made prior to the expiration of the approved inpatient stay.

(B) If a denial decision is made, a reconsideration request may be made directly to the OHCA, or its designated agent and should occur within 3 days of the denial notification due to the timeliness of processing such a request with the patient still in the facility. The request for reconsideration shall include new and/or additional medical information to justify the need for continued care.

(4) **Utilization control requirements for psychiatric beds.** Medicaid utilization control requirements for inpatient psychiatric services for persons under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is also made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of individuals under age 21. The EPSDT program is a comprehensive child health program, designed for ensuring the availability of and access to required health care resources and helping parents and guardians of Medicaid eligible children effectively use these resources. An effective EPSDT program assures that health problems found are diagnosed and treated early before they become more complex and their treatment more costly. The physician plays a significant role in educating parents and guardians in all services available through the EPSDT program. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid Program. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under the Federal Regulations. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. The following services are covered under EPSDT:

(A) The Oklahoma Program adopted the following recommendations which includes at least:

(i) Six screenings during the first year of life;

(ii) Two screenings in the second year;

(iii) One screening yearly for ages two thru five years; and

(iv) One screening every other year for ages 6 thru 20 years.

(B) Periodicity schedules for screening, dental, vision and hearing, and other services include:

(i) **Screening services.** Comprehensive examinations performed by a licensed physician, dentist or other provider qualified under State law to furnish primary medical and health services are covered. See OAC 317:30-3-47 for EPSDT services. Screenings must include all of the following:

(I) A comprehensive health and developmental history (including assessment of both physical and mental health development);

(II) A comprehensive unclothed physical exam;

(III) Appropriate immunizations according to age and health history;

(IV) Laboratory tests (including lead blood level assessment appropriate to age and risk); and

(V) Health education (including anticipatory guidance).

(ii) **Vision services.** At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal.

(iii) **Dental services.** At a minimum, dental services include relief of pain and infections, restoration of teeth and maintenance of dental health. Dental services may not be limited to emergency services. Coverage also includes inpatient services in an eligible participating hospital, outpatient dental screening every 12 months, two bite-wing x-rays, and/or oral prophylaxis one each 12 months; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized. This includes amalgam and composite restoration, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic flippers, and lingual arch bars. (Refer to Dental Provider Manual for limitations.)

(iv) **Hearing services.** At a minimum, hearing services include diagnosis and treatment for defects in hearing, including hearing aids. Hearing aid evaluation once every 12 months and purchase of a hearing aid when prescribed as a result of the hearing aid evaluation.

(v) **Immunizations.** Federal legislation created the Vaccine for Children Program to be effective October 1, 1994. Vaccines will be provided free of charge to all enrolled providers for Medicaid eligible children. Participating providers may bill for an administration fee to be set by HCFA on a regional basis. They may not refuse to immunize based on inability to pay the administration fee. Medicaid will continue to pay non-participating providers for vaccines and an administration fee of $2.10 until April 1, 1995, when Federal Financial Participation will no longer be available.

(vi) **Appropriate laboratory tests.** Use medical judgement in determining the applicability of the laboratory tests or analyses to be performed. If any laboratory tests or analyses are medically contraindicated at the time of the screening, provide them when no longer medically contraindicated laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered.

(I) As appropriate, conduct the following laboratory tests: Anemia test; Sickle cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated. Tuberculin test. Give a tuberculin test to every child who has not received one within a year.

(II) Lead toxicity screening. Where age and risk factors indicate it is medically appropriate to perform a blood level assessment, a blood level assessment is mandatory. See OAC 317:30-3-50 for required lead screening guidelines.

(vii) **Other necessary health care.** Other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects, and physical and mental illnesses and conditions discovered by the screening services.

(I) Interperiodic screenings outside the periodicity schedule for screening examinations are allowed at necessary intervals when a medical condition is suspected.

(II) Outpatient care for acute physical injury.

(III) Prescribed drugs beyond the ~~three~~ prescription limitation.

(IV) Inpatient psychotherapy for individuals under 21 years of age when prior authorized. Payment is made to psychologists who are licensed to practice.

(V) Inpatient psychological testing. Limited to one hour per recipient each 12 months. If medically necessary, additional hours will be prior authorized. Payment is made to psychologists who are licensed to practice.

(VI) Outpatient psychological services for eligible individuals under 21 years of age when prior authorized. See (V) of this unit for limitations.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: *Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above. Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.*

(7) **General exclusions.** The following are excluded from coverage for persons under the age of 21:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.
(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.
(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.
(D) Separate payment for pre and post-operative care when payment is made for surgery.
(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
(F) Sterilization of persons who are under 21 years of age.
(G) Non-therapeutic hysterectomy.
(H) Medical Services considered to be experimental or investigational.
(I) More than one inpatient visit per day per physician.
(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)
(K) Physician supervision of hemodialysis or peritoneal dialysis.
(L) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.
(M) Payment for the services of physicians' assistants except as specifically set out.
(N) Direct payment to perfusionist as this is considered part of the hospital cost.
(O) Treatment of obesity including weight reduction surgery.
(P) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
(Q) Night calls or unusual hours.
(R) Mileage.
(S) Other than routine hospital visit on date of discharge unless patient expired.
(T) Tympanometry ~~(92567)~~.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. For in-State physicians, claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits will reflect a message that the claim was referred to Medicaid. If such a message is not present, a claim for coinsurance and deductible must be filed with Medicaid within 90 days of the date of Medicare payment in order to be considered timely filed. The Medicare EOMB must be attached to the claim. If payment was denied by Medicare Part B, and the service is a Medicaid covered service, mark the claim "denied by Medicare".

(1) Out of state claims will not "cross over". Providers must file a claim for coinsurance and/or deductible within 90 days of the Medicare payment. The Medicare EOMB must be attached to the claim.
(2) Claims filed under Medicaid must be filed within one year from the date of service. For dually eligible individuals, to be eligible for payment of coinsurance and/or deductible under Medicaid, a claim must be filed with Medicare within one year from the date of service.

317:30-5-9. Medical services

(a) **Use of medical modifiers.** The Physicians' Current Procedural Terminology (CPT) and the second level HCPCS provide for 2-digit medical modifiers to further describe medical services. Modifiers are used when appropriate.

(b) **Covered office services.**

(1) Payment is made for ~~two~~ four office visits (or home) per month per patient, for adults (over age 21), regardless of the number of physicians involved. Additional visits per month are allowed for services related to emergency medical conditions.
(2) Visits for the purpose of family planning are excluded from the ~~two~~ four per month limitation.
(3) Payment is allowed for insertion of IUD in addition to the office visit.
(4) Separate payment will be made for the following supplies when furnished during a physician's office visit.
(A) Casting materials
(B) Dressing for burns
(C) Intrauterine device
(D) IV Fluids
(E) Medications administered by IV
(F) Glucose administered IV in connection with chemotherapy in office
(5) Payment is made for routine physical exams only as prior authorized by the County DHS office and are not counted as an office visit.
(6) Medically necessary office lab and X-rays are covered.
(7) Hearing exams by physician for persons between the ages of 21 and 65 are covered only as a diagnostic exam to determine type, nature and extent of hearing loss.
(8) Hearing aid evaluations are covered for persons under 21 years of age.
(9) IPPB (Intermittent Positive Pressure Breathing) is covered when performed in physician's office.

(10) Payment is made for both office visit and injection of joints performed during the visit.

(11) Payment is made for an office visit in addition to allergy testing.

(12) Separate payment is made for antigen.

(13) Eye exams are covered for persons between ages 21 and 65 for medical diagnosis only.

(14) If a physician personally sees a patient on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(15) The following specimen collection fees are covered:

(A) Catheterization for collection of specimen, multiple patients.

(B) Catheterization for collection of specimen, single patient, all places of service.

(C) Routine Venipuncture.

(16) The Professional Component for electrocardiograms, electroencephalograms, electromyograms, and similar procedures are covered on an inpatient basis as long as the interpretation is not performed by the attending physician.

(17) Cast removal is covered only when the cast is removed by a physician other than the one who applied the cast.

(c) **Non-covered office services.**

(1) Payment is not made separately for an office visit and rectal exam, pelvic exam or breast exam. Office visits including one of these types of exams should be coded with the appropriate office visit code.

(2) Payment cannot be made for prescriptions or medication dispensed by a physician in his office.

(3) Payment will not be made for completion of forms, abstracts, narrative reports or other reports, separate charge for use of office or telephone calls.

(4) Additional payment will not be made for night calls, unusual hours or mileage.

(5) Payment is not made for an office visit where the patient did not keep appointment.

(6) Refractive services are not covered for persons between the ages of 21 and 65.

(7) Removal of stitches is considered part of post-operative care.

(8) Payment is not made for a consultation in the office when the physician also bills for surgery.

(9) Separate payment is not made for oxygen administered during an office visit.

(d) **Covered inpatient medical services.**

(1) For persons between ages 21 and 65, payment is made for 24 days hospital care per state fiscal year. For persons under 21 years of age, payment is made for medically necessary inpatient care. Psychiatric admissions must be prior authorized.

(2) Payment is allowed for the services of two physicians when supplemental skills are required and different specialties are involved. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(3) Certain medical procedures are allowed in addition to office visits.

(4) Payment for critical care is all-inclusive and includes payment for all services that day. Payment for critical care, first hour is limited to one unit per day and 4 units per month. Payment for critical care, each additional 30 minutes is limited to two units per day/month.

(e) **Non-covered inpatient medical services.**

(1) For inpatient services, all visits to a patient on a single day are considered one service except where specified. Payment is made for only one visit per day.

(2) A hospital admit or visit and surgery on the same day would not be covered if post-operative days are included in the surgical procedure. If there are no post-operative days, a physician can be paid for visits.

(3) Drugs administered to inpatients are included in the hospital payment.

(4) Payment will not be made to a physician for an admission or new patient work-up when patient receives surgery in out-patient surgery or ambulatory surgery center.

(5) Payment is not made to the attending physician for interpretation of tests on his own patient.

(f) **Other medical services.**

(1) Payment will be made to physicians providing Emergency Department services.

(2) Payment is made for two nursing home visits per month. The appropriate CPT code should be used.

(3) When payment is made for "Evaluation of arrhythmias" or "Evaluation of sinus node", the stress study of the arrhythmia includes inducing the arrhythmia and evaluating the effects of drugs, exercise, etc. upon the arrhythmia.

(4) When the physician bills twice for the same procedure on the same day, it should be supported by a written report.

317:30-5-11. Psychiatric services

~~On codes where time is specified, the physician must report individual psychotherapy to the patient for that specified amount of time. Payment is made for the following services:~~

~~(1) Individual Psychotherapy: Individual Psychotherapy is covered on an inpatient or outpatient basis. Outpatient psychotherapy is subject to the two outpatient visits per month limitation. Individual psychotherapy (doctor to patient) is defined as a service personally rendered to an individual by a physician.~~

~~(2) Family therapy: Family Therapy must be for the direct benefit of the identified patient even when provided without the patient present.~~

~~(3) Psychological testing by physician.~~

(a) Payment is made for procedure codes listed in the Psychiatry Series of the most recent edition of the CPT codes. The codes in this service range are accepted services within the Medicaid program for children and adults with the following exceptions:

(1) Psychiatric evaluation of hospital records, other psychiatric reports, psychometric and/or projective tests, and other accumulated data for medical diagnostic purposes.

(2) Interpretation or explanation of results of psychiatric, other medical examinations and procedures, or other accumulated data to family or other responsible persons, or advising them how to assist the patient.

(3) Preparation of report of patient's psychiatric status, history, treatment, or progress (other than for legal or consultative purposes) for other physicians, agencies, or insurance carriers.

(4) Unlisted psychiatric service or procedure.

(b) All services must be medically necessary and appropriate and include a DSM multi axial diagnosis completed for all five axes from the most recent version of the DSM.

(c) Services in the psychiatry series of the CPT manual must be provided by a board eligible or board certified psychiatrist or a physician, physician assistant, or nurse practitioner with additional training that demonstrates the knowledge to conduct the service performed. Documentation of training for physicians who are not board eligible or board certified psychiatrists should be submitted to the Medical Director of the OHCA.

(d) No services in the psychiatry series of the CPT manual may be provided via telemedicine or other electronic medium, with the exception of "pharmacologic management". Pharmacological management may be performed via telemedicine under the following circumstances:

(1) A healthcare professional with knowledge of the patient must accompany and attend the patient during the performance of the service.

(2) The psychiatrist performing the service or in the case of a group practice or agency, another psychiatrist within that practice or agency must have seen the patient receiving the service during either a psychiatric exam or previous pharmacologic management session or other face-to-face psychiatric service.

(3) The patient must understand the procedure including the technologic aspects of the process and agree, in writing, to having his/her pharmacological management session via electronic equipment.

(e) The telecommunications equipment must provide clear images of the psychiatrist to the patient. The psychiatrist must have a clear visual field to effectively evaluate the physical condition of the patient, including but not limited to extrapyramidal symptoms, injuries and changes in weight. Audio reception must be sufficient for the patient and physician to clearly hear one another's conversation.

317:30-5-15. Chemotherapy injections

(a) **Outpatient.**

(1) Outpatient chemotherapy is compensable only when a malignancy is indicated or for the diagnosis of Acquired Immune Deficiency Syndrome (AIDS). Outpatient chemotherapy treatments are unlimited. Outpatient visits in connection with chemotherapy are limited to ~~two (2)~~ four per month.

(2) Payment for administration of chemotherapy medication is made under appropriate HCPC Supplemental J Codes. Payment is made separately for office visit and administration under the appropriate CPT code.

(3) When injections exceed listed amount of medication, show units times appropriate quantity, i.e., injection code for 100 mgm but administering 300, used 100 mgm times 3 units.

(4) Glucose - fed through IV in connection with chemotherapy administered in the office would be covered.

(b) **Inpatient.**

(1) Inpatient hospital supervision of chemotherapy administration is non-compensable. The hospital visit in connection with chemotherapy could be allowed within our guidelines if otherwise compensable, but must be identified by description.

(2) Hypothermia - Local hypothermia is compensable when used in connection with radiation therapy for the treatment of primary or metastatic cutaneous or subcutaneous superficial malignancies. It is not compensable when used alone or in connection with chemotherapy.

(3) The following are not compensable:

(A) Chemotherapy for Multiple Sclerosis;

(B) Efudex;

(C) Oral Chemotherapy;

(D) Photochemotherapy;

(E) Scalp Hypothermia during Chemotherapy; and

(F) Strep Staph Chemotherapy.

317:30-5-22. Obstetrical care

(a) Obstetrical care should be billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery should be used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the patient leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the antepartum visits. The antepartum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total obstetrical care are listed in (1) - ~~(7)~~ (6) of this subsection.

(1) Level I - Complete Ultrasound: Payment will be made separately from the total obstetrical care for one complete ultrasound per pregnancy when the patient has

been referred to a radiologist or maternal fetal specialist trained in ultrasonography. The patient's record must be documented as to the reason the ultrasound was requested and the components of the ultrasound. The appropriate HCPC code must be used.

(2) Level II - Targeted Ultrasound: Payment will be made separately from the total obstetrical care for one medically necessary ~~Level II (~~targeted~~)~~ ultrasound per pregnancy for high risk pregnancies. ~~Payment for the ultrasound includes payment for consultation.~~ Documentation as to the medical justification must be ~~attached to the claim and also~~ made a part of the patient's record. The ~~Level II (~~targeted~~)~~ ultrasound must be performed:

(A) with equipment capable of producing ~~Level II (~~targeted~~)~~ quality evaluations; and

(B) by an obstetrician certified by the American Board of Obstetrics and Gynecology as a diplomat with special qualifications in maternal fetal medicine or ~~who has satisfactorily completed fellowship and trained~~ an active candidate for certification in maternal fetal medicine.

(C) a complete ultrasound code is used if during the procedure it is apparent that a targeted ultrasound is not medically necessary.

(3) Standby attendance at C-Section, for the purpose of attending the baby, is compensable when billed by a physician not participating in the delivery.

(4) Spinal anesthesia administered by the attending physician is a compensable service and should be billed separately from the delivery.

(5) Amniocentesis is not included in routine obstetrical care and should be billed separately.

(6) Additional payment is not made for the delivery of twins. If one twin is delivered vaginally and one is delivered by C-section by the same physician, the higher level procedure is paid. If one twin is delivered vaginally and one twin delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment will not be made to the same physician for both standby and assistant at C-Section.

(c) Assistant surgeons will be paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section should bill separately for the prenatal and the six weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total obstetrical care.

(1) An additional allowance may not be made for induction of labor, double set-up examinations, fetal stress and non-stress tests, or pudendal anesthetic. Do not bill separately for these procedures.

(2) Standby at C-Section is not compensable when billed by a physician participating in delivery.

(3) Payment is not made for assistant surgery for obstetrical procedures which include prenatal or post partum care.

(4) Pitocin induction of labor is considered part of the delivery and separate payment is not made.

(5) Fetal scalp blood sampling is considered part of the total OB care.

317:30-5-24. Radiology

(a) **Outpatient and emergency department.**

(1) The technical component of outpatient radiological services performed during an emergency department visit is included in the emergency department case rate paid to the hospital.

(2) The professional component of x-rays performed during an emergency department visit is covered.

(3) ~~Payment of one complete ultrasound for pregnant women by a radiologist trained in ultrasonography.~~ Payment will be made separately from the total obstetrical care for one Level I complete ultrasound per pregnancy when the patient has been referred to a radiologist or maternal fetal specialist trained in ultrasonography. The patient's record must be documented as to the reason the ultrasound was requested and the components of the ultrasound. The appropriate HCPC code must be used. Payment ~~of~~ will be made separately from the total obstetrical care for one medically necessary ~~Level II~~ targeted ultrasound per pregnancy for high risk pregnancies. Documentation as to the medical justification must be made a part of the patient's record. The ~~Level II (~~targeted ultrasound~~)~~ must be performed:

(A) with equipment capable of producing ~~Level II~~ targeted quality evaluations; and

(B) by an ~~obstetrician fellowship trained~~ obstetrician certified by the American Board of Obstetrics and Gynecology as a diplomat with special qualifications in maternal fetal medicine. ~~Limited Targeted Ultrasound, should be used as a substitute by the Maternal Fetal Obstetrician if, during the procedure, it is apparent that a complete targeted ultrasound is not medically necessary.~~

(C) a complete ultrasound code is used if during the procedure it is apparent that a targeted ultrasound is not medically necessary.

(4) Outpatient chemotherapy is compensable for proven malignancies and opportunistic infections. Outpatient radiation therapy is covered for the treatment of proven malignancies or when treating benign conditions utilizing sterotactic radiosurgery (e.g., gamma knife).

(5) One screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms.

(b) **Inpatient procedures.** Inpatient radiological procedures are compensable if done on a referral basis. Claims for inpatient interpretations by the attending physician are not compensable unless the attending physician reads interpretations for the hospital on all patients.

(c) **Inpatient radiology performed outside of hospital.** When patient is an inpatient but has to be taken elsewhere for

an x-ray, such as to an office or another hospital because the admitting hospital did not have proper equipment, the place of service should still be IH, since the patient is considered to be in the hospital at the time of service.

(d) **Radiology therapy management.** Weekly clinical management is based on five fractions delivered comprising one week regardless of the time interval separating the delivery of treatments. Weekly clinical management should be billed as one unit of service rather than five.

(e) **Miscellaneous.**

(1) **Arteriograms, angiograms and aortograms.** When arteriograms, angiograms or aortograms are performed by a radiologist, they are considered radiology, not surgery.

(2) **Injection procedure for arteriograms, angiograms and aortograms.** The "interpretation only" code and the "complete procedure" code are not both allowed for one of these procedures.

(3) **Evac-U-Kit or Evac-O-Kit.** Evac-U-Kit and Evac-O-Kit are included in the charge for the Barium Enema.

(4) **Examination.** Examination at bedside or in operating room allows an additional charge to be made. Examination outside regular hours is not a covered charge.

(5) **Supplies.** Separate payment is not made for supplies such as "administration set" used in provision of office chemotherapy.

(6) **Fluoroscopy or Esophagus study.** Separate charge for fluoroscopy or esophagus study in addition to a routine gastrointestinal tract examination is not covered unless a report is submitted indicating an esophagram was done as a separate procedure.

(f) **Magnetic Resonance Imaging.** MRI/MRA scans are covered when medically necessary. Documentation in the progress notes must reflect the medical necessity. The diagnosis code must be shown on the claim.

(g) **Placement of radium or other radioactive material.**

(1) For Radium Application use the appropriate HCPCS code.

(2) When a physician supplies the therapeutic radionuclides (implant grains or Gold Seeds) and provides a copy of the invoice, payment will be made at 100% of the invoice charges. Fee may include cost of radium, container, and shipping and handling.

PART 3. HOSPITALS

317:30-5-41. Coverage for adults

For persons 21 years of age or older, payment is made to hospitals for services as described in this Section.

(1) **Inpatient hospital services.**

(A) Effective August 1, 2000, all general inpatient hospital services for all persons 21 years of age or older is limited to 24 days per person per state fiscal year (July 1 through June 30). The 24 day limitation applies to both hospital and physician services. No exceptions or extensions will be made to the 24 day inpatient services limitation.

(B) Effective October 1, 1993, inpatient chemical detoxification (alcohol or drugs) for persons age 21 and older is limited to a maximum of five days and subject to post-payment review. No continued stay in inpatient chemical detoxification is allowed.

(C) Effective October 1, 1993, inpatient chemical dependency treatment (alcohol or drugs) for persons age 21 and older is not covered.

(D) All inpatient services are subject to post-payment utilization review by the Oklahoma Health Care Authority, or its designated agent. These reviews will be based on OHCA's, or its designated agent's, admission criteria on severity of illness and intensity of treatment.

(i) It is the policy and intent to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a Medicaid recipient. If the OHCA, or its designated agent, upon their initial review determines the admission should be denied, a notice is sent to the facility and the attending physician(s) advising them of the decision. This notice also advises that a reconsideration request may be submitted within 60 days. Additional information submitted with the reconsideration request will be reviewed by the OHCA, or its designated agent, who utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, OHCA is informed. At that point, OHCA sends a letter to the hospital and physician requesting refund of the Medicaid payment previously made on the denied admission.

(ii) If the hospital or attending physician did not request reconsideration by the OHCA, or its designated agent, the OHCA, or its designated agent, informs OHCA that there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, sends a letter to the hospital and physician requesting refund of the amount of Medicaid payment previously made on the denied admission.

(iii) If an OHCA, or its designated agent, review results in denial and the denial is upheld throughout the appeal process and refund from the hospital and physician is required, the Medicaid recipient cannot be billed for the denied services.

(E) If a hospital or physician believes that an acute care hospital admission or continued stay is not medically necessary and thus not Medicaid compensable but the patient insists on treatment, the patient should be informed that he/she will be personally responsible for all charges. If a Medicaid claim is filed and paid and the service is later denied the patient is not responsible. If a Medicaid claim is not filed and paid the patient can be billed.

(F) Payment is made to a participating hospital for hospital based physician's services. The hospital must have a Hospital-Based Physician's Contract with OHCA for this method of billing.

(2) **Outpatient hospital services.**

(A) **Emergency hospital services.** Emergency department services are covered. Payment is made at a case rate which includes all non-physician services provided during the visit.

(B) **Level I - Complete Ultrasound.** Payment will be made separately from the total obstetrical care for one complete ultrasound per pregnancy when the patient has been referred to a radiologist or maternal fetal specialist trained in ultrasonography. The patient's record must be documented as to the reason the ultrasound was requested and the components of the ultrasound. The appropriate HCPC code must be used.

(C) **Level II - Targeted Ultrasound.** Payment will be made separately from the total obstetrical care for one medically necessary ~~Level II (~~targeted~~)~~ ultrasound per pregnancy for high risk pregnancies. ~~Payment for the ultrasound includes payment for consultation.~~ Documentation as to the medical justification must be ~~attached to the claim and also~~ made a part of the patient's record. The ~~Level II (~~targeted~~)~~ ultrasound must be performed:

(i) with equipment capable of producing ~~Level II (~~targeted~~)~~ quality evaluations; and

(ii) by an obstetrician certified by the American Board of Obstetrics and Gynecology as a diplomat with special qualifications in maternal fetal medicine or an active candidate for certification in maternal fetal medicine. ~~Limited Targeted Ultrasound, should be used if, during the procedure, it is apparent that a complete targeted ultrasound is not medically necessary.~~

(iii) a complete ultrasound code is used if during the procedure it is apparent that a targeted ultrasound is not medically necessary.

(D) **Dialysis.** Payment for dialysis is made at the Medicare allowable facility rate. This rate includes all services which Medicare has established as an integral part of the dialysis procedure, such as routing medical supplies, certain laboratory procedures, oxygen, etc. Payment is made separately for injections of Epoetin Alfa (EPO or Epogen).

(E) **Technical component.** Payment is made for the technical component of outpatient radiation therapy and compensable x-ray procedures.

(F) **Laboratory.** Payment is made for medically necessary outpatient services.

(G) **Blood.** Payment is made ~~in behalf of categorically needy and medically needy individuals~~ for outpatient blood and blood fractions when these products are required for the treatment of a congenital or acquired disease of the blood. ~~In order to be compensable for the medically needy, the blood or blood fraction must have been required over a period of 60 days and must be preauthorized.~~

(H) **Ambulance.**

(I) **Pharmacy.**

(J) **Home health care.** Hospital based home health providers must be Medicare certified and have a current Home Health Agency contract with the Oklahoma Health Care Authority.

(i) Payment is made for home health services provided in a patient's residence to all categorically needy individuals.

(ii) Payment is made for a maximum of 36 visits per year per eligible recipient.

(iii) Payment is made for standard medical supplies.

(iv) Payment is made on a rental or purchase basis for equipment and appliances suitable for use in the home.

(v) Non-covered items include sales tax, enteral therapy and nutritional supplies, and electro-spinal orthosis systems (ESO).

(vi) Payment may be made at a statewide procedure based rate. Payment for any combination of skilled and home health aide visits shall not exceed 36 visits per year.

(vii) Payment may be made to home health agencies for prosthetic devices.

(I) Coverage of oxygen includes rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators when prior authorized. A completed HCFA-484 must accompany the initial claim for oxygen. Purchase of oxygen systems may be made where unusual circumstances exist and purchase is considered most appropriate. Refer to the Medical Suppliers Manual for further information.

(II) Payment is made for permanent indwelling catheters, drain bags, insert trays and irrigation trays. Male external catheters are also covered.

(III) Sterile tracheostomy trays are covered.

(IV) Payment is made for colostomy and urostomy bags and accessories.

(V) Payment is made for hyperalimentation, including supplements, supplies and equipment rental in behalf of persons having permanently inoperative internal body organ dysfunction. CC-17 should be submitted to the Medical Authorization Unit. Information regarding the patient's medical condition that necessitates the hyperalimentation and the expected length of treatment, should be attached.

(VI) Payment is made for ventilator equipment and supplies when prior authorized. CC-17 should be submitted to the Medical Authorization Unit.

(VII) Medical supplies, oxygen, and equipment should be billed using appropriate HCPCS

codes which are included in the HCPCS Level II Coding Manual.

(K) **Outpatient hospital services, not specifically addressed.** Outpatient hospital services, not specifically addressed, are covered for adults only when prior authorized by the Medical Professional Services Unit of the Oklahoma Health Care Authority.

(L) **Outpatient chemotherapy and radiation therapy.** Payment is made for charges incurred for the administration of chemotherapy for the treatment of malignancies and opportunistic infections. Payment for radiation therapy is limited to the treatment of proven malignancies and benign conditions appropriate for sterotactic radiosurgery (e.g., gamma knife).

(M) **Ambulatory surgery.**

(i) **Definition of Ambulatory Surgical Center.** An ambulatory surgical center (ASC) is a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients and which enters into an agreement with HCFA to do so. An ASC may be either independent (i.e., not part of a provider of services or any other facility) or may be operated by a hospital (i.e., under the common ownership, licensure or control of a hospital). If an ASC is the latter type it has the option of being covered and certified under Medicare as an ASC, or of being covered as an outpatient hospital facility. In order to be covered as an ASC operated by a hospital, a facility must:

(I) elect to do so, and continue to be so covered unless HCFA determines there is good cause to do otherwise;

(II) be a separately identifiable entity, physically, administratively, and financially independent and distinct from other operations of the hospital; and

(III) meet all the requirements with regard to health and safety, and agree to the assignment, coverage and reimbursement rules applied to independent ASC's.

(ii) **Certification.** In order to be eligible to enter into an agreement with HCFA to be covered as an ASC, a facility must be surveyed and certified as complying with the conditions for coverage for ASC's in 42 CFR 416.39-49.

(N) **Outpatient surgery services.** The covered facility services are defined as those services furnished by an ASC or OHF in connection with a covered surgical procedure.

(i) **Services included in the facility reimbursement rate.** Services included in the facility reimbursement rate are:

(I) Nursing, technical and other related services. These include all services in connection with covered procedures furnished by nurses and technical personnel who are employees of the facility. In addition to the nursing staff, this category would include orderlies and others involved in patient care.

(II) Use of the patient of the facility. This category includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use by the patient's relatives in connection with surgical services.

(III) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment. This category includes all supplies and equipment commonly furnished by the facility in connection with surgical procedures, including any drugs and biologicals administered while the patient is in the facility. Surgical dressings, other supplies, splints, and casts include those furnished by the facility at the time of surgery. Additional supplies and materials furnished later would generally be furnished as incident to a physician's service and not as a facility service. Supplies include those required for both the patient and facility personnel, i.e., gowns, masks, drapes, hoses, scalpels, etc., whether disposable or reusable.

(IV) Diagnostic or therapeutic items and services directly related to the surgical procedure. Payment to the facility includes items and services furnished by facility staff in connection with covered surgical procedures. These diagnostic tests include but are not limited to tests such as urinalysis, blood hemoglobin or hematocrit, CBC and fasting blood sugar, etc.

(V) Administrative, recordkeeping, and housekeeping items and services. These include the general administrative functions necessary to run the facility, such as scheduling, cleaning, utilities, rent, etc.

(VI) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood products furnished during the course of the procedure will be included in the payment for the facility charge. In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.

(VII) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.

(ii) **Services not included in facility reimbursement rates.** The following services are not included in the facility reimbursement rate:

(I) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post-operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which

the individual physician usually includes in a set "global" fee for a given surgical procedure.

(II) The sale, lease, or rental of durable medical equipment to facility patients for use in their homes. If the facility furnishes items of DME to patients it should be treated as a DME supplier and these services billed on a separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(III) Prosthetic devices. Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prosthesis is intra-ocular lenses (IOL's). Prosthetic devices should be billed as a separate line item using appropriate HCPCS code.

(IV) Ambulance services. If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs.

(V) Leg, arm, back and neck braces. These items are not included in the facility payment. Payment is limited to the scope of the Authority's Medical Programs.

(VI) Artificial legs, arms, and eyes. This equipment is not considered part of the facility service and is not included in the facility payment rate. Payment is limited to the scope of the Authority's Medical Programs.

(VII) Services of an independent laboratory. Payment for laboratory services is limited to the scope of the Authority's Medical Programs.

(iii) **Reimbursement - facility services.** The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, reimbursement will be made for only the major procedure. Reimbursement will be made at a state-wide payment rate based on Medicare's established groups as adapted for Medicaid.

(iv) **Compensable procedures.** The HCPCS codes identify the compensable procedures and should be used in billing.

(O) **Outpatient hospital services for persons infected with tuberculosis (TB).** Outpatient hospital services are covered for persons infected with tuberculosis. Coverage includes, but may not be limited to, outpatient hospital visits, laboratory work and x-rays. Services to persons infected with TB are not limited to the scope of the Medicaid program; however, prior authorization is required for services that exceed the scope of coverage under Medicaid. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy".

(P) **Mammograms.** Medicaid covers one screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms.

(3) **Exclusions.** The following are excluded from coverage:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.

(C) Reversal of sterilization procedures for the purposes of conception are not covered.

(D) Medical services considered to be experimental.

(E) Services or any expense incurred for cosmetic surgery including removal of benign skin lesions.

(F) Refractions and visual aids.

(G) Payment for the treatment of obesity.

PART 5. PHARMACISTS

317:30-5-72. Categories of service eligibility

(a) **Coverage for adults.** ~~(1)~~ ~~**Categorically needy.**~~ Prescription drugs for categorically needy adults are covere-d as set forth in this subsection.

(~~A~~ 1) With the exception of ~~(B)~~ (2) and ~~(C)~~ (3) of this ~~paragraph~~ subsection, categorically needy adults are eligible for ~~three~~ a maximum of six covered prescriptions per month with a limit of three brand name prescriptions.

(~~B~~ 2) ~~For categorically related adults who are residents of Nursing Facilities, private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) or who are persons eligible under any Home and Community Based Waiver program (for example the Developmentally Disabled Waiver, the ADvantage Waiver, or the In Home Support Waiver) are eligible for all medically necessary prescriptions subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2 and OAC 317:30-5-77.3.~~ Subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2, and OAC 317:30-5-77.3, exceptions to the six medically necessary prescriptions per month limit are:

(A) Unlimited monthly medically necessary prescriptions for categorically related individuals who are residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded; and

(B) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the three brand name or thirteen

total prescriptions will be covered with prior authorization.

(~~C~~3) Drugs exempt from the ~~three~~ prescription limit include: Antineoplastics, anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions ~~which~~ that require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, low-phenylalanine formula and amino acid bars for persons with a diagnosis of PKU, certain solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis~~ are excluded from the prescription limitation~~. For purposes of this Section, exclusion from the ~~three~~ prescription limit means claims filed for any of these prescriptions will not count toward the ~~three~~ prescriptions allowed per month.

~~(2) **Medically needy.** With the exception of individuals who are eligible under OAC 317:35-7-45 (individuals eligible because of catastrophic illness), medically needy adults are not covered in the prescription drug program. For those individuals who are eligible because of catastrophic illness coverage the prescription drug benefit is limited to three drugs per month. Eligibility for catastrophic illness is a portion of Oklahoma's medically needy program.~~

~~(A) Each medically needy applicant classified as having a catastrophic illness, within that definition, who meets the Medicaid standards of eligibility receives a medical ID card.~~

~~(B) If a medically needy adult is approved under the catastrophic provision with a spenddown, all prescriptions will be applied toward the spenddown until the full amount is met.~~

(b) **Coverage for children ~~(categorically and medically needy)~~.** Prescription drugs for Medicaid eligible individuals under 21 years of age are not limited.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are eligible for a prescription drug benefit.

317:30-5-72.1. Drug benefit

OHCA administers and maintains an Open Formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The Authority covers any drug for its approved purpose that has been approved by the Food and Drug Administration (FDA) for manufacturers who have entered into a drug rebate agreement with the Centers for Medicare and Medicaid Services~~,~~ (CMS), formerly known as the Health Care Financing Administration (HCFA) subject to the following exclusions, and limitations.

(1) The following drugs, classes of drugs, or their medical uses are excluded from coverage:

(A) Agents used to promote fertility.

(B) Agents primarily used to promote hair growth.

(C) Agents used for cosmetic purposes.

(D) Agents used for the symptomatic relief of coughs and colds. Cough and cold drugs are not covered.

(E) Vitamins and Minerals.

(F) Agents used primarily for the treatment of anorexia or weight gain. Drugs used primarily for the treatment of obesity, such as appetite suppressants are not covered. Drugs used primarily to increase weight are not covered unless otherwise specified.

(G) Agents used for smoking cessation. Nicotine replacement products are not covered.

(H) Food supplements.

(I) Agents that are experimental or whose side effects make usage controversial.

(J) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or designee.

(K) Over-the-counter drugs. Over-the-counter medications are not covered except for those medications listed in Paragraph (3) of this subsection.

(2) The exceptions to the exclusions provided in subsection OAC 317:30-5-72.1(1) are as follows:

(A) Agents used for the systematic relief of cough and colds. Antihistamines for allergies or antihistamine use associated with asthmatic conditions may be covered when medically necessary and prior authorized. ~~Non-sedating antihistamines are covered for children without prior authorization.~~

(B) Vitamins and Minerals. Vitamins and minerals are not covered except under the following conditions:

(i) prenatal vitamins are covered for pregnant women up to age 50;

(ii) fluoride preparations are covered for persons under 16 years of age or pregnant; and

(iii) calcifediol/calciferol when used to treat end stage renal disease are covered.

(C) Agents used primarily for the treatment of anorexia or weight gain. There is limited coverage under the scope based prior authorization.

(D) Agents used for smoking cessation. A limited smoking cessation benefit is available through OAC 317:30-5-77.2(e)(1)(B)(ii).

(E) Over the counter drugs. Insulin, PKU formula and amino acid bars, certain smoking cessation products, and the following family planning products are covered.

(i) Male and Female Condoms.

(ii) Contraceptive sponges.

(iii) Diaphragms.

(iv) Spermicidal jellies, creams, suppositories, and foams.

(3) All covered outpatient drugs are subject to prior authorization as provided in OAC 317-30-5-77.2 and 317:30-5-77.3.

(4) All covered drugs may be excluded or coverage limited if:

(A) the prescribed use is not for a medically accepted indication as provided under 42 U.S.C. § 1396r-8;

(B) the drug is subject to such restriction pursuant to the rebate agreement between the manufacturer and the Health Care Financing Administration;

(C) OHCA has excluded coverage of the drug from its formulary established by the State as provided under 42 U.S.C. § 1396r-8.

317:30-5-77. Brand necessary certification

(a) When a product is available in both a brand and generic form, a prior authorization is required before the branded product may be dispensed. ~~Unless the~~ The prescribing provider ~~certifies a~~ must certify the brand name drug product is medically necessary for the well being of the patient, otherwise a generic must be substituted for the name brand product. ~~The requirements for a brand name certification are as follows:~~

(1) The certification must be written in the physician's or other prescribing provider's handwriting.

(2) Certification must be written directly on the prescription blank or on a separate sheet which is attached to the original prescription.

(3) A standard phrase indicating the need for a specific brand is required. The Authority recommends use of the phrase "Brand Necessary".

(4) It is unacceptable to use a printed box on the prescription blank that could be checked by the physician to indicate brand necessary, or to use a hand-written statement that is transferred to a rubber stamp and then stamped onto the prescription blank.

(5) If a physician phones a prescription to the pharmacy and indicates the need for a specific brand, the physician should be informed of the need for a handwritten certification. The pharmacy can either request that the certification document be given to the patient who then delivers it to the pharmacy upon receipt of the prescription, or request the physician send the certification through the mail.

(b) The Brand Necessary Certification applies to HCFA Upper Limit and State Maximum Allowable Cost (SMAC) products.

(c) For certain narrow therapeutic index drugs, a prior authorization will not be required. The DUR Board will select and maintain the list of narrow therapeutic index drugs.

317:30-5-77.2. Prior authorization

(a) **Definition.** The term prior authorization means an ~~authorization~~ approval for payment by OHCA to the pharmacist ~~to fill the prescription~~ before ~~it~~ a prescription is ~~filled~~ dispensed by the pharmacist.

(b) **Process.** Because of the required interaction between a prescribing provider (such as a physician) and a pharmacist to receive a prior authorization, OHCA allows a pharmacist up to a 30 calendar day period from the point of sale notification to provide the data necessary for OHCA to make a decision regarding prior authorization. Should a pharmacist fill a prescription prior to the actual authorization he/she takes a business risk that the claim for filling the prescription will be denied. In the case that information regarding the prior authorization is not provided within the 30 day calendar period, claims will be denied.

(c) **Documentation.** OHCA administers a prior authorization program through a contract with an agent. Prior Authorization requests with clinical exceptions must be mailed or faxed to the Medication Authorization unit of the agent. Other authorization requests, claims processing questions and questions pertaining to DUR alerts must be addressed by contacting the Pharmacy help desk. Authorization requests with complete information are reviewed and a response returned to the dispensing pharmacy within 24 hours.

(d) **Emergencies.** In an emergency situation the Health Care Authority will authorize a 72 hour supply of medications to a client. The authorization for a 72 hour emergency supply of medications does not count against the Medicaid limit described in OAC 317:30-5-72(a)(1).

(e) **Utilization and scope.** There are three reasons for the use of prior authorization: utilization controls, product based controls, and scope controls. Scope controls refer to constraints used to insure a drug is used for approved indications and is therapeutically appropriate.

(1) **Utilization.**

(A) **Quantity.** Toradol is covered for eligible individuals for a quantity up to 22 tablets or a 5 day supply ~~which ever~~ whichever is less, each month. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(B) **Duration.**

~~(i) **H2 antagonists/proton pump inhibitors/carafate.** H2 receptor antagonists and Carafate are covered for eligible individuals for 90 days of therapy in the previous 360 days. H2 antagonists and Carafate do not require prior authorization when prescribed at the recommended doses or lower after the 90 day limit. The following are recommended doses for these drugs.~~

~~(I) Drug name: Ranitidine (Zantac): 300mg per day~~

~~(II) Drug name: Cimetidine (Tagamet): 800mg per day~~

~~(III) Drug name: Famotidine (Pepcid): 20mg per day~~

~~(IV) Drug name: Nizatidine (Axid): 150mg per day~~

~~(V) Drug name: Sucralfate (Carafate): 1000mg four times per day~~

(~~ii~~ i) **Smoking cessation products.** A 90-day smoking cessation benefit consisting of Zyban, ~~prescription nicotine patches,~~ prescription or non-prescription nicotine replacement products, or ~~Zyban/patch~~ Zyban/nicotine replacement combination is covered once per twelve months ~~when prior authorized~~. ~~Any additional coverage is considered on a case by case basis.~~ Coverage beyond

90 days requires prior authorization and proof of enrollment in a behavior modification program, such as the Oklahoma Tobacco Helpline or a manufacturer's telephone counseling program.

(~~iii~~ ii) **Benzodiazepines and barbiturates.** Selected Barbiturates and Benzodiazepines are covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required for other medications in this category and when additional coverage is medically necessary beyond this limit.

(~~iv~~ iii) **Hypnotics.** ~~Ambien a hypnotic medication similar in activity to benzodiazepines is~~ Hypnotic medications are covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(2) **Scope.**

(A) **Antihistamines.** Legend antihistamines are covered only after a previous trial with an over-the-counter antihistamine. Over-the-counter non-sedating antihistamines are a covered benefit for children under 21 years of age. The trial should be with an antihistamine that exhibits comparable characteristics to the legend alternative. Also, the trial should have been in the last ~~three months~~ month and be of adequate dose and duration. A fourteen day trial of an over-the-counter non-sedating antihistamine is required prior to approval of a legend product for all clients. ~~Non-sedating antihistamines for children under 21 years of age are exempt from the prior authorization program as put forth in Oklahoma Statutes.~~

(B) **Growth Hormone.** Growth Hormone is a covered medication via the prior authorization program provided the patient meets the applicable criteria for initiation and continuance of treatment. The following are the specific indications in which growth hormone therapy will be considered for coverage:

(i) the treatment of short stature, Turner's syndrome, hypoglycemia related growth hormone deficiency;

(ii) physiologic replacement for adults who previously met growth hormone deficiency guidelines as children; and

(iii) catabolic wasting in AIDS patients.

(C) **Anorexiants.** Limited anorexiant coverage is available for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) and Narcolepsy through Product Based Prior Authorization. ~~All products require prior authorization for use in adults. The Anorexiants are divided into three categories. The first category requires no prior authorization for children and includes Methylphenidate immediate and controlled release formulations, Dextroamphetamine immediate and controlled release formulations, and the immediate release formulation of Adderall™, including generic equivalents. The second category requires a prior authorization for children and adults and also requires a previous trial with both Methylphenidate and Dextroamphetamine. The products in this category are Pemoline and Methamphetamine. The third category includes Concerta, Metadate CD, and Adderall XR. These drugs require prior authorization for children and adults and a previous trial with a medication from the first category. The prescribing physician must complete and sign the petition for prior authorization. Authorizations will be issued for a one year period.~~

(D) **TB related medications.** ~~Drugs~~ Certain drugs prescribed for the treatment of TB related morbidities ~~not listed in OAC 317:30-3-46~~ require prior authorization.

(E) **Clopidigrel (Plavix™).** Clodpidigrel is covered for eligible individuals through the prior authorization process. Authorization will be granted to individuals with diagnoses for which an approved indication exists and the individual has a contra-indication for aspirin use or has a therapeutic failure with previous aspirin therapy.

(F) **Multiple indication medications.** Medications which have been approved by the FDA for multiple indications may be subject to a scope-based prior authorization when at least one of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Prior authorizations for these drugs may be structured as step therapy or a tiered approach as recommended by the Drug Utilization Review Board and approved by the OHCA Board of Directors.

(G) Prior authorization may be required to assure compliance with FDA approved and/or medically accepted indications, dosage, duration of therapy, quantity, or other appropriate use criteria including pharmacoeconomic consideration.

317:30-5-77.3. Product

(a) The Oklahoma Health Care Authority utilizes a prior authorization system subject to their authority under 42 U.S.C. §1396r-8 and 63 Okla. Stat. §5030.3(B). The prior authorization program is not a drug formulary which is separately authorized in 42 U.S.C. §1396r-8. Drugs are placed into two or more tiers based on similarities in clinical efficacy, side-effect profile and cost-effectiveness after recommendation by the Drug Utilization Review Board and OHCA Board approval. Drugs placed in tier number one require no prior authorization. Drugs placed in tier number two or any tier other than tier number one require prior authorization.

(1) ~~Two~~ Three exceptions exist to the requirement of prior authorization:

(A) failed trial (or trials) with a tier one product, ~~or~~

(B) a clinical exception in the particular therapeutic category, or

(C) the manufacturer or labeler of a product may opt to participate in the state supplemental drug rebate program to move a product from a higher tier to tier one which will remove the required prior authorization for that product.

(i) After a drug or drug category has been added to the Product Based Prior Authorization program, OHCA or its contractor may establish a cost-effective benchmark value for each therapeutic category or individual drug. The benchmark value may be calculated based on an average cost, an average cost per day, a weighted average cost per day or any other generally accepted economic formula. A single formula for all drugs or drug categories is not required. Supplemental rebate offers from manufacturers which are greater than the minimum required supplemental rebate will be accepted and may establish a new benchmark rebate value.

(ii) Manufacturers of products assigned to tiers number two and higher may choose to pay a supplemental rebate to the state in order to avoid a prior authorization on their product or products assigned to the higher tier.

(iii) Supplemental rebate agreements shall be in effect for one year and may be terminated at the option of either party with a 60 day notice. Supplemental rebate agreements are subject to the approval of CMS. Termination of a Supplemental Rebate agreement will result in the specific product reverting to the previously assigned higher tier in the PBPA program.

(iv) The supplemental unit rebate amount for a tier two or higher product will be calculated by subtracting the federal rebate amount per unit from the benchmark rebate amount per unit.

(v) Supplemental rebates will be invoiced concurrent with the federal rebates and are subject to the same terms with respect to payment due dates, interest, and penalties for non-payment as specified at 42 U.S.C. Section 1396r-8. All terms and conditions not specifically listed in federal or state law shall be included in the supplemental rebate agreement as approved by CMS.

(vi) Drugs or drug categories which are not part of the Product Based Prior Authorization program as outlined in 63 O.S. Section 5030.5 may be eligible for supplemental rebate participation. The OHCA Drug Utilization Review Board shall determine supplemental rebate eligibility for drugs or drug categories after considering clinical efficacy, side effect profile, cost-effectiveness and other applicable criteria.

(2) All clinical exceptions are recommended by the Drug Utilization Review Board.

(b) Additional therapeutic categories of drugs will be subject to subsection (a) of this Section if recommended by the Drug Utilization Review Board, considered by the Medical Advisory Committee and approved by the OHCA Board. For example, two existing therapeutic categories of drugs are currently subject to prior authorization: anti-secretory or ulcer drugs (proton-pump inhibitors and H2 Blockers) and non-steroidal, anti-inflammatory drugs (NSAIDs).

(1) With respect to anti-secretory or ulcer drugs, there are two tiers of drugs in this therapeutic classification.

(A) The clinical exceptions for anti-secretory or ulcer drugs in tier number two are demonstrated by the following conditions:

(i) H. pylori eradication; or

(ii) prophylaxis or treatment of NSAID-induced ulcer; or

(iii) erosive esophagitis or maintenance of healed erosive esophagitis; or

(iv) GERD (Gastroesophageal Reflux Disease) complications (e.g. esophageal strictures, dysphagia, Barrett's esophagus); or

(v) scleroderma.

(B) These clinical conditions are demonstrated by documentation sent by the prescribing physician and pharmacist. New clinical exceptions are subject to DUR Board recommendation and approval by the OHCA Board.

(2) With respect to non-steroidal, anti-inflammatory drugs (NSAIDs), there are two tiers of drugs in this therapeutic classification.

(A) The clinical exceptions for non-steroidal, anti-inflammatory drugs in tier number two are demonstrated by the following conditions:

(i) history of upper GI bleeding; or

(ii) history of NSAID-induced ulcer, or

(iii) active peptic ulcer disease, or

(iv) concurrent use of warfarin, or

(v) concurrent chronic use of oral corticosteroids, or

(vi) chronic NSAID therapy in elderly or debilitated patients, or

(vii) Indomethacin (management of gout).

(B) These clinical conditions are demonstrated by documentation sent by the prescribing physician and pharmacist. New clinical exceptions are subject to DUR Board recommendations and approval by the OHCA Board.

PART 35. RURAL HEALTH CLINICS

317:30-5-356. Coverage for adults

Payment is made to rural health clinics for adult services as set forth in this Section.

(1) **RHC services.** Payment is limited to ~~two~~ four visits per recipient per month. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-51 for exceptions to this limit for children under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Additional preventive service exceptions include:

(A) **Obstetrical care.** A Rural Health Clinic should have a written contract with its physician, nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how maternity care will be billed to Medicaid, in order to avoid duplicative billing situations. The agreement should also specifically identify the physician's compensation for rural health and non-rural health clinic (other ambulatory) services.

(i) If the clinic compensates the physician, nurse midwife or advanced practice nurse to provide maternity care, then the clinic must bill the Medicaid program for prenatal care as a "maternity encounter". A maternity encounter includes a comprehensive physical examination and/or routine scheduled medical visits. Payment will be allowed for one initial visit and 13 subsequent visits:

(I) three visits during the first trimester;

(II) three visits during the second trimester; and

(III) eight visits during the third trimester.

(ii) If the clinic does not compensate its practitioners to provide maternity care, then the independent practitioner must bill the Medicaid program for obstetrical care according to the method described in the Medicaid provider specific fee-for-service rules for physicians, nurse midwives and advanced practice nurses. (Physician Assistants are excluded from billing the Medicaid program as individual practitioners.)

(iii) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.

(iv) A standard profile of routine obstetrical lab services may be billed separately. The appropriate revenue code and CPT codes are used.

(B) **Family planning services.** Family planning services are paid on an encounter basis. Coverage of family planning services are available to women between the child bearing age of 12 and 50. Family planning encounters do not count as one of the two RHC visits per month.

(i) A family planning visit includes a physical examination, counseling and prescribing appropriate medications and/or contraceptive methods.

(ii) Prescribed contraceptives may be billed independently from the family planning encounter.

(2) **Other ambulatory services.** Services defined as "other ambulatory" services are not considered a part of a RHC encounter and are therefore billable to the Medicaid program by the RHC or provider of service on the appropriate claim forms. Other ambulatory services are subject to the same scope of coverage as other Medicaid services billed to the program, i.e., limited adult services and some services for under 21 subject to same prior authorization process. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-57 through 317:30-3-60 for general coverage and exclusions under Medicaid fee-for-services. Refer to OAC 317:30-3-51 for exceptions under EPSDT. Some specific limitations are applicable to other ambulatory services as set forth in Specific Provider Rules and excerpted as follows: Coverage under optometrists for adults is limited to treatment of eye disease not related to refractive errors. There is no coverage for eye exams for the purpose of prescribing eyeglasses, contact lenses or other visual aids. (See OAC 317:30-5-431.)

PART 63. AMBULATORY SURGICAL CENTERS

317:30-5-566. Outpatient surgery services

The covered facility services are defined as those services furnished by an ASC or OHF in connection with a covered surgical procedure.

(1) **Services included.** Services included in the facility reimbursement rate are:

(A) Nursing, technicians, and other related services. These include all services in connection with covered procedures furnished by nurses and technical personnel who are employees of the facility. In addition to the nursing staff, this category would include orderlies and others involved in patient care.

(B) Use by the patient of the facility. This category includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use by the patient's relatives in connection with surgical services.

(C) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment. This category includes all supplies and equipment commonly furnished by the facility in connection with surgical procedures, including any drugs and biologicals administered while the patient is in the facility. Surgical dressings, other supplies, splints, and casts include only those furnished by the facility at the time of surgery. Additional supplies and materials furnished later would generally be furnished as incident to a physician's service and not as a facility service. Supplies include those required for both the patient and facility personnel, i.e., gowns, masks, drapes, hoses, scalpels, etc., whether disposable or reusable.

(D) Diagnostic or therapeutic items and services directly related to the surgical procedures. Payment to the facility includes items and services furnished by facility staff in connection with covered surgical procedures. These diagnostic tests include but are not limited to tests such as urinalysis, blood hemoglobin or hematocrit, CBC and fasting blood sugar, etc.

(E) Administrative, recordkeeping and housekeeping items and services. These include the general administrative functions necessary to run the facility, such as scheduling, cleaning, utilities, rent, etc.

(F) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood ~~products~~ fractions furnished during the course of the procedure will be included in the payment for the facility charge. ~~In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.~~

(G) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.

(2) **Services not included in facility reimbursement rates are:**

(A) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post-operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which the individual physician usually includes in a set "global" fee for a given surgical procedure.

(B) The sale, lease or rental of durable medical equipment (DME) to patients for use in their homes. If the facility furnishes items of DME to patients it should be treated as a DME supplier and this requires a separate contract and separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(C) Prosthetic devices. Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prostheses is intraocular lenses (IOL's). These should be billed as a separate line item.

(D) Ambulance services. If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs. This requires a separate contract and a separate claim form.

(E) Leg, arm, back and neck braces. These items are not included in the facility payment. Payment is limited to the scope of the Authority's Medical Programs.

(F) Artificial legs, arms and eyes. This equipment is not considered part of a facility service and is not included in the facility payment rate. Payment is limited to the scope of the Authority's Medical Programs.

(G) Services of an independent laboratory. Payment for laboratory services is limited to the scope of the Authority's Medical Programs.

(H) Reimbursement - facility services. The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, reimbursement will be made for only the major procedure. Reimbursement will be made at a state-wide payment rate based on Medicare's established groups as adapted for Medicaid.

(3) **Compensable procedures.** The List of Covered Surgical Procedures in (1) of this Section sets out those procedures for which the Authority will recognize a facility charge if otherwise compensable under the Authority's Medical Programs. If a procedure code is not on the list the Authority will not pay a facility charge.

(A) The inclusion of a procedure on this list does not in any way change any of the overall coverage limitations or exclusions of the Medicaid program. For instance, the program generally excludes coverage for cosmetic surgery, surgery for obesity, sexual reassignment, and removal of benign skin lesions. This list sets out the coverage and payment provisions if the procedure is otherwise compensable.

(B) The procedures are listed by body system, HCPCS codes, a brief description of the procedure and the applicable group payment rate.

(C) The HCPCS codes further identify the compensable procedures and should be used in billing.

[OAR Docket #04-1018; filed 5-24-04]

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

[OAR Docket #04-1020]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-53. [AMENDED]
Part 5. Eligibility
317:30-3-73. [AMENDED]
317:30-3-76. through 317:30-3-77. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-8. [AMENDED]
317:30-5-18. [AMENDED]
Part 15. Child Health Centers
317:30-5-198. [AMENDED]
(Reference APA WF # 03-24, 03-37 and 03-41)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 441.253; 42 CFR 441.254; 42 CFR 441.61(c)
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ANALYSIS:
Medical Providers-Fee for Service, Physicians specific, rules are revised to comply with federal regulations found in 42 CFR 441.253 and 441.254 regarding payment for the sterilization of mentally competent individuals aged 21 or older. Current agency rules state that in order for the sterilization of a competent individual over 21 to be compensable under Medicaid, the individual cannot have previously resided in an institution. Federal regulations have been amended to allow for payment for sterilizations of mentally competent individuals aged 21 or older as long as they are not currently institutionalized. Additional revisions will clarify rules regarding retroactive eligibility and correct an erroneous policy reference.

Medical Providers-Fee for Service, Eligibility specific, rules are revised to revoke an obsolete section that contains a general list of persons eligible for Medicaid; rules regarding clients' financial eligibility for Medicaid are found in the agency's existing Medical Assistance for Adult and Children-Eligibilty (OAC 317:35) rules. Medical Providers-Fee for Service, Child Health Centers specific, rules are revised to allow the dentists in Child Health Centers to bill for dental services using the fee-for-service fee schedule. The revision will provide more adequate reimbursement for the Oklahoma State Department of Health and better tracking of services for OHCA. Oklahoma State Department of Health dentists currently bill a bundled encounter rate. This existing method does not allow OHCA to track the services that are provided without a chart review. The rule revision will allow OHCA to track the services by claims submission.

Medical Providers-Fee for Service, Physicians specific, rules are revised to clearly state that cosmetic surgical procedures are not compensable for adults. Various procedure codes for adults for cosmetic surgery are also deleted from agency rules.
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 25, 2004.

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-53. Dental services

At a minimum, dental services include relief of pain and infection; restoration of teeth and maintenance of dental health; and/or oral prophylaxis one each 12 months. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, amalgam and composite restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic flippers and lingual arch bars; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized. (Refer to OAC ~~317:30-5-675~~ 317:30-5-695 for amount, duration and scope.)

PART 5. ELIGIBILITY

317:30-3-73. Persons eligible for medical assistance [REVOKED]

~~(a) The following persons are eligible for medical assistance:~~

~~(1) All persons receiving a State Supplemental Payment (aged, blind or disabled) and all persons included in an active Temporary Assistance for Needy Families (formerly Aid to Families with Dependent Children) case. This includes essential persons who were included in the case prior to January 1974, and persons who are eligible after disregard of OASDI cost of living (COLA) increases. These individuals are identified by a permanent plastic identification card.~~

~~(2) Child (residing in Oklahoma) included in an active Foster Care case.~~

~~(3) All persons determined categorically needy but not receiving a money payment.~~

~~(4) All persons otherwise eligible for medical assistance under the age of 21 whose income exceeds the categorically needy standards.~~

~~(5) Any women who, while pregnant, were eligible for, applied for, and received medical assistance under the approved State plan. All pregnancy related and postpartum services will continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.~~

~~(6) Persons in a nursing home not receiving a money payment but eligible for medical services.~~

~~(7) Former Temporary Assistance for Needy Families (TANF) recipient may be eligible for medical assistance for four months after they become ineligible for TANF payment due to increased earnings.~~

~~(8) Federal regulations require payment for emergency medical services in behalf of legalized aliens, illegal aliens, and ineligible aliens. Legalized aliens who are Cuban/Haitian, Aged, Blind, or Disabled and individuals under 19 years of age are entitled to the full scope of Medicaid coverage when otherwise eligible. It must be established that the individual has/had a medical condition (including emergency labor and delivery) with acute symptoms such that the absence of immediate medical attention might result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part. In order to establish this condition, the provider should submit MS-MA-5 to the local county Department of Human Services office showing the medical condition and the service provided in order that it can be substantiated that the individual's condition meets the Federal definition of~~

~~emergency medical services. After this is established, the provider will receive an authorization to bill for the services.~~

~~(9) Refugees eligible for a money payment or medical assistance only.~~

~~(b) Any questions regarding the eligibility of an individual, should be referred to the local county Department of Human Services office.~~

317:30-3-76. Retroactive eligibility [REVOKED]

~~Medicaid coverage may be retroactive prior to the month in which application was made as long as the application is made within three months of the date of service. The conditions which must be met for retroactive eligibility are:~~

~~(1) Verified Medicaid covered services were incurred, and~~

~~(2) All eligibility requirements were met for the period services were provided.~~

317:30-3-77. Notification of needed medical services

(a) When an individual not currently eligible, including Medicare eligible individuals, requests the physician and/or hospital to bill the Authority for medical services, Form MS-MA-5, Notification of Needed Medical Services, may be completed by the physician and a designated representative of the facility which is to provide the medical services or the patient, parent or guardian may make application by completing an Application for Medical Services. The original forms are routed to the Oklahoma Department of Human Services office in the county of the patient's residence for determination of eligibility. The date of the application is the date the first form received is stamped into the local ~~DHS~~ OKDHS county office. If the patient is in the hospital, application should be made while the patient is still in the hospital, if at all possible. ~~The application must be received in the local DHS county office no later than the third month following the month in which the service was provided.~~

(b) For pregnant women requesting medical services, Form MS-MA-5 is not required, but will be accepted as medical verification of pregnancy. If Form MS-MA-5 is not completed, a letter or written statement from the physician or certified nurse midwife is acceptable. Pregnancy may also be verified by submission of a copy of a laboratory report indicating the individual is pregnant. The expected date of delivery must also be established. This can be established from either medical information from the physician or nurse midwife or, in absence of these reports, the applicant's statement.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-8. Surgery

(a) **Use of surgical modifiers.** The Physicians' Current Procedural Terminology (CPT) provides for 2-digit surgical modifiers to further describe surgical services. All of these modifiers must be used on OHCA claims when applicable. The CPT also provides an alternate method of using a special 5-digit code beginning with 099--. These codes will not be accepted by OHCA. This method cannot be used to record modifications to the procedure code. Use the appropriate 2-digit modifier placed just to the right of the 5-digit surgical procedure code.

(b) **Description of modifiers and how they are paid.**

(1) -20 Microsurgery - OHCA does not make an additional payment for this modifier. The procedure will be paid at the regular OHCA allowable.

(2) -22 Unusual services - OHCA does not make an additional payment for this modifier. The procedure will be paid at the regular OHCA allowable.

(3) -26 Professional component - This modifier is used to identify a professional component. It is used when the physician provides an interpretation rather than a full-service procedure. Modifier -26 will also be used by the hospital-based radiologist or pathologist on radiology, surgical pathology and echocardiography done in the hospital. The allowables for modifier -26 are listed in the Authority's listing of the procedure-based maximum allowable payments.

(4) -47 Anesthesia by surgeon - OHCA does not make an additional payment for this modifier. OHCA does not make an additional payment for local anesthesia. OHCA will pay additional for surgical procedure codes 62274 through 62279 and nerve block, codes 64400 through 64530. These codes are used by surgeons or obstetricians when applicable without modifier -47. The procedure will be paid at the regular OHCA allowable. Anesthesia coding and methodology is described at the front of the CPT for the practicing anesthesiologist.

(5) -50 Bilateral procedure and - 51 Multiple surgery - There has been some misunderstanding about the use of modifier -50 (bilateral surgery) and -51 (multiple surgery). These modifiers are not interchangeable. They have very different meanings and result in very different payments.

(A) Bilateral Procedure. This modifier is to be used when there is no specific code in the CPT for a bilateral procedure. List the bilateral procedure on one line followed by modifier -50. The payment will be 150 percent of the base allowable for the procedure so it is no longer necessary to list the procedure twice on a claim when it is bilateral. The units of service are shown as "1".

(B) Multiple surgery. When a surgeon or assistant surgeon performs multiple surgery, modifier -51 is applied to the secondary procedures. The multiple surgery rule provides that the second and subsequent surgeries are paid at a lesser amount. The major procedure is listed without a -51 modifier. This procedure will be whole or full allowable. All other procedures done at the same session are identified

by modifier -51 . If the secondary procedure(s) require modifier -51 and modifier -51 is not used, the claim will be denied with the message, "756 - must add modifier to CPT/HCPC." Modifier -51 prices the claim at fifty percent of the allowable.

(6) -52 Reduced services - This modifier will be handled like modifier -51. The claim will be paid at 50 percent of the allowable.

(7) -54 Surgical care only - This is applied to the procedure code when the physician performs itinerant surgery or another physician provides the post-operative care. OHCA will pay this at eighty percent of the allowable for the full procedure.

(8) -55 Postoperative management only - When one physician performs the postoperative management and another physician has performed the surgical procedure, the postoperative component is identified by adding the modifier -55 to the usual procedure number. When the surgery is performed by an "itinerant surgeon", and post-operative care is provided by another physician, payment is made for postoperative care under modifier -55 at the rate of 20% of the surgical allowable. When the surgery is cataract surgery performed by an ophthalmologist as an "itinerant surgeon", the postoperative care is paid to the optometrist providing the postoperative care under modifier -55. Payment in this instance will also be made at 20% of the surgical allowable.

(9) -56 Preoperative management only - OHCA will deny payment for this modifier. The physician who provides the preoperative care files under the appropriate medicine codes. A preoperative exam is considered part of the global fee for surgery.

(10) -62 Two surgeons - This modifier is used when two surgeons work as co-surgeons. The code is used when the skills of two surgeons (usually of different specialties) are required in the management of a specific surgical procedure. OHCA will pay this at sixty percent of the allowable for the full procedure. The claims from both surgeons must reflect this modifier.

(11) -66 Surgical team - OHCA will deny payment for this modifier. Each physician must file individually using appropriate modifiers.

(12) -75 Concurrent care - This modifier is used when the patient requires the services of two or more physicians. All claims for payment of concurrent care are suspended for medical review. This -75 modifier shows that a specialist is seeing the patient in consultation and rendering a special service or procedure in addition to the services of the admitting physician or primary physician.

(13) -76 Repeat procedure by same physician - This is not to be used for bilateral surgery. When the same physician performs the same procedure two or more times on the same day, the claim is billed showing the procedure code and the number of times it was performed on one line unless the code itself signifies that multiple services were provided. This is particularly important for radiologists, as repeat procedures on the same day may otherwise deny as duplicates. However, if a repeat procedure on same day was omitted on the first filing, a claim is filed with modifier -76. If the claim is for professional component, modifier -26 must be entered as the first modifier and -76 as the second modifier. Alternately, the physician files an adjusted claim showing the correct number of procedures.

(14) -77 Repeat procedure by another physician - This is not to be used for bilateral surgery. This modifier is used when appropriate as it identifies that the claim is not a duplicate of another physician's services. This is especially important for radiologists. If the claim is for professional component, modifier -26 is entered as the first modifier and - 77 as the second modifier.

(15) -78 Return to the operating room for a related procedure during the postoperative period - A procedure with this modifier suspends for physician review to determine appropriate payment.

(16) -79 Unrelated procedure or service by the same physician during the postoperative period - A procedure with this modifier suspends for physician review to determine appropriate payment.

(17) -80 Assistant surgeon:

(A) The assistant surgeon identifies his service by the use of modifier -80 or -82 as appropriate. This modifier is applied to each and every surgical procedure code listed on his claim.

(B) Where there is multiple surgery, the major procedure is followed by -80 and all secondary procedures will have two modifiers: -51, -80. These will follow the procedure code and be on the same line. OHCA will pay modifier -80 at twenty percent of the allowable for the full procedure. All secondary procedures require two modifiers, -51 and -80, and pay ten percent of the allowable for full procedure.

(18) -81 Minimum assistant surgeon - OHCA will deny payment for this modifier.

(19) -82 Assistant surgeon (when qualified resident surgeon not available) - This modifier is used when the claiming physician is the assistant surgeon in a teaching hospital; otherwise, the claim will be denied. OHCA will recognize modifier -82 and pay the modifier at twenty percent of the allowable for the procedure. See modifier -80 for multiple surgery.

(20) -90 Reference (outside) laboratory - OHCA denies payment for this modifier, since the provider performing the procedure must file the claim.

(21) -99 Multiple modifiers - Do not use modifier -99 on the claim. Where two modifiers are required, list the two modifiers on the claim and not the -99 modifier. If modifier -99 is used, OHCA will deny the claim.

(c) **Bilateral surgery.** When a bilateral procedure is performed, the physician lists the procedure only once on a single line and identifies it as bilateral by modifier -50. Additionally, the narrative description identifies it as bilateral so that the procedure code modifier and the description are compatible. This is true even when one physician does one side and another does the other side. In such instances the appropriate modifiers would be -50, -62. Both follow the procedure code and are on the same line.

(1) Modifier -50 has been developed so that CPT manual may eventually eliminate the use of special procedure codes to identify bilateral procedures and to provide for uniform coding of all bilateral procedures. The CPT manual states: "Use of this modifier will eventually eliminate many of the bilateral procedure numbers now listed separately by five digit codes."

(2) However, if the procedure code states bilateral, do not use the -50 modifier as the allowable has already been calculated as a bilateral procedure. It is extremely important that modifier -50 be applied only to bilateral procedures and not to other multiple surgery procedures. OHCA will suspend all modifier -50 claims for medical review to assure proper payment.

(d) **Multiple surgery.** When a surgeon or assistant surgeon performs multiple surgeries, modifier -51 is applied to secondary procedures. The major procedure must not have modifier - 51 applied.

(1) When modifier -51 is used OHCA applies the multiple surgery rule. The multiple surgery rule provides that under certain circumstances the second and subsequent surgeries are paid at a lesser amount. OHCA currently pays procedure codes with modifier -51 at 50 percent of the full allowable for the procedure.

(2) One other issue is, given two or more procedures performed on the same person, on the same day, when does the multiple surgery rule apply? It is important to distinguish between multiple surgery and the multiple surgery rule. Multiple surgery refers to more than one surgical procedure done on the same person on the same day. The multiple surgery rule provides that under certain circumstances the second and subsequent surgeries are paid at a lesser amount.

(A) Some surgeries are never paid under the multiple surgery rule. In other words, they are never compensable when done in conjunction with other surgeries; payment is made only for the major procedure. Examples are exploratory laparotomy, lysis of adhesions or appendectomy for staging done in conjunction with other abdominal surgery. These procedures are always incidental to the major procedure.

(B) There are many surgeries which always include lesser surgeries. For example, a TUR always includes a cystoscopy; bronchoscopy always includes laryngoscopy. Payment for vaginal delivery always includes payment for any cervical block, episiotomy or episiotomy repair or pudendal block.

(C) Some surgeries do not contribute significantly to the difficulty of a major surgical procedure. These surgeries are denied because they do not represent any significant additional time or effort. An example is liver biopsy during other abdominal surgery.

(D) Some procedures, although multiple, have single codes which combine the procedures. For example, a skin graft to an area may include obtaining the graft from a different area and an arthrodesis code may specify that it includes obtaining the bone graft.

(E) Bilateral multiple surgery using modifier -50 is usually subject to the multiple surgery rule so that modifier -50, followed by -51 may be necessary for a bilateral secondary procedure. The result will be that an allowable of 150 percent is cut in half, or 75 percent of the basic allowable.

(F) Some multiple surgeries are properly treated as co-surgery under a single procedure code. For instance, a neurosurgeon and orthopedist may work together on a laminectomy with arthrodesis (single procedure code) or a neurosurgeon and ENT surgeon may work together on a transnasal surgery on the pituitary gland. Co-surgery is billed using modifier -62.

(3) There are two special procedure codes which may be used when microdissection is involved:

(A) 64830. Microdissection and/or repair of nerve. This code is listed on the next claim line immediately below the nerve repair and the allowable is 50 percent of the allowable for the repair itself.

(B) 61712. Microdissection, intracranial or spinal procedure. This code is listed on the next claim line immediately below the major procedure and the allowable is 25 percent of the major procedure code allowable.

(e) **Surgical codes not treated as multiple surgery.** There are some surgical procedures which OHCA does not recognize as requiring a multiple surgery modifier. When these procedures are performed in conjunction with another surgical procedure, these procedures will be paid at the full allowable after review.

(f) **Incidental procedures.** Some procedures are rarely compensable when done in conjunction with another surgical procedure. These are procedures which are incidental to the major procedure, such as an incidental appendectomy or a routine intra-abdominal biopsy. These procedures are identified in the CPT manual by the notation "Separate procedure" when they can also be performed as an independent procedure. Following are some of the most common:

(1) Appendectomy with hysterectomy.

(2) Exploratory laparotomy with any abdominal or pelvic surgical procedures.

(3) Ovarian cystectomy with hysterectomy or other ovarian surgery such as wedge-resection of ovaries.

(4) Diagnostic arthroscopy of the knee with any other arthroscopic surgery of the knee.

(5) Diagnostic laryngoscopy with any bronchoscopy procedure.

(6) Only one laparoscopic procedure allowed.

(7) Umbilica hernia repair when done at the same time as a ventral hernia repair.

(g) **Assistant surgeons.** If two surgeons claim as co-surgeons rather than as a primary and assistant surgeon, both use modifier -62 (Two Surgeons) on their claims.

(1) The Authority will not make payment for two assistant surgeons.

(2) Federal rules provide that Medicaid must not make payment for an assistant surgeon in a teaching setting when a resident is available to provide the service. An

assistant surgeon who claims for services provided in a teaching setting uses modifier -82 to identify that a resident was not available. These claims are subject to audit and review of the records. If a physician claims for assistant surgeon when a qualified resident was available, penalties may be levied.

(3) Many procedures do not require an assistant surgeon. OHCA will not pay for an assistant surgeon or co-surgeon when unnecessary.

(h) **Non-compensable surgery.**

~~(1) The following procedure codes (which are not all-inclusive) are denied on adults as~~ Procedures which are cosmetic ~~surgery and require medical review prior to payment on children~~ are not covered for adults. Intradermal introduction of pigments or tattooing is considered cosmetic surgery and non-compensable for adults except when related to breast reconstruction after surgery for breast cancer and considered medically necessary. Intradermal introduction of pigments or tattooing require medical review prior to payment for children.

~~(A) 11950: Subcutaneous injection of "filling" material (e.g., silicone); 1cc or less~~

~~(B) 11951: 1.1 to 5.0cc~~

~~(C) 11952: 5.1 to 10.0cc~~

~~(D) 11954: over 10.0cc~~

~~(E) 15780: Dermabrasion; total face (e.g., for acne scarring, fine wrinkling, rhytids, general keratosis)~~

~~(F) 15781: segmental, face~~

~~(G) 15782: regional, other than face~~

~~(H) 15824: Rhytidectomy; forehead~~

~~(I) 15825: neck with platysmal tightening (platysmal flap, P-flap)~~

~~(J) 15826: glabellar frown lines~~

~~(K) 15829: superficial musculoaponeurotic system (SMAS) flap~~

~~(L) 15831: Excision, excessive skin and subcutaneous tissue (including lipectomy); abdomen (abdominoplasty)~~

~~(M) 15832: thigh~~

~~(N) 15834: hip~~

~~(O) 15835: buttock~~

~~(P) 15836: arm~~

~~(Q) 15837: forearm or hand~~

~~(R) 15838: submental fat pad~~

~~(S) 15839: other area~~

~~(T) 15876: Suction assisted lipectomy; head and neck~~

~~(U) 15877: Suction assisted lipectomy; trunk~~

~~(V) 15878: Suction assisted lipectomy; upper extremity~~

~~(W) 15879: Suction assisted lipectomy; lower extremity~~

~~(2) The following procedure codes are not compensable within the scope of the Title XIX program:~~

~~(A) 11050: Paring or curettement of benign hyperkeratotic skin lesion with or without chemical cauterization (such as verrucae or clavi) not extending through the stratum corneum (e.g., callus or wart) with or without local anesthesia; single lesion~~

~~(B) 11051: two or four lesions~~

~~(C) 11052: more than four lesions~~

~~(D) 11100: Biopsy of skin, subcutaneous tissue and/or mucous membrane (including simple closure), unless otherwise listed (separate procedure); single lesion~~

~~(E) 11101: each separate additional lesion~~

~~(F) 11200: Removal of skin tags, multiple fibrocutaneous tags, any area; up to and including 15~~

~~(G) 11201: each additional ten lesions~~

~~(H) 11400: Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.5 cm or less~~

~~(I) 11401: lesion diameter 0.6 to 1.0 cm~~

~~(J) 11402: lesion diameter 1.1 to 2.0 cm~~

~~(K) 11403: lesion diameter 2.1 to 3.0 cm~~

~~(L) 11404: lesion diameter 3.1 to 4.0 cm~~

~~(M) 11406: lesion diameter over 4.0 cm~~

~~(N) 11420: Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 0.5 cm or less~~

~~(O) 11421: lesion diameter 0.6 to 1.0 cm~~

~~(P) 11422: lesion diameter 1.1 to 2.0 cm~~

~~(Q) 11423: lesion diameter 2.1 to 3.0 cm~~

~~(R) 11424: lesion diameter 3.1 to 4.0 cm~~

~~(S) 11426: lesion diameter over 4.0 cm~~

(i) **General surgery information.**

(1) When a D & C is performed in conjunction with abdominal hysterectomy, the full allowable is paid for the hysterectomy and 50% of the allowable is paid for the D & C (51 modifier required).

(2) When a D & C is performed in conjunction with a vaginal hysterectomy, only the hysterectomy can be paid.

(3) When multiple surgery involves tubal ligation, removal of tubes and ovaries, or other procedures for which specific codes exist, the regular procedure code is to be used. The proper consent form must also accompany these claims. If the multiple surgery on a person under 21 years of age involves tubal ligation; removal of the tubes and ovaries, or other procedures for which specific codes exist, the sterilization procedure is not compensable. No consent form is necessary since sterilization may not be paid for persons under 21 years of age. A postpartum tubal ligation (Procedure Code 58605) is paid at one hundred percent of the allowable charge if the patient is over 21 years of age and the claim is accompanied by an acceptable consent form.

(4) Vasectomy requires sterilization consent form. Considered incidental in conjunction with any urological operative procedure.

(5) A cochlear implant device is not covered for persons between the ages of 21 and 65. Cochlear implant is covered for persons between the ages of two through 17 who meet all of the guidelines listed below.

(A) No contraindications to the implant, including those described in the product's FDA-approved package insert.

(B) Diagnosis of bilateral profound sensorineural deafness with little or no benefit from a hearing (or vibrotactile) aid, as demonstrated by the inability to improve on age appropriate closed-set word identification tasks.

(C) Freedom from middle ear infection, an accessible cochlear lumen that is structurally suited to implantation, and freedom from lesions in the auditory nerve and acoustic areas of the central nervous system.

(D) The device must be used in accordance with the FDA approved labeling.

(E) Claims are suspended for medical review to determine if the guidelines are met.

(6) All aspects of Electrophysiologic Study of the heart are done at one session (sinus node, A-V node, Bundle of HIS and arrhythmia itself). If more than one area is done at the same session, multiple surgery rules apply.

(7) Additional payment is allowed for use of marlex mesh or graft. Use code 99070.

(8) Gravlee jet washer - procedure is compensable only when the patient exhibits clinical symptoms suggestive of endometrial disease, such as irregular or heavy bleeding.

(9) Payment is not made for pre and post operative care billed in conjunction with surgery. This does not apply to those specific surgical procedures where the fee is considered to be for the surgical procedure only. Under most circumstances, payment for the immediate pre-operative visit within 24 hours in the hospital, or elsewhere to examine the patient, complete the hospital records and initiate the treatment program, is included in the listed value for the surgery. All surgical procedures are considered to include normal, uncomplicated follow-up care unless otherwise indicated. The Combined Procedures Terminology manual identifies most of these procedures with a star.

(10) Additional payment is not allowed for suprapubic cystotomy performed in conjunction with abdominal bladder or urethral surgery (Marshall-Marchetti). When suprapubic cystotomy is performed in conjunction with genito-urinary surgery from the vaginal approach, it would be allowed as multiple surgery.

(11) Balloon valvuloplasty of heart valves other than pulmonic valve, is not covered.

(12) In cataract participatory surgery, payment can be made to the Ophthalmologist for cataract surgery and separate payment to the Optometrist for postoperative care. The surgery by the Ophthalmologist is billed under the appropriate CPT surgical code with modifier 54 and the payment is made at 80% of the surgical allowable. The postoperative care is billed by the Optometrist under the same CPT surgical code with modifier 55 and the payment is made at 20% of the surgical allowable. Cataract participatory surgery is appropriate for surgical procedure codes 66830 through 66986. The Ophthalmologist shows the name of the Optometrist providing postoperative care on the claim in the block requiring the referring physician's name. If this required information is not on the claim, the claim is denied.

(13) Reduction mammoplasty is covered only when the procedure has been determined medically necessary. Prior approval by the Medical Concurrent Review team is required and prior authorization (PA) must be issued by OHCA. ~~This PA applies to fee for service only. If a client is assigned or chooses a managed care plan, authorization procedures are delineated by the Health Plan.~~ The procedure must be performed within the client's Medicaid certification period. The processes and required documentation for prior approval of reduction mammoplasty are provided in subparagraphs (A) and (B) of this paragraph.

(A) Logarithm of body surface area will be applied.

(B) If the data plots above the 22nd percentile, the procedure is considered medically necessary. If the data plots between the 5th and 22nd percentiles, medical necessity would be questioned and referred to the Agency's Medical Director for review. If below the 5th percentile, the procedure is considered cosmetic and not eligible for coverage.

(i) Prior approval is determined based on documentation provided.

(ii) Office progress notes from referring physician with detailed symptomatology must be submitted and includes:

(I) Office progress notes covering one year from current date;

(II) Chronic back and/or neck pain;

(III) Breast pain;

(IV) Intertrigo;

(V) Documented weight loss program if applicable.

(iii) Office progress notes and evaluation from surgeon must be submitted and includes:

(I) Patient's height and weight;

(II) Front and side view photographs;

(III) Projected number of grams of breast tissue to be removed;

(IV) Diagnosis; and

(V) CPT Code.

317:30-5-18. Elective sterilizations

(a) Payment is made for elective sterilizations performed in behalf of eligible individuals if all of the following circumstances are met:

(1) The patient must be at least 21 years of age at the time the consent form is signed;

(2) The patient must be mentally competent, and ~~never previously~~ not presently institutionalized;

(3) A properly completed Federally mandated consent for sterilization form is attached to the claim; and

(4) The form is signed and dated at least 30 days, but not more than 180 days prior to surgery.

(b) When a sterilization procedure is performed in conjunction with a C-Section, the appropriate HCPC coding is used to

report the procedures performed. A consent form is required when the sterilization procedure is performed.
(c) Reversal of sterilization procedures for the purpose of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim.
(d) The ADM-71 consent form was developed to meet federal requirements.

PART 15. CHILD HEALTH CENTERS

317:30-5-198. Coverage by category
(a) **Adults.** There is no coverage for services rendered to adults.
(b) **Individuals eligible for Part B of Medicare.** EPSDT Center services provided to Medicare eligible recipients should be billed directly to the fiscal agent.
(c) **Children.** Payment is made for compensable services rendered in eligible child health centers as described below:
(1) **Child health screening examination.** An initial screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. A child health screening examination must include all of the following components to be compensable.
(A) **Comprehensive health and development history.** This information may be obtained from the parent or other responsible adult who is familiar with the child's history and include an assessment of both physical and mental health development. Coupled with the physical examination, this includes:
(i) **Developmental Assessment.** The developmental assessment includes a range of activities to determine whether an individual's developmental processes fall within a normal range of achievement according to age group and cultural background. Screening for developmental assessment is a part of every routine, initial and periodic screening examination. Providers should acquire information on the child's usual functioning as reported by the child, teacher, health professional or other familiar person and review developmental progress as a component of overall health and well-being given the child's age and culture. As appropriate, assess the following elements:
(I) Gross and fine motor development;
(II) Communication skills, language and speech development;
(III) Self-help, self-care skills;
(IV) Social-emotional development;
(V) Cognitive skills;
(VI) Visual-motor skills;
(VII) Learning disabilities;
(VIII) Psychological/psychiatric problems;
(IX) Peer relations; and/or
(X) Vocational skills.
(ii) **Assessment of Nutritional Status.** Nutritional assessment may include preventive treatment and follow-up services including dietary counseling and nutrition education if appropriate. This is accomplished in the basic examination through:
(I) Questions about dietary practices;
(II) Complete physical examination, including an oral dental examination;
(III) Height and weight measurements;
(IV) Laboratory test for iron deficiency; and
(V) Serum cholesterol screening, if feasible and appropriate.
(B) **Comprehensive unclothed physical examination.** A comprehensive unclothed physical examination includes the following:
(i) **Physical growth.** Record and compare height and weight with those considered normal for that age; record head circumference for children under one year of age; and report height and weight over time on a graphic recording sheet.
(ii) **Unclothed physical inspection.** Check the general appearance of the child to determine overall health status and detect obvious physical defects. Physical inspection includes an examination of all organ systems such as pulmonary, cardiac, and gastrointestinal.
(C) **Appropriate immunizations.** Assess whether the child has been immunized against diphtheria, pertussis, tetanus, polio, measles, rubella, and mumps, and whether booster shots are needed. Immunizations must be provided when medically necessary and appropriate. Immunizations can be provided at the time of the screening when appropriate. Separate payment will be made for immunizations which are given at the time of the screening.
(D) **Appropriate laboratory tests.** Use medical judgement in determining the applicability of the laboratory tests or analyses that are medically contraindicated at the time of the screening, provide them when no longer medically contraindicated. Laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered. As appropriate, conduct the following laboratory tests:
(i)Lead toxicity screening. Is required for every Medicaid eligible child at 12 and 24 months of age. A lead toxicity screening is also required for any Medicaid eligible child 36 to 72 months of age who has not previously been screened for lead poisoning. Any additional lead toxicity screening will continue to be covered based on a provider's medical judgment.
(ii) Anemia test.
(iii) Sickle cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated.
(iv) Tuberculin test. Give a tuberculin test to every child who has not received one within a year.

(v) In addition to the tests listed (i) through (iv) of this subparagraph, there are several other tests to consider. Appropriateness is determined by an individual's age, sex, health history, clinical symptoms and exposure to disease. These may include a urine screening, pinworm slide, urine culture (for girls), serological test, drug dependency screening, stool specimen for parasites, ova, blood and HIV screening.

(E) **Health Education.** Health education is a required component of screening services and includes anticipatory guidance. At the outset, the physical and dental assessment, or screening, gives the initial context for providing health education. Health education and counseling to both parents, guardians or children is required. It is designed to assist in understanding expectations of the child's development and provide information about the benefits of healthy lifestyles and practices as well as accident and disease prevention.

(F) **Vision and hearing screens.** Vision and hearing services are subject to their own periodicity schedules. However, age appropriate vision and hearing assessments must be performed as a part of the screening.

(G) **Dental screening services.** An oral dental examination may be included in the screening and as a part of the nutritional status assessment. Federal regulations require a direct dental referral for every child in accordance with the periodicity schedule and at other intervals as medically necessary. Therefore, when an oral examination is done at the time of the screening, the child may be referred directly to a dentist for further screening and/or treatment.

(H) **Diagnosis and treatment.** When a screening indicates the need for further evaluation of an individual's health, a referral for diagnostic services are defined as those services necessary to fully evaluate defects, physical or mental illnesses or conditions discovered by the screening.

(I) **Other.** Health care, treatment, or other measures to correct or ameliorate defects, physical or mental illnesses or conditions must also be provided and will be covered by the EPSDT Program. The defects, illnesses and conditions must have been discovered during the screening or shown to have increased in severity.

(J) **Services deemed medically necessary.** Services deemed medically necessary and allowable under federal Medicaid regulations, may be covered by the EPSDT Program even though those services may not be part of the Oklahoma Health Care Authority Medicaid program. However, such services must be prior authorized and must be allowable under federal Medicaid regulations. Federal Medicaid regulations also require the state to make the determination as to whether the service is necessary and do not require the provision of any items or services that the state determines are not safe and effective or which are considered experimental.

(2) **Dental screening examination.** An examination for dental disease by an Oklahoma licensed dentist. This will include prophylaxis with fluoride treatment, and charting of needed treatment and, if necessary, x-rays (including two bite wing films).

(3) **Dental sealants.** Professional application of dental sealants when appropriate to prevent pit and fissure caries requires prior authorization. Provider warrants this service to OHCA for a period of eight years, replacement of lost sealants will be at no cost to OHCA. Teeth numbers 03, 14, 19 and 30 are eligible for sealants from eruptions thru eight years of age. Teeth numbers 02, 15, 18 and 31 from eruption thru 13 years of age. Teeth numbers 04, 05, 12, 13, 20, 21 and 29 from eruption thru 14 years of age.

(4) **Dental ~~encounter~~ services.** At a minimum, dental ~~encounter includes~~ services include relief of pain and infection; restoration of teeth and maintenance of dental health; and/or oral prophylaxis one each 12 months. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, amalgam and composite restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement basis, acrylic flippers and lingual arch bars; other restoration, repair and/or replacement of dental defects ~~after the treatment plan submitted by a dentist has been authorized~~. Some services may require prior authorization. Services are to be provided as referenced in OAC 317:30-5, Part 79 (Dentists).

(5) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A Child Health Encounter may include a child health history, physical examination, developmental assessment, nutrition assessment and counseling, social assessment and counseling, genetic evaluation and counseling, indicated laboratory and screening tests, screening for appropriate immunizations, health counseling and treatment of childhood illness and conditions.

(6) **Child health diagnosis encounter.** The child health diagnosis encounter consists of the following procedures:

(A) an intake process and diagnosis interview which reviews the relevant developmental, medical, genetic, psychosocial, educational, and behavioral history;

(B) clinical observations and standardized assessment procedures regarding the client's overall development including emotional, speech, language, or hearing abilities;

(C) feedback regarding evaluation results which is provided to appropriate family and/or collaterals; and

(D) development of a treatment plan.

(7) **Child guidance treatment encounter.** A child guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan.

(8) **Immunization.** Immunizations will include all appropriate immunizations given in connection with a Child Health Screening Examination or Child Health Encounter.

(9) **Multidisciplinary review.** Multidisciplinary review of the treatment plan in order to determine if services should be continued, modified or terminated as evidenced by services rendered in child health and child guidance programs.

(10) **Hearing evaluation.** Hearing evaluation includes pure tone air, bone and speech audiometry provided by a state licensed speech pathologist or audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(11) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed speech pathologist or audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(12) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a client's ear and providing a finished earmold which is used with the client's hearing aid provided by a state licensed speech pathologist or audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

[OAR Docket #04-1020; filed 5-24-04]

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

[OAR Docket #04-1019]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241. [AMENDED]
Part 67. Case Management Services for Under 21
317:30-5-595. through 317:30-5-596.1. [AMENDED]
317:30-5-596.2. [NEW]
317:30-5-597. [AMENDED]
317:30-5-599. [AMENDED]
Part 79. Dentists
317:30-5-697. [AMENDED]
Part 85. ADvantage Program Waiver Services
317:30-5-763. [AMENDED]
Part 95. Agency Personal Care Services
317:30-5-952. [AMENDED]
(Reference APA WF # 03-11, 03-14, 03-16, 03-21, 03-22A and 03-33)
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N/A
ANALYSIS:

Medical Providers-Fee for Service, Outpatient Behavioral Health Services specific, rules are revised to eliminate payment for Behavioral Health services in Nursing Facilities. Behavioral Health services are optional Medicaid services and due to state government budget constraints, the Agency Board voted on December 12, 2002, to eliminate payment for Outpatient Behavioral Health services for Medicaid Nursing Facility residents effective January 1, 2003. This Board approved reduction was approved using the Attorney General's opinion that under an emergency declaration by the Board, action could be taken to maintain a balanced budget. The Board action expires June 30, 2003. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. Therefore, in order to continue this cost saving measure and maintain a balanced budget, revision are needed to eliminate payment for Behavioral Health services in Nursing Facilities.

Medical Providers-Fee for Service, Case Management Services for Under 21 specific, rules are revised to allow payment for indirect behavioral health case management services in order to decrease the utilization of inpatient services by seriously emotionally disturbed children. Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, education and other services essential to meeting basic human needs.

The number of children who are repeat users of high end (acute and residential) hospital psychiatric care continues to increase. Revisions are designed enable the behavioral health case management providers to perform more effective services that should result in a decrease in the repeat utilization of costly hospital services. The proposed changes divide behavioral health case management into two service types, direct and indirect. Direct services activities would be face to face interaction with either the child and/or the child's parent/guardian/family member or service providers. Indirect services activities would be paid at a lower rate and include non face-to-face activities such as phone calls, monitoring of client's progress, and the case manager's travel time to or from activities necessary for the implementation of the service plan. The revisions will increase the case manager's ability to monitor the client's use of community services more effectively in order to assure that resources are maximized. Allowing the case manager to travel to the client's home, when other methods have been unsuccessful, will encourage case managers to continually assess the needs of the child and help divert the client from inpatient services. If a problem is identified, the case manager can then work quickly to align community services, and, in doing so, avoid hospital placement. The current rule disallows this type of monitoring and discourages the case manager from making regular contact. Rule revisions are needed to allow payment for indirect behavioral health case management services in order to decrease the utilization of inpatient services by seriously emotionally disturbed children.

Medical Providers-Fee for Service, Dentist specific, rules are being revised to streamline the process for the billing of oral surgery services. Current rules do not allow oral surgeons to use industry standard practices when billing for services. By allowing the use of the CPT codes and the HCFA-1500 form for claims, the need for a prior authorization for several oral surgery services will be eliminated. Oral Surgeons will benefit from the rule by being able to use industry standard billing practices when filing Medicaid claims. Providers no longer will be required to submit study models and panorex type radiographs for prior approval of all oral surgery procedures. Revisions will be advantageous to the Agency in that the Agency will have the ability to more accurately track oral surgery services and save staff time required to handle prior authorization requests for services. Medicaid eligible children will also benefit by being able to receive needed oral surgery services in a more timely manner. Rule revisions are need to streamline the billing process for oral surgery services.

The Oklahoma Department of Human Services has requested rule revisions to the Medical Providers-Fee for Service, ADvantage Program Waiver and Agency Personal Care Services specific, rules to provide for a new category for ADvantage Case Management services for very rural/difficult services areas. ADvantage Case Management is a service that assists Home and Community Based ADvantage Waiver clients in gaining access to needed waiver, state plan and other services. Case Management coordinates needed medical, social, educational and other services, regardless of the funding source. A Centers for Medicare and Medicaid Services (CMS) review of the ADvantage Program found a shortage of the availability of case management services and case management capacity to monitor the delivery of services, primarily in very rural western and eastern Oklahoma counties. The Case Management capacity problem has recently intensified with the elimination of the Eldercare Program. The Department of Human Services, which pays the state share of the service, has proposed a higher reimbursement rate for services provided to clients who, in general, reside in a county with a population density equal to or less than 25 persons per square mile. A Rates and Standards Hearing recently changed the rate structure and increased the reimbursement rate. Without the proposed rate structure change and rate increase, the remaining Advantage Case Management providers will not have the resources to expand into counties currently being served solely by Eldercare Program providers. Additional revisions will clarify the definition of Case Management and Skilled Nursing services as they relate to the ADvantage Waiver and revise the billing periods for services to coincide with HIPAA regulations.

Medical Providers-Fee for Service, Outpatient Behavioral Health Services specific, rules are revised to meet a January 1, 2004 Health Insurance Portability and Accountability Act (HIPAA) established deadline by which state Medicaid agencies must comply with national coding provisions. Rule revisions are necessitated in order to have Medicaid compensable service titles, descriptions, and units of service match available Health Care Procedure Coding System (HCPCS) codes. Revisions establish the Mental Health Assessment by a Non-Physician service which is compensable for clients who are seeking services for the first time from a contracted agency if the client is not receiving or previously received services from that agency. The service is divided into two types, low or moderate complexity, based on the amount of face-to-face time spent on the assessment. Previously, the provider was compensated for the services by billing for individual or family counseling. The Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) has requested that Program for Assertive Community Treatment (PACT) services be added as a Medicaid compensable behavioral health service. PACT services provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness in need of intensive ongoing services. The ODMHSAS will pay the state match for all PACT providers. The ODMHSAS has also requested Medicaid compensation of Community Based Structured Emergency Care services (new title Crisis Intervention Services-Facility Based) for children. These services are emergency psychiatric and substance abuse services to resolve crisis situations which are currently Medicaid compensable for adults only. The service is designed to evaluate individuals on a short term 24 hour basis, up to 72 hours, and then return them home, if possible, or recommend inpatient residential care. Currently, the ODMHSAS pays the state match for these services for adults and will also pay for children's

services. Medical Providers-Fee for Service, Outpatient Behavioral Health Services specific, rules are in need of revision to comply with HIPAA coding regulations and add new compensable services.

Medical Providers-Fee for Service, ADvantage Program Waiver Services specific, rules are revised to: (1) update service codes consistent with HIPAA national code requirements; and (2) eliminate special code reimbursement for Adult Day Health Facility based respite care.

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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 25, 2004.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-241. Coverage for adults and children

(a) **Service(descriptions and conditions.** Outpatient behavioral health services are covered for adults and children as set forth in this Section, unless specified otherwise, and when provided in accordance with a documented individualized ~~treatment~~ service plan~~;~~ , developed to treat the identified mental health and/or substance abuse disorder s). All services are to be for the goal of improvement of functioning, independence, or well being of the ~~patient~~ client. The ~~patient~~ client must be able to actively participate in the treatment. Active participation means that the ~~patient~~ client must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment. The assessment must include~~.~~ a DSM ~~IV~~ multi axial diagnosis completed for all five ~~axis~~ axes from the most recent DSM version. All services will be subject to medical necessity criteria. For DMHSAS Contracted and Private facilities, an agent designated by the Oklahoma Health Care Authority will apply the medical necessity criteria. For ~~Public~~ public facilities (~~Regionally~~ regionally based CMHCS), the medical necessity criteria will be self-administered. Non prior authorized services will not be Medicaid compensable with the exception of ~~six units of individual counseling, two units of family counseling and one unit of treatment plan development per Medicaid recipient per calendar year, one unit of medical review per month, crisis intervention and community based structured emergency care~~ Mental Health Assessment by a Non-Physician, Mental Health Service Plan Development, Crisis Intervention Services (by a MHP and Facility based), and Program of Assertive Community Treatment Services (PACT). ~~Payment is made for Rehabilitative Treatment services for children.~~ Payment is not made for Outpatient Behavioral Health Services for ~~Children~~ children who are receiving Residential Behavioral Management Services in a ~~Foster or~~ Group Home or Therapeutic Foster Care with the exception of Psychotherapy services which must be ~~are eligible for Outpatient Behavioral Health services only if prior~~ authorized by the OHCA or its designated agent~~, regardless of provider type providing Outpatient Behavioral Health services~~ as medically necessary and indicated, and Crisis Intervention Services (facility based). Residents of nursing facilities are not eligible for Outpatient Behavioral Health services.

~~(1)~~ ~~**Treatment plan development.**~~

~~(A) Description - The treatment plan must be completed by the responsible MHP or other direct service staff. Treatment plan development includes the evaluation of assessment and diagnostic information in order to develop a written individualized treatment plan. The treatment plan must contain the following written elements: patient's strengths/assets, weakness/liabilities, problems, goals, and objectives that are specific and time limited, discharge plan, criteria and date. Each treatment service to be received must be listed. If individual counseling is to be received the theoretical approach to be used should also be included. The frequency of each service and responsible MHP, BHRS, physician or nurse must be delineated. A full five axis DSM IV diagnosis must be documented. Deferred diagnosis for Axis I are not acceptable. Axis II and III must be completed. A completed Client Assessment Record (CAR) is also required. In some circumstances, a completed Child and Adolescent Functioning Assessment Scale (CAFAS) may be substituted for the CAR assessment when authorized by OHCA or its designated agent. A valid compensable treatment plan must be signed and dated by the patient (if over age 14), the parent/guardian (if under age 18), and must include a statement by the patient regarding their involvement, understanding and comments on the plan. For children who are school aged, collaboration with the school system regarding the treatment must be included. Medicaid recipients in an ICF/MR, nursing facility or receiving Residential Behavioral Management Services in a foster or group home are not eligible for this service.~~

~~(B) Providers - Treatment plan development will be provided by the patient treatment team. This includes all staff responsible for the treatment services delineated in the plan. The treatment plan is not valid until it is signed and dated by the responsible MHP, the responsible physician, the patient, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing.~~

~~(2)~~ ~~**Treatment plan review.**~~

~~(A) Description - Treatment plan review is a comprehensive review and evaluation of the current efficacy of the treatment. This includes a review of the treatment plan with the patient and the modification of the plan as required. It includes the CAR evaluation and other documentation required for prior authorization extension requests. In some circumstances, a~~

~~completed Child and Adolescent Functioning Assessment Scale (CAFAS) may be substituted for the CAR assessment when authorized by OHCA or its designated agent. This review must include the participation of the MHP, the physician providing pharmacological management, and other staff relevant to the treatment, as well as the patient. It is designed to assure that medications and all forms of treatment are provided in the least intrusive manner possible, to encourage normalization and prevent institutionalization. All compensable treatment plan reviews must include an update to the individual treatment plan. Patient involvement must be clearly documented, if the patient is 14 years of age or older. If the patient is under 18 years of age, the parent or guardian must also be involved and sign the treatment plan.~~

~~(B) Providers - Treatment plan review will be provided by the treatment team members. The review is not valid until signed and separately dated by the responsible MHP, the responsible physician (if patient is receiving medication or otherwise under the care of the physician), the patient, the guardian (if applicable), and any other direct service provider, and all requirements have been met.~~

~~(3) **Individual counseling.**~~

~~(A) Description - Individual counseling is a method of treating mental health and alcohol and other drug (AOD) disorders using face to face, one on one interaction between a Mental Health Professional and a patient to promote emotional or psychological change to alleviate disorders. MHPs performing this service must use an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the patient's status and response to treatment as well as psycho educational intervention are appropriate components of individual counseling. Individual counseling must be provided in an appropriate, private confidential setting including the patient residence or the provider's office. The counseling must be goal directed utilizing techniques appropriate to the treatment plan and the patient's developmental and cognitive abilities.~~

~~(B) Providers - Individual counseling must be provided by a MHP.~~

~~(4) **Group counseling.**~~

~~(A) Description - Group counseling is a method of treating mental health and AOD disorders using the interaction between a mental health professional and two or more patients to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objective of the individual patient's treatment plan. The individual patient's behavior, the size of the group, and the focus of the group must be included in each patient's medical record. This service does not include social skills development or daily living skill activities and must take place in an appropriate, confidential setting, limited to the therapist and group members. Group counseling is limited to eight total patients except for residents of nursing and ICF/MR facilities where the limit is six total patients. Group size is limited to a total of six patients for all children. A group may not consist solely of related individuals.~~

~~(B) Providers - Group counseling will be provided by a MHP.~~

~~(5) **Family counseling.**~~

~~(A) Description - Family counseling is a face to face interaction between a MHP and family to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. Family counseling must be provided for the benefit of a Medicaid eligible individual as a specifically identified component of an individual treatment plan. Family Counseling must be provided in a confidential setting which may include a patient's residence or provider's office.~~

~~(B) Providers - Family counseling will be provided by a MHP.~~

~~(6) **Psychological testing.**~~

~~(A) Description - a psychologist utilizing tests selected from currently accepted psychological test batteries performs psychological testing. Test results must be reflected in the individual treatment plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.~~

~~(B) Providers - Psychological testing will be provided by a psychologist or certified psychometrist. A psychological technician of a psychologist may provide psychological testing.~~

~~(7) **Medical review.**~~

~~(A) Description - Medical review is a documented review and evaluation by a registered nurse, or physician's assistant focusing on a patient's response to medication and compliance with the medication regimen. The patient must be present at the time of the medical review. The review will include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration. A physician is not required to be present, but must be available for consult. Medical review is designed to maintain the patient on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medical reviews may not be billed for Medicaid recipients who reside in nursing homes or ICF/MR's.~~

~~(B) Providers - Medical reviews must be provided by a licensed registered nurse, or a physician's assistant as a direct service under the supervision of a physician.~~

~~(8) **Individual Rehabilitative Treatment Services.**~~

~~(A) Description - Individual Rehabilitative Treatment Service is a face-to-face, service which is performed to assist Medicaid recipients who are experiencing significant functional impairment due to mental illness and/or AOD disorders in order to increase the skills necessary to perform activities of daily living, and function in the community. Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re) development, lifestyle changes and recovery principles and practices. Each Individual Rehabilitative Treatment Service provided must have an objective and purpose relevant to the individualized treatment plan and the patient diagnosis. Compensable Individual Rehabilitative Services are provided to patients who have the ability to benefit from the services as evidenced by the patient's developmental and cognitive abilities and communication skills. This service may be provided one on one between the patient and BHRS, or may be provided with parent/guardian present or occasionally with only the parent/guardian for the purpose of treating the identified patient's disorder. Other family may be present if pertinent to the treatment goals and objectives.~~

~~(B) Providers. A BHRS or MHP must provide this service. Residents of nursing and ICF/MRs Facilities and children receiving Residential Behavioral Management Group in a Foster or Home setting are not eligible for this service.~~

~~(9) **Group Rehabilitative Treatment Services (adult).**~~

~~(A) Description - Rehabilitative Treatment Services for adults are behavioral health remedial services, which are necessary to improve the patient's ability to function in the community. They are performed to assist patients with mental health illnesses and AOD disorders. Examples of services, which may be covered under the definition of rehabilitation, are: independent living, self-care, social skills (re)development, lifestyle change and recovery principles and practices. Services will be provided in the least restrictive setting appropriate for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. Each service must have purpose that is related directly to the individual treatment plan and diagnosis of each participant. Compensable Rehabilitative Treatment Services are provided to patient's who have the ability to benefit from the service. Travel time to and from activities is not covered. The maximum staffing ratio is fourteen patients to one staff. Countable staff must be appropriately trained in an anger management/intervention technique such as MANDT or CAPE to be directly involved in patient care. Recipients residing in a nursing facility or Intermediate Care Facility for the Mentally Retarded (ICF/MR) will not be eligible for this service.~~

~~(B) Providers - Group Rehabilitative treatment services for adults are provided utilizing a treatment curriculum approved by a MHP. A BHRS or MHP may perform group rehabilitative treatment services.~~

~~(10) **Group Rehabilitation Treatment Services (children).**~~

~~(A) Description - Group Rehabilitative Treatment Services for children are behavioral health remedial services, as specified in the individual treatment plan which are necessary for the treatment of mental health and AOD disorders. They may be provided alone or in conjunction with other behavioral health services. Examples of educational and supportive services which may be covered under the definition of rehabilitative treatment services are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle change and recovery principles. Services will be provided in the least restrictive setting appropriate for the reduction of psychiatric impairment and the restoration of functioning consistent with the requirements of age appropriate behavioral functioning and self-sufficiency. Meeting with family members, legal guardian and/or significant other is covered when the services are directed exclusively to the effective treatment of the recipient. Each service provided under Rehabilitative Treatment Services must have a goal and purpose, which relates directly to the individual treatment plan of each participant. Compensable Rehabilitative Treatment Services are provided to recipients who have the ability to benefit from the service. The child must be able to actively participate and must possess the cognitive, developmental and communication skills necessary to benefit from the service. Travel time to and from activities is not covered. Staff to patient ratio shall not exceed eight children to one staff member. Countable staff must be appropriately trained, including trained and certified in a recognized anger management intervention technique, such as MANDT or CAPE to be directly involved in patient care. Patients residing in a nursing facility or an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or children receiving Residential Behavioral Management services in a foster or group home will not be eligible for this service.~~

~~(B) Providers - Group Rehabilitative Treatment Services for children are provided utilizing a treatment curriculum approved by a MHP. A BHRS or MHP may perform group rehabilitative treatment services.~~

~~(11) **Crisis Intervention Services.**~~

~~(A) Description - Crisis Intervention Services are face to face services of an emergency nature to evaluate and resolve acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal and/or homicidal behaviors. The crisis situation and significant functional impairment must be clearly documented. Crisis Intervention will not be reimbursed for recipients who, while receiving other behavioral health services, experience acute behavioral or emotional dysfunction.~~

~~(B) Providers - Crisis Intervention Services must be provided by a Mental Health Professional (MHP)~~

~~(12) **Community Based Structured Emergency Care.**~~

~~(A) Description - Community Based Structured Emergency Care is emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment and medical assessment. Community Based Structured Emergency Care is compensable for individuals 18 years of age and older.~~

~~(B) Providers - Community Based Structured Emergency Care will be under the supervision of a physician aided by a licensed nurse, and will also include mental health professionals for the provision of group and individual treatment. A physician must be available for the 3 hour period. This service is limited to providers who contract with or are operated by the Department of Mental Health and Substance Abuse Services to provide this service within the overall behavioral health service delivery system.~~

(1) **Mental Health Assessment by a Non-Physician** includes a history of psychiatric symptoms, concerns and problems, an evaluation of mental status, a psychosocial and medical history, a full five axes diagnosis and evaluation of current functioning, and an evaluation and assessment of alcohol and other drug use (historic and present). It must also include an evaluation of the client's strengths and information regarding the client's treatment preferences. For adults, it may include interviews or communications with family, caretakers, or other support persons as permitted by the client. For children under the age of 18, it must include an interview with a parent, or other adult caretaker. For children, the assessment must also include information on school performance and school based services. This service is performed by an MHP. The minimum face-to-face time spent in assessment with the client and others as identified previously in this paragraph for a low complexity Mental Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more. This service is compensable on behalf of a client who is seeking services for the first time from the contracted agency and is not compensable if the client has previously received or is currently receiving services from the agency.

(2) **Mental Health Services Plan Development by a Non-Physician (moderate complexity).** Mental Health Services Plan Development by a Non-Physician (moderate complexity) is to be performed by the practitioners and others who will comprise the treatment team. It is performed with the direct active participation of the client and a client support person or advocate if requested by the client. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Mental Health Services Plan is developed based on information obtained in the mental health assessment and includes the evaluation of assessment by the practitioners and the client of all pertinent information. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the client's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited. For adults, it must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. Each type of service to be received must be delineated in the service plan and the practitioner who will be providing and responsible for each service must be identified. In addition, the anticipated frequency of each type of service must be included. This service is provided by the client treatment team. This includes all staff responsible for the treatment services delineated in the plan, the client (if over age 14), and the parent/guardian if under age 18. The service plan is not valid until it is signed and dated by the responsible MHP, the treating physician, the client, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing. One unit per Medicaid recipient per provider is allowed without prior authorization. If determined by OHCA or its designated agent, one additional unit per year may be authorized.

(3) **Mental Health Services Plan Development by a Non-Physician (low complexity).** Mental Health Services Plan Development by a Non-Physician (low complexity) is for the purpose of reviewing, revising and updating an established Mental Health Services Plan. All elements of the plan must be reviewed with the client and treatment progress assessed. When significant progress toward recovery and the treatment goals is not occurring, the service plan must be altered in order to support and maximize progress toward recovery. When significant progress has been made, the plan must be updated to reflect the improved client's abilities and strengths and services adjusted accordingly. Mental Health Services Plan Development by a Non-Physician (low complexity) will be provided by the treatment team members. The review is not valid until signed and separately dated by the responsible MHP, the responsible physician (if client is receiving medication or otherwise under the care of the physician), the client, the guardian (if applicable), and

any other direct service provider, and all requirements have been met.

(4) **Individual/Interactive Psychotherapy.**

(A) Individual Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change.

(B) Interactive Psychotherapy is generally furnished to children and involves the use of physical aids and nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the client who has not yet developed or who has lost either the expressive language communication skills to explain his/her symptoms and response to treatment, or the receptive communication skills to understand the clinician. It may be used for adults who are hearing impaired and require the use of a language interpreter due to language barriers.

(C) There are a total of six different compensable units of individual/interactive psychotherapy, three each for interactive and individual psychotherapy. They are Individual Insight Oriented, Behavior Modifying and or Supportive Psychotherapy in an Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes), and Interactive Psychotherapy in an office or Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes). There is a maximum of one unit of either Individual or Interactive Psychotherapy per day. With the exception of a qualified interpreter if needed, only the client and the MHP should be present and the setting must protect and assure confidentiality. Ongoing assessment of the client's status and response to treatment as well as psycho-educational intervention are appropriate components of individual counseling. The counseling must be goal directed, utilizing techniques appropriate to the service plan and the client's developmental and cognitive abilities.

(D) Individual/Interactive counseling must be provided by a MHP.

(5) **Group Psychotherapy.**

(A) Group Ppsychotherapy is a method of treating behavioral disorders using the interaction between the MHP and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual client's current service plan. This service does not include social or daily living skills development as described under Individual and Group Psychosocial Rehabilitation Services.

(B) Group Psychotherapy must take place in a confidential setting limited to the MHP conducting the service, an assistant or co-therapist, if desired, and the group psychotherapy participants. Group Psychotherapy is limited to a total of eight adult individuals except when the individuals are residents of an ICF/MR where the maximum group size is six. For all children under the age of 18, the total group size is limited to six. The typical length of time for a group psychotherapy session is one hour. A maximum of two Group Psychotherapy units per day are allowed. Half units are acceptable. The individual client's behavior, the size of the group, and the focus of the group must be included in each client's medical record. A group may not consist solely of related individuals.

(C) Group psychotherapy will be provided by a MHP.

(6) **Family Psychotherapy.**

(A) Family Psychotherapy is a face-to-face psychotherapeutic interaction between a MHP and the client's family, guardian, and/or support system. It is typically inclusive of the identified client, but may be performed if indicated without the client's presence. When the client is an adult, his/her permission must be obtained. Family psychotherapy must be provided for the direct benefit of the Medicaid recipient to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting.

(B) The length of a Family Psychotherapy session is one hour. No more than two hours of Family Psychotherapy are allowed per day. Half units are acceptable. Family Psychotherapy must be provided by a MHP.

(7) **Psychosocial Rehabilitation Services (group).**

(A) Psychosocial Rehabilitation Services are behavioral health remedial services which are necessary to improve the client's ability to function in the community. They are performed to improve the skills and abilities of clients to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may take the form of a psychosocial clubhouse and promote the principles and practices of a work ordered day. Compensable Psychosocial Rehabilitation Services are provided to clients who have the ability to benefit from the service. The services performed must have a purpose that directly relates to the goals and objectives of the client's current service plan. A client who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(B) Travel time to and from Psychosocial Rehabilitative treatment is not compensable. Breaks,

lunchtime and times when the client is unable or unwilling to participate are not compensable. The minimum staffing ratio is fourteen clients for each BHRS or MHP for adults and eight to one for children under the age of eighteen. Countable professional staff must be appropriately trained in a recognized anger behavioral/management intervention program such as MANDT or CAPE. This service may be performed by a BHRS using a curriculum approved by a licensed MHP clinician. In order to develop and improve the client's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the Outpatient Behavioral Health agency site. When this occurs, the BHRS or MHP must be present and interacting, teaching, or supporting the defined learning objectives of the client for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for recipients who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange for transportation for those who require specialized transportation equipment. Residents of an ICF/MR or children receiving Residential Behavioral Management Services in a Group or Therapeutic Foster Care setting are not eligible for this service.

(C) Group Psychosocial Rehabilitation Services are provided utilizing a treatment curriculum approved by a MHP. A BHRS or MHP may perform group psychosocial rehabilitation services.

(8) **Psychosocial Rehabilitation Services (individual).**

(A) Psychosocial Rehabilitation Services (individual) is performed for the same purposes and under the same description and requirements as Psychosocial Rehabilitation Services (group) [Refer to paragraph (7) of this subsection]. It is generally performed with only the client present, but may include the client's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.

(B) A BHRS or MHP must provide this service. Residents of ICF/MR facilities and children receiving Residential Behavioral Management Group services in a Foster or Home setting are not eligible for this service. This billing unit is fifteen minutes and no more than six units per day are compensable.

(9) **Psychological testing.**

(A) Psychological testing is provided by a psychologist utilizing tests selected from currently accepted psychological test batteries. Test results must be reflected in the Mental Health Services plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) Psychological testing will be provided by a psychologist or certified psychometrist. A psychological technician of a psychologist may provide psychological testing.

(10) **Medication Training and Support.**

(A) Medication Training and Support is a documented review and educational session by a registered nurse, or physician's assistant focusing on a client's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the client on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medication Training and Support may not be billed for Medicaid recipients who reside in ICF/MR facilities.

(B) Medication Training and Support must be provided by a licensed registered nurse, or a physician's assistant as a direct service under the supervision of a physician.

(11) **Crisis Intervention Services.**

(A) Crisis Intervention Services are for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal or severe psychiatric distress. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented. Crisis Intervention Services are not compensable for Medicaid recipients who reside in an ICF/MR, or who receive Residential Behavioral Management Services in a Group or Therapeutic Foster home, or recipients who, while receiving other behavioral health services, experience acute behavioral or emotional dysfunction. The unit is a fifteen minute unit with a maximum of eight units per month and 40 units each 12 months per recipient.

(B) Crisis Intervention Services must be provided by a MHP.

(12) **Crisis Intervention Services (facility based stabilization).** Crisis Intervention Services (facility based stabilization) are emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment. Crisis Intervention Services (facility based stabilization) will be under the supervision of a physician aided by a licensed nurse, and will also include mental health professionals for the provision of group and individual treatments. A physician must be available. This service is limited to providers

who contract with or are operated by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) to provide this service within the overall behavioral health service delivery system. Crisis Intervention Services (facility based stabilization) are compensable for child and adult Medicaid recipients. Only children who are enrolled and approved through a Community Based Systems of Care Program are eligible for this service. The unit of service is per hour. The ODMHSAS is responsible for providing the State match for this service.

(13) **Program of Assertive Community Treatment (PACT) Services.**

(A) Program of Assertive Community Treatment (PACT) Services are those delivered within an assertive community based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self contained multi-disciplinary team. The team must use an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for persons most clearly in need of intensive ongoing services. Services must satisfy all statutory required program elements as articulated in the Oklahoma Administrative Code 450:55. At a minimum, the services must include:

(i) Assessment and evaluation;

(ii) Crisis intervention to cover psychiatric crisis and drug and alcohol crisis intervention;

(iii) Symptom assessment, management, and individual supportive psychotherapy;

(iv) Medication evaluation and management, administration, monitoring and documentation;

(v) Rehabilitation services;

(vi) Substance abuse treatment services;

(vii) Activities of daily living training and supports;

(viii) Social, interpersonal relationship, and related skills training; and,

(ix) Case management services.

(B) Providers of PACT services are specific teams within an established mental health delivery organization and must be operated by or contracted with and must be certified by the ODMHSAS in accordance with 43A O.S. 319 and Oklahoma Administrative Code 540:55. The unit is a per diem inclusive of all services provided by the PACT team. No more than 12 days of service per month may be claimed. Medicaid recipients who are enrolled in this service may not receive other Outpatient Behavioral Health Services except for Crisis Intervention Services (facility based stabilization). The ODMHSAS is responsible for providing the state match for this service.

(b) **Prior authorization of services and requirements.** To be authorized to provide individual, group or family ~~counseling~~ psychotherapy, ~~medical review~~ medication training and support, ~~or~~ psychosocial rehabilitation services (individual or group) ~~rehabilitation treatment~~, or Mental Health Services Plan Development (low complexity) the provider must administer fully and document the Client Assessment Record (CAR) evaluation that assesses the client's functional abilities. In some circumstances, a completed CAFAS may be substituted for the CAR assessment when authorized by OHCA or its designated agent. The client must also have a DSM-IV Axis I diagnosis appropriate to his/her symptoms, behaviors, and/or impairments.

(1) The OHCA requires information to be submitted when a provider is requesting prior authorization. If the Medicaid recipient resides in ~~a Nursing Facility or~~ an ICF/MR, or receives Residential Behavioral Management in a Foster Care setting or receives Residential Behavior Management Services in a Group Home setting, the individual ~~treatment~~ service plan required for that service must be included with the request and must reflect the need for the requested Behavioral Health Services. The ~~patient~~ client must agree to the ~~treatment~~ service plan and sign the request. Requests submitted electronically must have signatures on site and available for auditors with signatures dated prior to, or on, the start date for treatment services. The required information for prior authorization includes:

(A) Pertinent demographic and identifying information;

(B) Complete and current (within 30 days of the date submitted to OHCA or its designated agent) CAR assessment (CAFAS or other recognized functional assessment tools may be substituted in some instances when authorized by OHCA or its designated agent);

(C) Complete multi axial DSM ~~IV~~ diagnosis using the most current edition with supportive documentation and, if requested by OHCA or its designated agent, a mental status examination summary;

(D) Psychiatric and treatment history;

(E) ~~Treatment~~ Service plan with goals, objectives and time frames for treatment; and

(F) Services requested.

(2) Medicaid recipients will be considered for prior-authorization after receipt of complete and appropriate information submitted by the provider. Based on diagnosis, functional assessment, history and other Medicaid services being received, the Medicaid recipient may be approved to receive one of four levels of care. There are four levels of care for children and four levels of care for adults. Medicaid recipients who reside in ~~Nursing Facilities or~~ ICF/MRs may be approved for ~~one of two levels of care~~ services according to the level of care established for this population. Medicaid recipients who receive Residential Behavior Management in a Foster Care setting or receive Residential Behavior Management in a Group Home setting may be approved for additional counseling based on demonstrated medical necessity and prior authorization by OHCA or its designated agent, regardless of provider type requesting to perform the additional services. A Medicaid recipient may be approved for a time frame of one to six

months. For each level of care the documentation must illustrate the recipient meets the established medical necessity criteria. The OHCA (or its designated agent) will review the request for completeness and appropriateness. ~~The provider will be notified within 24 hours (excluding weekends and holidays) if the request is incomplete, deficient, or inappropriate, and additional information will be requested.~~ A completed request will be reviewed and processed within ~~72 working hours~~ three business days. Requests will be reviewed by licensed master's prepared therapist (Licensed Clinical Social Workers, Licensed Behavioral Practitioners, Licensed Professional Counselors, Licensed Marriage and Family Therapists) with experience in behavioral health care, or Licensed Registered Nurses with experience in behavioral health care. Psychiatrists, (M.D. and D.O.) and Psychologists possessing current State licenses may be utilized for reviews and appeals.

(3) A prior authorization decision may be appealed by the provider or ~~patient~~ client if filed within five working days of receipt of the decision. The first level of appeal is to request a reconsideration, which will be performed under the supervision of the manager of OHCA's designated agent's Pre-Authorization Unit. If the appeal is not satisfactorily resolved during reconsideration, the provider or ~~patient~~ client may submit an appeal to the OHCA through its standard grievance process (see OAC 317:2).

(4) Providers seeking prior-authorization will follow OHCA's designated agent's Outpatient Behavioral Health Prior Authorization Manual guidelines for submitting requests on behalf of the Medicaid recipient.

PART 67. BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES FOR INDIVIDUALS UNDER 21 YEARS OF AGE

317:30-5-595. Eligible providers

Services are provided by case management agencies established for the purpose of providing case management services.

~~(1) **Program requirements.** Programs must be reviewed in the areas of substance abuse and/or mental health by the Department of Mental Health and Substance Abuse Services (DMHSAS) as an agent of the OHCA in accordance with a current Interagency Agreement for such purposes. The program must be found to be in compliance with the applicable approved OHCA standards for the purpose of providing case management services. Only organizations that have submitted a completed OHCA Case Management Provider Application to DMHSAS before July 1, 2003, will be eligible to be reviewed by DMHSAS for such purposes. On or after July 1, 2003, any organization seeking to be a provider of case management services not having a valid Memorandum of Agreement as an OHCA case management provider, or a completed OHCA Case Management Provider Application with DMHSAS, must demonstrate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the DMHSAS review, in accordance with the above referenced DMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of case management services. As set forth in the current DMHSAS/OHCA Interagency Agreement, reviews conducted by DMHSAS will be limited to determinations that applications for initial and/or continued case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.~~

(~~2~~ 1) **Provider agency requirements.** The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:

(A) ~~Case management staff to serve the target group on a 24 hour on call basis.~~ On or after July 1, 2003, any organization seeking to be a provider of behavioral health case management services not having a valid Memorandum of Agreement as an OHCA case management provider, or a completed OHCA Case Management Provider Application with DMHSAS, must demonstrate appropriate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the DMHSAS review, in accordance with DMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of behavioral health case management services. As set forth in the current DMHSAS/OHCA Interagency Agreement, reviews conducted by DMHSAS will be limited to determinations that applications for initial and/or continued behavioral health case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.

(B) ~~Administrative capacity to fulfill State and Federal requirements.~~ On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to behavioral health case management from JCAHO, CARF, COA, or AOA, and maintain the standards of the accreditation at all times.

(C) ~~Maintenance of programmatic and financial records. Program records should show that the agency is able to develop and maintain assessment records. The financial records should include development of a management system which tracks costs associated with worker activities.~~ OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.

(D) ~~Be an agency which agrees to comply with applicable Federal and State regulations, as set forth in the contractual agreement.~~ Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals under the age of 21 must be community based with a history of serving seriously emotionally disturbed (SED) children and their families.

(E) ~~On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to case management from JCAHO, CARF, COA, or AOA, and meet the standards of the accreditation agency at~~

~~all times.~~ The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes. The financial records should include development of a management system which tracks costs associated with worker activities.

(F) An agency must agree to follow the Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.

(G) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.

(H) An agency must agree to comply with applicable Federal and State regulations, as set forth in the contractual agreement.

(~~F~~I) Agencies will be required to maintain the Code of Federal Regulations (CFR) requirements as required by the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services (CMS) at all times.

~~(G) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.~~

~~(H) Agencies that are eligible to contract with OHCA to provide case management services to consumers under the age of 21 must be community based with a history of serving children and their families. Consumers under the age of 21 must be in imminent risk of out-of-home placement for psychiatric reasons or substance abuse or in out-of-home placement due to psychiatric or substance abuse reasons.~~

(J) Hospitals who are providers of inpatient psychiatric acute or residential services for children are ineligible to contract with OHCA to provide children's behavioral health case management services.

~~(3) **Application to become a provider by the Department of Mental Health.** On or before July 1, 2003, an application as an eligible provider for case management services must be requested from the Department of Mental Health and Substance Abuse Services. This process is in addition to any other application submitted to the Department of Mental Health. The application will be reviewed and the provider will be notified within ten days from receipt of application of the determination. An application must be submitted prior to the beginning of each contract period.~~

~~(4) **Memorandum of agreement.** The Oklahoma Health Care Authority and the Department of Mental Health and Substance Abuse Services have developed a memorandum of agreement that provides for responsibility of payment of the Medicaid state share required for federal financial participation. In accordance with this agreement, DMHSAS has agreed to pay the state share for case management services provided by Public facilities and DMHSAS facilities.~~

~~(5) **Provider types.**~~

~~(A) **Public facilities.** Public facilities are the regionally based Community Mental Health Centers. DMHSAS is responsible for the State's share of Medicaid services. Reimbursement will be at the Public rate.~~

~~(B) **DMHSAS Contracted facilities.** DMHSAS Contracted facilities are those facilities who contract with the DMHSAS to provide services. These facilities receive an appropriation from the DMHSAS and report to DMHSAS via the OMHIS system. DMHSAS is responsible for the State's share of Medicaid services. Reimbursement will be at the Public rate.~~

~~(C) **Private facilities.** Private facilities are those facilities that contract directly with the Oklahoma Health Care Authority to provide case management services. The State's share of Medicaid services is included in the OHCA budget. Reimbursement will be at the Private rate.~~

~~(6) **Service provider education and experience requirements before July 1, 2001.** For case management services to be compensable by Medicaid, the case manager performing the service must maintain current case management certification from the Department of Mental Health and Substance Abuse Services. For those case managers who are certified on or before July 1, 2001, the following educational and experience requirements apply:~~

~~(A) Associates degree in a related human service field; OR~~

~~(B) Two years of college education plus two years or more human service experience; OR~~

~~(C) Bachelor's degree in a related human service field plus one year or more human service experience; OR~~

~~(D) Master's degree in a related human service field.~~

(~~7~~2) **Service provider education and experience requirements ~~after July 1, 2001~~.** ~~The following educational and experience requirements apply after July 1, 2001.~~ For behavioral health case management services to be compensable by Medicaid, the case manager performing the service must have and maintain a current children's behavioral health case manager certification from the Department of Mental Health and Substance Abuse Services (refer to OAC 450:50) and have a:

(A) Bachelor's or Master's degree in a mental health related field including, but not limited to psychology, social work, occupational therapy, family studies, sociology, criminal justice, school guidance and counseling; OR

(B) A current license as a registered nurse in Oklahoma; OR

(C) Certification as an alcohol and drug counselor allowed to provide substance abuse case management to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis~~; AND~~

~~(D) Current case management certification from the Department of Mental Health and Substance Abuse Services~~.

317:30-5-596. Coverage by category

Payment is made for behavioral health case management ~~service~~ services as set forth in this Section.

(1) **Adults.** Coverage for adults is found in OAC 317:30-5-586.

(2) **Children.** Payment is made for services to persons under age 21 as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for initial behavioral health case management services are persons under age 21 who are in imminent risk of ~~out-of-home placement~~ hospitalization for psychiatric ~~reasons~~ or substance abuse reasons or are ~~in out-of-home placement~~ receiving treatment in an inpatient psychiatric hospital and nearing discharge ~~due to psychiatric or substance abuse reasons~~. All behavioral health case management services will be subject to medical necessity criteria. ~~The criteria will be applied to each individual case by an agent designated by the Oklahoma Health Care Authority.~~

(i) ~~Case~~ Behavioral health case management services are provided to assist ~~consumers~~ eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides referral, linkage and advocacy on behalf of the ~~consumer~~ child to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and ~~Case management is designed~~ to assist individuals in accessing services for themselves following the case management guidelines established by the Department of Mental Health and Substance Abuse Services. In order to be compensable, the service must be performed utilizing the DMHSAS Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service recipient and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Helping activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the child and family by phone or face-to-face, to identify immediate needs for return to home/community no more than two business days after notification that the family requests case management services. The case manager will conduct a face-to-face follow-up appointment with the child and family within 72 hours of discharge. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within 24 hours of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The ~~consumer~~ recipient/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) ~~Provision of case management services will not restrict a consumer's free choice of providers. Eligible recipients will have the freedom to choose a case management provider as well as providers of other medical care.~~ An eligible recipient/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the child and family and are not duplicated ~~by other staff~~, behavioral health case management activities will be provided in accordance with ~~a comprehensive~~ an individualized ~~treatment/service~~ service plan. ~~The development of this plan includes clinical staff participation, thus ensuring that staff knows a client has a case manager.~~

(iv) The ~~treatment~~ service plan ~~includes~~ must include goals and objectives that are measurable and time limited and must describe the specific activities to be performed. ~~The plan also includes specific activities. Time spent in planning case management activities or service development is compensated if the consumer is present. If there are outpatient behavioral health services in addition to case management services, the treatment plan must be reviewed and signed by the responsible mental health professional, consumer,~~

~~and physician (if applicable).~~ Behavioral health case management service plan development is compensable if the time is spent communicating with the child, parent/guardian/family member or provider of other services. The plan must be developed with participation by, as well as, reviewed and signed by the child (only if over 16 years of age), the parent or guardian, the behavioral health case manager, and a mental health professional as defined in OAC 317:30-240(c).

(v) Medicaid reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of service plan development.

(II) Face-to-face meetings with the child and/or the parent/guardian/family member for the implementation of activities delineated in the service plan.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the service plan.

(IV) Supportive activities such as non face-to-face communication with the child and/or parent/guardian/family member or the behavioral health case manager's travel time to and from meetings for the purpose of development or implementation of the service plan.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the service plan.

(~~iv~~ vi) Medicaid reimbursable behavioral health case management does not include the following activities:

(I) Physically escorting or transporting a ~~consumer~~ child or family to scheduled appointments or staying with the ~~client consumer~~ child during an appointment; or

(II) ~~Monitoring financial goals~~ Managing finances; or

(III) Providing specific services such as shopping or paying bills; or

(IV) Delivering bus tickets, food stamps, money, etc.; or

~~(V) Services to nursing home consumers; or~~

(~~VI~~ V) Counseling, ~~or~~ rehabilitative services, psychiatric assessment, or discharge planning; or

(~~VII~~ VI) Filling out forms, applications, etc., on behalf of the ~~consumer~~ child when the ~~consumer~~ child is not present; or

(~~VIII~~ VII) Filling out Medicaid forms, applications, etc., or;

(~~IX~~ VIII) Mentoring or tutoring; or

(~~X~~ IX) ~~Services being provided or available from DHS/OJA caseworker; or~~ Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies.

~~(X) Service to children receiving residential behavior management services in a foster home or group home setting; or~~

~~(XI) Services to consumers residing in ICF/MR facilities.~~

~~(B) **Providers.** Case management services must be provided by a Community Mental Health Center or other qualifying provider agency of case management. Two different provider agencies may not bill case management service(s) for the same consumer on the same day.~~

(B) The following Medicaid recipients are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through DHS/OJA staff without special arrangements with DHS, OJA, and OHCA;

(ii) Children receiving services in Residential Behavior Management Services (RBMS) in a foster care or group home setting;

(iii) Residents of ICF/MR and nursing facilities; and

(iv) Children receiving Home and Community Based Waiver services.

~~(3) **Adults.** Coverage for adults is found in OAC 317:30-5-585.~~

(~~4~~ 3) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients should be filed directly with the fiscal agent.

317:30-5-596.1. Prior authorization

(a) Prior authorization of behavioral health case management services ~~and requirements to be authorized to provide case management services~~ is mandatory. The provider must request prior authorization from the OHCA or its designated agent. ~~In order for the services to be prior authorized, consumer information requested must be submitted. Consumer information includes but is not limited to the following:~~

~~(1) Complete multi-axial DSM-IV diagnosis with supportive documentation and mental status examination summary; and~~

~~(2) Treatment history; and~~

~~(3) Current psycho social information; and~~

~~(4) Psychiatric history; and~~

~~(5) Fully developed case management service plan, with goals, objectives, and time frames for services.~~

(b) Medicaid recipients who are eligible for services will be considered for prior authorization after receipt of complete and appropriate information submitted by the provider in accordance with the guidelines for behavioral health case management services developed by OHCA or its designated agent. ~~Based on diagnosis, functional assessment, history and other Medicaid services being received, the Medicaid~~

~~recipient may be approved to receive case management services. Medicaid recipients who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive Medicaid compensable case management services.~~ A Medicaid recipient may be approved for a time frame of one to six months. The OHCA (or its designated agent) will review the initial request ~~for completeness and appropriateness~~ in accordance with the guidelines for prior authorization in the Behavioral Health Case Management Manual. ~~The provider will be notified within 24 hours (excluding weekends and holidays) if the request is incomplete, deficient, or inappropriate, and, if so, additional information will be requested. A completed request will be reviewed and processed within 72 working hours.~~ An initial request for case management services requires the provider to submit specific documentation to OHCA or its designated agent. A fully developed service plan is not required at the time of initial request. The provider will be given a time frame to develop the service plan while working with the child and his/her family and corresponding units of service will be approved prior to the completion of the service plan. The provider will be required to engage with the child/family within 72 hours of discharge from an inpatient psychiatric hospital and/or within 72 hours of receiving the request for services from the family or other community resource. The expectation is for the behavioral health case manager to immediately engage with the child/family to prevent hospital readmission and to refer to needed community resources. Extension ~~Requests~~ requests will be reviewed by licensed master's prepared therapists (Licensed Clinical Social Workers, Licensed Professional Counselors, Licensed Marriage and Family Therapists, Licensed Behavioral Practitioners) with experience in behavioral health care, Licensed Registered Nurses with experience in behavioral health care, Psychiatrists (M.D. and D.O.), or Psychologists possessing current state licensure.

(c) A prior authorization decision may be appealed by the provider or ~~consumer~~ client if filed within five working days of receipt of the decision. The first level of appeal is to request a reconsideration from OHCA's designated agent. If the appeal is not satisfactorily resolved during reconsideration, the provider or ~~consumer~~ client may submit an appeal to the OHCA through its standard grievance process (refer to OAC 317:2).

(d) Providers seeking prior authorization will follow OHCA's designated agent's ~~Outpatient Behavioral Health Prior Authorization Manual~~ prior authorization process guidelines for submitting behavioral health case management requests on behalf of the Medicaid recipient.

317:30-5-596.2. Direct and Indirect Case Management services

Case management services are provided using one of two categories of service.

(1) **Direct case management services.** For Direct case management services the behavioral health case manager performs face to face interactions with either the child and/or the child's parent/guardian/family member or service providers necessary for the implementation of activities delineated in the service plan. Service plan development, when performed face to face, is considered direct behavioral health case management.

(2) **Indirect behavioral health case management.** For Indirect case management services the behavioral health case manager performs non face to face services related to the child's case, excluding those activities cited as non Medicaid compensable in OAC 317:30-5-596(2)(vi). Examples of indirect behavioral health case management are phone calls, monitoring of client progress and the case manager's travel time to or from activities necessary for the implementation of the service plan. Other indirect services may be communication through letters, memorandums or e-mail to treatment or other service providers necessary for the implementation of activities delineated in the service plan. Electronic communication documentation must be encrypted and meet HIPAA guidelines.

317:30-5-597. Reimbursement

(a) Reimbursement for case management services is determined using a Relative Value Unit system (RVU) fee schedule. A monetary conversion factor (CF) will be used to determine the overall level of payments to providers. The conversion factor uses the l996 baseline payment data, adjusted to **reduce** Medicaid's payment of fixed costs. The formula for calculating the rates is as follows: RVU x CF = Rate.

(b) Each unit of case management is provided using one of two categories of service. These categories are Direct and Indirect Case Management services. The rate for Direct case management service is the rate described in (a) of this Section. The rate for Indirect case management service is based on the Direct case management rate less a provider negotiated amount.

(~~b~~c) Case management services are reimbursed using a 15 minute unit of service.

317:30-5-599. Documentation of records

All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service plan, ~~Documentation~~ documentation of each session must include but is not limited to:

(1) goals and objectives addressed,
(2) progress toward goals and objectives,
(3) start and stop times,
(4) date,
(5) staff signature and credentials, and at least one of the following:
  (A) specific activities performed by the behavioral health case manager on behalf of the child related to linkage, referral, or monitoring;
  (B) specific activities related to the monitoring of the child's progress on the goals and objectives contained in the service plan; and
  (C) specific activities necessary for service plan development.

~~(6) specific resources to which the consumer was referred.~~

PART 79. DENTISTS

317:30-5-697. Oral surgery procedures

Some elective oral surgery procedures require a written report or treatment plan be reviewed by the ~~Authority's~~ OHCA Dental Consultant prior to surgery to determine if the service is within the scope of the Dental Program. ~~All maxillofacial bone and joint surgeries for deformities and dysfunctions must be prior authorized. Study models and panorex type radiographs must be submitted to the OHCA Dental Consultant for approval prior to the procedure being performed.~~ All oral surgeons may bill on the HCFA-1500 using CPT codes or the ADA dental claim form using the HCPCS, Level II, Dental codes.

~~(1) All oral surgeons must use the dental claim form and the dental codes contained in this manual.~~

~~(2) All assistant surgery must be prior authorized. Requests for prior authorization (form MS-MA-5) must be filed with the MS-MA-5 from the primary surgeon.~~

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-763. Description of services

Services included in the ADvantage Program are as follows:

(1) **Case Management.**

(A) Case Management services are ~~those which~~ services that assist ~~recipients~~ a client in gaining access to ~~necessary waiver and other Medicaid services~~ medical, social educational or other services, regardless of payment source of services, that may benefit the client in maintaining health and safety. Case managers ~~will~~ initiate and oversee necessary assessments and reassessments to establish or reestablish waiver program eligibility ~~and appropriateness of services~~. Case managers ~~will~~ develop the ~~recipient's~~ client's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the ~~recipient~~ client, as determined through assessments. Case managers ~~will~~ initiate the addition of necessary services or deletion of unnecessary services, as dictated by the ~~recipient's~~ client's condition and available support. Case managers ~~will~~ monitor the ~~recipient's~~ client's condition to ensure delivery and appropriateness of services and ~~will~~ initiate plan of care reviews. ~~Case managers will assist the recipient in accessing medical, social, educational or any other services which may benefit the recipient.~~ If a client requires hospital or nursing facility services, the case manager assists the client in accessing institutional care and, as appropriate, periodically monitors the client's progress during the institutional stay and helps the client transition from institution to home by updating the service plan and preparing services to start on the date the client is discharged from the institution.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training or authority, can perform on behalf of a client;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities;

(iii) If a client is in a hospital or nursing facility and the case manager provides transitional case management services to the client and the client returns home with ADvantage services, case management services provided during the institutional stay, within 120 days of transition to ADvantage, may be authorized for reimbursement and are to be claimed as delivered on the day of discharge from the institution.

(I) If the client has received transitional services but dies prior to discharge, the client is enrolled in the waiver on the date of death, the AA authorizes services for reimbursement and the provider claims services as delivered on the date of client death/waiver enrollment.

(II) If the client has received transitional services but fails to enter the waiver, any transitional services provided are reimbursed as "Medicaid administrative" costs and providers follow special procedures specified by the AA to bill for services provided.

(~~B~~ C) Case Management services are prior authorized and billed per ~~15 minute~~ 15-minute unit of service using the rate associated with the location of residence of the client served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a client who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a client who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to clients that reside in AA identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington

Counties. Services to these clients are prior authorized and billed using the Standard rate.

(iii) The United States 2000 Census, Oklahoma Counties population data is the source for determination of whether a client resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Respite.**

(A) Respite services are provided to ~~individuals~~ clients who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the ~~individual~~ client. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite ~~is an hourly rate~~ services are billed per 15-minute unit service. ~~A~~ Within any one-day period, a minimum of ~~two hours~~ eight units must be provided with a maximum of ~~seven hours~~ 28 units provided. ~~It~~ The service is provided in the ~~recipient's~~ client's home.

~~(C) Facility Based Respite is filed as an hourly rate. A minimum of two hours must be provided with a maximum of seven hours. It is only provided in an Adult Day Health Care Facility.~~

(~~D~~ C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(~~E~~ D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the ~~recipient's~~ client's home.

(3) **Adult Day Health Care.**

(A) Adult Day Health Care is furnished on a regularly scheduled basis for one or more days per week, at least four hours per day in an outpatient setting. It provides both health and social services which are necessary to ensure the optimal functioning of the client. Physical, occupational, respiratory and/or speech therapies may only be provided as an enhancement to the basic Adult Day Health Care service when authorized by the plan of care and billed as a separate procedure. Meals provided as part of this service shall not constitute a full nutritional regimen. Transportation between ~~recipient's~~ the client's residence and the service setting is provided as a part of Adult Day Health Care. Personal Care service enhancement in Adult Day Health Care is assistance in bathing and/or hair washing authorized by the plan of care and billed as a separate procedure. Most assistance with activities of daily living, such as eating, mobility, toileting and nail care, are services that are integral to the Adult Day Health Care service and are covered by the Adult Day Health Care basic reimbursement rate. Assistance with bathing and/or hair care is not a usual and customary adult day health care service. Enhanced personal care in adult day health care for assistance with bathing and/or hair washing will be authorized when an ADvantage waiver ~~consumer~~ client who uses adult day health care requires assistance with bathing and/or hair washing to maintain health and safety.

(B) Adult Day Health Care is a ~~per diem rate, if six or more hours are provided in a day~~ 15 minute unit. No more than 6 hours are authorized per day. ~~If fewer than six hours but at least one hour of service are provided in a day, the service is billed in one hour units.~~ The number of units of service a ~~recipient~~ client may receive is limited to the number of units approved on the ~~recipient's~~ client's approved plan of care.

(C) Adult Day Health Care Therapy Enhancement is a ~~20 minute~~ maximum one session per day unit of service ~~per week~~.

(D) Adult Day Health Personal Care Enhancement is a maximum one per day unit of bathing and/or hair washing service.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the ~~recipient's~~ client's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the ~~recipient~~ client would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the waiver client are excluded.

(B) If a client is in a hospital or nursing facility and environmental modification are required as part of institutional transition services to assist the person to return home safely, environmental services provided during the institutional stay within 120 days of transition to ADvantage, may be authorized for reimbursement and are to be claimed as delivered on the day of discharge from the institution.

(~~B~~ C) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable ~~recipients~~ clients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service shall exclude any equipment

and/or supply items which are not of direct medical or remedial benefit to the waiver client. This service is necessary to prevent institutionalization.

(B) If a client is in a hospital or nursing facility and specialized medical equipment and supplies are required as part of institutional transition services to assist the person to return home safely, specialized medical equipment and supplies provided during the institutional stay within 120 days of transition to ADvantage, may be authorized for reimbursement and are to be claimed as delivered on the day of discharge from the institution.

(~~B~~ C) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code ~~and a modifier~~. All services must be prior authorized.

(6) **Comprehensive Home Care.** Comprehensive Home Care is an integrated service-delivery package which includes case management, personal care, skilled nursing, in-home respite and advanced supportive/restorative assistance.

(A) Comprehensive Home Care is provided by an agency which has been trained and certified by the Long Term Care Authority to provide an integrated service delivery system. Comprehensive Home Care is case management in combination with one or more of the following services:

(i) personal care,
(ii) in-home respite,
(iii) skilled nursing, and/or
(iv) advanced supportive/restorative services.

(B) All services must be provided in the home and must be sufficient to achieve, maintain or improve the ~~consumer's~~ client's ability to carry out daily living activities. However, with OKDHS area nurse approval, or for ADvantage waiver clients, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the client in achieving vocational goals identified on the service plan. The sub-component services of Comprehensive Home Care are the same as described in (A) of this paragraph (see subparagraph (1)(A) of this section for ~~case management~~ Case Management services, OAC 317:35-15-2 for ~~personal care~~ Personal Care service, subparagraph (8)(A) of this section for ~~skilled nursing~~ Skilled Nursing, subparagraph (2)(A) of this section for In-Home Respite, and subparagraph (7)(A) of this section for Advanced Supportive/Restorative Assistance).

(C) CHC services are billed using the appropriate HCPC procedure code along with the CHC provider location code on the claim.

(7) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a ~~recipient~~ client who has a chronic, yet stable, condition. The service assists with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per ~~one hour~~ 15-minute unit of service. The number of units of this service a ~~recipient~~ client may receive is limited to the number of units approved on the plan of care.

(8) **Skilled Nursing.**

(A) Skilled Nursing services are services of a maintenance or preventive nature provided to ~~recipients~~ clients with stable, chronic conditions. These services are not intended to be treatment for an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide, assessment of the ~~recipient's~~ client's health and assessment of services to meet the ~~recipient's~~ client's needs as specified in the plan of care. ~~In addition, these services may include one or more of the following where appropriate to meet the needs of the client and authorized by the client's Case Manager:~~ A skilled nursing assessment/evaluation on-site visit is made to each client for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the client. A monthly visit report will be made to the ADvantage Program case manager, to report the client's condition or other significant information concerning each advanced supportive/restorative care client.

(i) The ADvantage Program case manager may recommend authorization of Skilled Nursing services for assessment/evaluation of:

(I) the client's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the client's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the ADvantage Program case manager may recommend authorization of Skilled Nursing services for the following:

(~~i~~ I) filling a one-week supply of insulin syringes for a blind diabetic who can self-inject the medication but cannot fill ~~his~~ his/her own syringe. This service would include monitoring the ~~patient's~~ client's continued ability to self-administer the insulin;

(~~ii~~ II) setting up oral medications in divided daily compartments for a ~~recipient~~ client who

self-administers prescribed medications but needs assistance and monitoring due to a minimal level or disorientation or confusion;

(~~iii~~ III) monitoring a ~~recipient's~~ client's skin condition when a client is at risk of skin breakdown due to immobility or incontinence, or the ~~recipient~~ client has a chronic stage II decubitus requiring maintenance care and monitoring;

~~(iv) conducting general health evaluations;~~

(~~v~~ IV) providing nail care for the diabetic client or client with circulatory or neurological deficiency;

~~(vi) making a monthly on-site visit to each recipient for whom advanced supportive/restorative care services are authorized to evaluate the condition of the recipient. A monthly visit report will be made to the ADvantage Program case manager, to report the recipient's condition or other significant information concerning each advanced supportive/restorative care recipient;~~

(~~vii~~ V) providing consultation and education to the ~~consumer~~ client, ~~consumer's~~ client's family and/or other informal caregivers identified in the service plan, regarding the nature of the chronic condition. Provide skills training (including return skills demonstration to establish competency) for preventive and rehabilitative care procedures to the ~~consumer~~ client, family and/or other informal caregivers as specified in the service plan~~; and~~.

~~(viii) providing on the job training and competency testing for advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing. The ADvantage Program case manager may recommend authorization of R.N. visits in other similar situations.~~

(B) Skilled Nursing service is ~~filed~~ billed for an assessment/evaluation per assessment or, for non-assessment services, billed for the first hour unit of service and for each ~~15 minute~~ 15-minute unit of service provided after the first hour. An agreement by a provider to produce a nurse evaluation is an agreement, as well, to provide the nurse assessment identified Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation shall be denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified Medicaid in-home care services for which the provider is certified and contracted.

(C) If a client is in a hospital or nursing facility and skilled nursing services are required as part of institutional transition services to assist the person to return home safely, skilled nursing services provided during the institutional stay within 120 days of transition to ADvantage, may be authorized for reimbursement and are to be claimed as delivered on the day of discharge from the institution.

(9) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day brought to the ~~recipient's~~ client's home. Each meal has a nutritional content equal to one third of the Recommended Daily Allowance. Meals are only provided to ~~recipients~~ clients who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal/unit. The limit of the number of units a ~~recipient~~ client is allowed to receive is limited on the ~~recipient's~~ client's plan of care.

(10) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of ~~individuals~~ clients with physical disabilities and related psychological and cognitive impairments. Services are provided in the ~~consumer's~~ client's home and are intended to help the ~~consumer~~ client achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the ~~patient~~ client to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the ~~recipient's~~ client's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the ~~recipient's~~ client's rehabilitative progress and will report to the ~~recipient's~~ client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the ~~consumer's~~ client's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per ~~15 minute~~ 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(11) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of ~~individuals~~ clients disabled by pain, disease or injury. Services are provided in the ~~consumer's~~ client's home and are intended to help the ~~consumer~~ client achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation

and light therapy. Under a physician's order, a licensed physical therapist evaluates the ~~recipient's~~ client's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the ~~recipient's~~ client's rehabilitative progress and will report to the ~~recipient's~~ client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the ~~consumer's~~ client's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per ~~15 minute~~ 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(12) **Comprehensive ~~home care~~ Home Care (CHC) ~~personal care~~ Personal Care.**

(A) ~~Comprehensive Home Care Personal Care is equal to personal care as defined in OAC 317:35-15-2.~~ Comprehensive Home Care (CHC) Personal Care is assistance to ~~an individual~~ a client in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual client or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) CHC Case Manager and Skilled Nursing staff are responsible for development and monitoring of the client's CHC Personal Care plan.

(~~B~~ C) Comprehensive Home Care (CHC) Personal Care services are prior authorized and billed per ~~one hour~~ 15-minute unit of service with units of service limited to the number of units on the ADvantage approved plan of care.

(13) **Speech and Language Therapy Services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of ~~individuals~~ clients disabled by pain, disease or injury. Services are provided in the ~~consumer's~~ client's home and are intended to help the ~~consumer~~ client achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language therapist evaluates the ~~recipient's~~ client's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed speech/language therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the ~~recipient's~~ client's rehabilitative progress and will report to the ~~recipient's~~ client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the ~~consumer's~~ client's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per ~~15 minute~~ 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(14) **Respiratory Therapy Services.**

(A) Respiratory therapy services are provided for ~~an individual~~ a client who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the ~~consumer's~~ client's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the ~~recipient~~ client. Treatment involved use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the ~~recipient~~ client and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the ~~recipient's~~ client's progress and will report to the ~~recipient's~~ client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the ~~consumer's~~ client's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per ~~15 minute~~ 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(15) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the ~~consumer~~ client and his/her family when a physician certifies that the ~~consumer~~ client has a terminal illness and has six ~~(6)~~ months or less to live and orders Hospice Care. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The

~~consumer~~ client signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the ~~consumer's~~ client's illness. Once the ~~consumer~~ client has elected hospice care, the hospice medical team assumes responsibility for the ~~consumer's~~ client's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the ~~consumer~~ client and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the ~~consumer's~~ client's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the ~~consumer's~~ client's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. ADvantage Hospice may be provided to the ~~consumer~~ client in a Nursing Facility (NF) only when the ~~consumer~~ client is placed in the NF for ADvantage Facility Based Extended Respite. Hospice provided as part of Facility Based Extended Respite may not be reimbursed for more than five ~~(5)~~ days during any ~~thirty (30)~~ 30 day period. A ~~consumer~~ client that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage Hospice services.

(B) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the Hospice provider is responsible for providing Hospice services as needed by the ~~consumer~~ client or ~~consumer's~~ client's family.

(16) **ADvantage Personal Care.**

(A) ADvantage Personal Care is assistance to an individual in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) ADvantage Home Care Agency Skilled Nursing staff working in coordination with an ADvantage Case Manager are responsible for development and monitoring of the client's Personal Care plan.

(C) ADvantage Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the ADvantage approved plan of care.

(17) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with client preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For an ADvantage Program client to be eligible to receive PERS service, the client must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the PERS;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the client's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the client's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the client.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the ADvantage approved plan of care.

PART 95. AGENCY PERSONAL CARE SERVICES

317:30-5-952. Prior authorization

Each client receiving personal care services must have a treatment plan developed by a Department of Human Services (DHS) Long Term Care (LTC) nurse or by an ADvantage Program Case Manager. The amount and frequency of the service, to be provided to the client, is listed on the treatment plan. The amount and frequency is also prior authorized by the LTC nurse or by the AA certification of the ADvantage Program Service Plan. The number of units of service the client is eligible to receive is limited to the service time amounts approved on the nurse's prior authorization or on the AA certified ADvantage Program Service Plan converted to 15-minute units. Services provided without prior authorization are not compensable.

[OAR Docket #04-1019; filed 5-24-04]

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

[OAR Docket #04-1015]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
317:30-5-1046. [AMENDED]
(Reference APA WF # 03-27)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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Subchapter 5. Individual Providers and Specialties
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
317:30-5-1046. [AMENDED]
(Reference APA WF # 03-27)
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Register publication:
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Docket number:
04-27
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Medical Providers-Fee for Service, Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers specific, rules are being revised to establish a system of care provided by the Organized Health Care Delivery System (OHCDS) for children in the care and custody of the Oklahoma Department of Human Services and the Oklahoma Office of Juvenile Affairs. Residential Behavioral Management Services are provided by OHCDS for children in the care and custody of the State of Oklahoma who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. Existing rules state that as of January 1, 2004, only certain degreed staff members may be compensated for RBMS redirection services. Under the revisions, redirection services provided by the houseparent staff, who supervise the children 24 hours per day, will be compensable if they receive initial and ongoing training in behavior management techniques. Other revisions will incorporate the Oklahoma Board of Nursing's definition of an Advanced Practice Nurse into rules and update existing language regarding the Child in Need of Mental Health Treatment Act and Health Care Financing Agency to reflect current terminology.
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 25, 2004.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1043. Coverage by category

(a) **Adults.** Residential Behavioral Management Services In Group Settings and Non-Secure Diagnostic and Evaluation Center Services are not covered for adults.

(b) **Children.** Residential Behavioral Management Services (RBMS) in Group Settings and Non-Secure Diagnostic and Evaluation Centers are covered for children as set forth in this subsection.

(1) **Description.** Residential Behavior Management Services are provided by Organized Health Care Delivery Systems (OHCDS) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. The ~~Behavior~~ behavior management services are provided in the least restrictive environment and within a therapeutic milieu. The group setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Residential Behavior Management Services are reimbursed in accordance with the intensity of supervision and treatment required for the group setting in which the client is placed. Clients residing in a Level E and Intensive Treatment Services (ITS) Group Homes receive maximum supervision and treatment. In addition, ITS group homes provide crisis and stabilization intervention and treatment. Clients residing in a Level D+ Group Home receive highly intensive supervision and treatment. Clients residing in a Level D Group home or in a wilderness camp receive close supervision and moderate treatment. Clients residing in a Level C Group Home receive minimum supervision and treatment. Clients residing in Residential Diagnostic and Evaluation Centers receive intensive supervision and a 20 day comprehensive assessment. ~~Clients residing in an OJA Operated Home receive intensive supervision and treatment.~~ Clients residing in a Sanctions Home receive highly intensive

supervision and treatment. Clients residing in an Independent Living Group Home receive intensive supervision and treatment. It is expected that RBMS in group settings are an all-inclusive array of treatment services provided in one day. In the case of a child who needs additional specialized services, under the Rehabilitation Option or by a psychologist, prior authorization by the OHCA ~~Medical Professional Services~~ or designated agent is required. Only specialized rehabilitation or psychological treatment services to address unique, unusual or severe symptoms or disorders will be authorized. If additional services are approved, the OHCDS shall collaborate with the provider of such services as directed by the OHCA or it's agent. Any additional specialized behavioral health services provided to children in state custody shall be funded in the normal manner. The OHCDS shall provide concurrent documentation that these services are not duplicative. The OHCDS determines the need for RBMS.

(2) **Medical necessity criteria.** The following medical necessity criteria must be met for residential behavior Management Services.

(A) Any DSM-IV AXIS I primary diagnosis, with the exception of V codes, with a detailed description of the symptoms supporting the diagnosis. A detailed description of the child's emotional, behavioral and psychological condition must be on file. A diagnosis is not required for behavior management services provided in Diagnostic and Evaluation centers.

(B) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(C) It has been determined by the OHCDS that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(D) Documentation that the child's presenting emotional and/or behavioral problems ~~prohibit full integration in a family/home setting without~~ prevent the child from living in a traditional family home. The child requires the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff~~, preventing the child from living in a traditional family home~~.

(E) The Agency which has permanent or temporary custody of the child agrees to active participation in the child's treatment needs and planning.

(F) All of the medical necessity criteria must also be met for continued stay in residential group settings.

(3) **Treatment components.**

(A) **Treatment plan development.** A comprehensive individualized treatment plan for each resident shall be formulated by the Provider Agency staff within 30 days of admission, for ITS level within 72 hours, with documented input from the Agency which has permanent or temporary custody of the child and when possible, the parent. This plan shall be revised and updated at least every three months, every seven days for ITS, with documented involvement of the Agency which has permanent or temporary custody of the child. Documented involvement can be written approval of the treatment plan by the Agency which has permanent or temporary custody of the child. A treatment plan is considered inherent in the provision of therapy and is not covered as a separate item of ~~Behavior Management Services~~ behavior management services. The treatment plan is individualized taking into account the child's age, history, diagnosis, functional levels, and culture. It includes appropriate goals and time limited and measurable objectives. Each resident's treatment plan shall also address the Provider Agency's plans with regard to the provision of services in each of the following areas:

(i) Group therapy;
(ii) Individual therapy;
(iii) Family therapy;
(iv) Alcohol and other drug counseling;
(v) Basic living skills redevelopment;
(vi) Social skills redevelopment;
(vii) Behavior redirection; and
(viii) The Provider Agency's plan to access appropriate educational placement services. (Any educational costs are excluded from calculation of the daily rate for ~~Behavior Management Services~~ behavior management services.)

(B) **Individual therapy.** The Provider Agency shall provide individual therapy on a weekly basis with a minimum of one or more sessions totaling one hour or more of treatment per week to children and youth receiving RBMS in Wilderness Camps, Level D, ~~OJA Operated Group Homes,~~ Level D+ homes, Level E Homes, Independent Living Homes, and Sanctions Homes. ITS Level residents will receive a minimum of five or more sessions totaling a minimum of five or more hours of individual therapy per week. Clients residing in Diagnostic and Evaluation Centers and Level C Group Homes receive Individual Therapy on ~~a~~ an as needed basis. Individual therapy must be age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's treatment plan. Individual counseling is a face to face, one to one service, and must be provided in a confidential setting.

(C) **Group therapy.** The Provider Agency shall provide group therapy to children and youth receiving residential behavioral management services. Group therapy must be a face to face interaction, age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's treatment plan. The minimum expected occurrence would be one hour per week in Level D, Level C, ~~OJA Operated,~~ Wilderness Camps and Independent Living. Two hours per week are required in Levels D+ and E. Ten hours per week are required in Sanctions Homes, Intensive Treatment Service Level. Group therapy is not required for Diagnostic and Evaluation Centers. Group size should not exceed six members

and group therapy sessions must be provided in a confidential setting.

(D) **Family therapy.** Family therapy is a face to face interaction between the therapist/counselor and family, to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The Provider Agency shall provide family therapy as indicated by the resident's individual treatment plan. The Agency shall work with the caretaker to whom the resident will be discharged, as identified by the OHCDS custody worker. The Agency shall seek to support and enhance the child's relationships with family members (nuclear and appropriate extended), if the custody plan for the child indicates family reunification ~~(nuclear and appropriate extended)~~. The RBMS provider shall also seek to involve the child's parents in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program. Any service provided to the family must have the child as the focus.

(E) **Alcohol and other drug abuse treatment education, prevention, therapy.** The Provider Agency shall provide alcohol and other drug abuse treatment for residents who have emotional or behavioral problems related to substance abuse/chemical dependency, to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. This service shall be considered ancillary to any other formal treatment program in which the child participates for treatment and rehabilitation. For residents who have no identifiable alcohol or other drug use, abuse, or dependency age appropriate education and prevention activities are appropriate. These may include self esteem enhancement, violence alternatives, communication skills or other skill development curriculums.

(F) **Basic living skills redevelopment.** The Provider Agency shall provide goal directed activities designed for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopment is age appropriate and relevant to the goals and objectives of the treatment plan. This many include, but is not limited to food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, job application and retention skills.

(G) **Social skills redevelopment.** The Provider Agency shall provide goal directed activities designed for each resident to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These are age appropriate, culturally sensitive and relevant to the goals of the individual treatment plan. For ITS level of care, the minimum skill redevelopment per day is three hours. Any combination of basic living skills and social skills redevelopment that is appropriate to the need and developmental abilities of the child is acceptable.

(H) **Behavior redirection.** The Provider Agency shall be able to provide behavior redirection management by agency staff as needed 24 hours a day, 7 days per week. The Agency shall ensure staff availability to respond in a crisis to stabilize residents' behavior and prevent placement disruption. In addition, ITS group homes will be required to provide crisis stabilization interaction and treatment for new residents 24 hours a day, seven days a week.

(4) **Providers.** For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers, the providers of individual, group and family therapies must:

(A) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board Supervision to be licensed in one of the above stated areas; or

(B) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing boards:

(i) Psychology,

(ii) Social work (clinical specialty only),

(iii) Licensed professional counselor,

(iv) Licensed marriage and family therapist, or

(v) Licensed behavioral practitioner; or

(C) have a baccalaureate degree in a mental health field in one of the stated areas listed in (B) of this paragraph AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in (A) of this paragraph; or

(D) be a registered psychiatric nurse; AND

(E) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;

(ii) treatment of victims of physical, emotional, and sexual abuse;

(iii) treatment of children with attachment disorders;

(iv) treatment of children with hyperactivity or attention deficit disorders;

(v) treatment methodologies for emotional disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;
(viii) anger management; and
(ix) crisis intervention.

(5) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services ~~of their providers~~ provided by their staff for behavior management therapies (Individual, Group, Family) as of January 1, 2004, providers must have the following qualifications:

(A) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board approved Supervision to be licensed in one of the above stated areas; or

(B) be licensed as an Advanced Practice Nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided, AND

(C) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;
(ii) treatment of victims of physical, emotional, and sexual abuse;
(iii) treatment of children with attachment disorders;
(iv) treatment of children with hyperactivity or attention deficit disorders;
(v) treatment methodologies for emotionally disturbed children and youth;
(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;
(vii) treatment of children and families with substance abuse and chemical dependency disorders;
(viii) anger management; and
(ix) crisis intervention.

(D) Staff providing basic living skills redevelopment, social skills redevelopment, ~~behavior redirection~~ and alcohol and other substance abuse treatment, shall meet one of the following areas:

(i) ~~Bachelor~~ Bachelor's or ~~master~~ Master's degree in a ~~mental~~ behavioral health related field including but not limited to, psychology, sociology, criminal justice, school guidance and counseling, social work, occupational therapy, family studies; or
(ii) a current license as a registered nurse in Oklahoma; or
(iii) ~~Certification~~ certification as an Alcohol and Drug Counselor is allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or
(iv) current certification as a Behavioral Health Case Manager from DMHSAS and meets OHCA requirements to perform case management services, as described in ~~317:30-5-585(1)~~ OAC 317:30-5-595(7).

(E) ~~Behavioral Management staff~~ Staff providing behavior redirection services must have current certification and required updates in nationally recognized behavior management techniques, such as CAPE or MANDT. Additionally, staff providing these services ~~shall~~ must receive initial and ongoing training in ~~a~~ at least one of the following areas: anger management, crisis intervention, normal child and adolescent development and the effect of abuse, neglect and/or violence on such development, grief and loss issues for children in out of home placement, interventions with victims of physical, emotional and sexual abuse, care and treatment of children with attachment disorders, care and treatment of children with hyperactive, or attention deficit, or conduct disorders, care and treatment of children, youth and families with substance abuse and chemical dependency disorders, passive physical restraint procedures, procedures for working with delinquents or the ~~Child in Need of Mental Health Treatment Act~~ Inpatient Mental Health and Substance Abuse Treatment of Minor's Act.

(F) In addition, Behavioral Management staff shall have access to consultation with an appropriately licensed mental health professional.

317:30-5-1046. Documentation of records and records review

(a) The OHCDS and the facilities with whom it contracts must maintain appropriate records system. Current treatment plans, case files, and progress notes are maintained in the facilities' files during the time the child or youth is receiving services. All services rendered must be reflected by documentation in the case records.

(b) OHCA and the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services (CMS) may evaluate through inspection or other means, the quality, appropriateness and timeliness of services provided by the OHCDS or facilities with whom it contracts.

(c) All residential behavioral management services in group settings and non-secure diagnostic and evaluation centers must be reflected by documentation in the patient records.~~(1)~~ Individual, group, family, and alcohol and other drug counseling, and social and basic living skills development services must include all of the following:

(1) date;
(2) start and stop time for each session;
(3) signature of the ~~therapist~~ therapist/staff providing service;

(4) credentials of ~~therapist~~ therapist/staff providing service;
(5) specific problem(s) addressed (problem must be identified on master treatment plan);
(6) methods used to address problem(s);
(7) progress made toward goals;
(8) patient response to the session or intervention; and
(9) any new problem(s) identified during the session.

[OAR Docket #04-1015; filed 5-24-04]

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

[OAR Docket #04-1021]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:35-1-2. [AMENDED]
Subchapter 3. Coverage and Exclusions
317:35-3-1. [AMENDED]
317:35-3-2. [AMENDED]
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-1. [AMENDED]
317:35-5-7. [AMENDED]
Part 3. Non-Medical Eligibility Requirements
317:35-5-26. [AMENDED]
Part 5. Countable Income and Resources
317:35-5-42. [AMENDED]
317:35-5-45. [AMENDED]
317:35-5-46. [AMENDED]
Subchapter 6. SoonerCare Health Benefits for Categorically Needy Pregnant Women and Families with Children
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-36. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-6-60. [AMENDED]
317:35-6-61. [AMENDED]
317:35-6-63. [AMENDED]
Subchapter 7. Medical Services
Part 1. General
317:35-7-1. [AMENDED]
Part 5. Determination of Eligibility for Medical Services
317:35-7-37. [AMENDED]
317:35-7-39. [REVOKED]
317:35-7-41. [AMENDED]
317:35-7-45. [REVOKED]
317:35-7-46. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
317:35-7-64. [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 1. Services
317:35-9-1. [AMENDED]
Part 9. Certification, Redetermination and Notification
317:35-9-76. [AMENDED]
Subchapter 10. Medical Aid to Families with Dependent Children
Part 3. Resources
317:35-10-10. [AMENDED]
Part 5. Income
317:35-10-26. [AMENDED]
317:35-10-28. through 317:35-10-33. [REVOKED]
317:35-10-35. through 317:35-10-37. [REVOKED]
Part 7. Budgeting and Assistance Payments
317:35-10-55. through 35-10-58. [REVOKED]
Part 9. Conditions of Eligibility-Age and Residence
317:35-10-65. through 317:35-10-68. [REVOKED]
Part 11. Conditions of Eligibility-Relationship of Payee to Child
317:35-10-75. through 317:35-10-77. [REVOKED]
Part 13. Conditions of Eligibility-Deprivation of Parental Support or Care by a Natural or Adoptive Parent
317:35-10-85. through 317:35-10-92. [REVOKED]
317:35-10-94. through 317:35-10-95. [REVOKED]
Subchapter 15. Personal Care Services
317:35-15-1. [AMENDED]
317:35-15-6. [AMENDED]
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Subchapter 1. General Provisions
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Subchapter 3. Coverage and Exclusions
317:35-3-1. [AMENDED]
317:35-3-2. [AMENDED]
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-1. [AMENDED]
Part 5. Countable Income and Resources
317:35-5-46. [AMENDED]
Subchapter 6. SoonerCare Health Benefits for Categorically Needy Pregnant Women and Families with Children
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-36. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-6-60. [AMENDED]
317:35-6-63. [AMENDED]
Subchapter 7. Medical Services
Part 1. General
317:35-7-1. [AMENDED]
Part 5. Determination of Eligibility for Medical Services
317:35-7-37. [AMENDED]
317:35-7-39. [REVOKED]
317:35-7-41. [AMENDED]
317:35-7-45. [REVOKED]
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
317:35-7-64. [AMENDED]

Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 1. Services
317:35-9-1. [AMENDED]
Subchapter 10. Medical Aid to Families with Dependent Children
Part 5. Income
317:35-10-26. [AMENDED]
317:35-10-29. [AMENDED]
317:35-10-31. [AMENDED]
Subchapter 15. Personal Care Services
317:35-15-1. [AMENDED]
317:35-15-6. [AMENDED]
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Subchapter 3. Coverage and Exclusions
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03-3049

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Agency rules are revised to eliminate the Oklahoma Medicaid Medically Needy Program. States have the option under the Medicaid program to extend coverage to individuals categorized as Medically Needy. Due to state government budget constraints, the OHCA Board voted on December 12, 2002, to eliminate coverage of medically needy individuals effective February 1, 2003. According to Article 10, Section 23 of the Oklahoma Constitution, all state agencies must maintain a balanced budget. In order for the Agency to accomplish the necessary financial reductions, rules are in need of revision to eliminate the Medically Needy Program.

Agency rules are in need of revision to remove duplicate language in OAC 317:35 as these rules are found in OAC 317:30.

Medical Assistance for Adults and Children-Eligibility rules are revised to remove language regarding the Qualifying Individuals-2 (QI-2) program from agency rules. The program was established by Congress effective January 1, 1998 for a five year period to reimburse eligible Medicare beneficiaries for part of their Part B Medicare premium. Congress chose not to extend the QI-2 program beyond December 31, 2002. An additional revision removes reference to two Oklahoma Department of Human Services forms that no longer exist. Also, various definitions of terms used in the financial eligibility determination process for Medicaid are revised, added, or deleted.

Medical Assistance for Adults and Children-Eligibility rules are revised to clarify rules used by the workers at the Oklahoma Department of Human Services when determining an individual's Medicaid eligibility. The proposed revisions will: (1) organize rules in a more logical order; (2) remove obsolete language; (3) update incorrect policy citations and form references; (4) move certain policy text to the "Instructions to Staff"; and (5) comply with federal requirements.

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DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA HEALTH CARE AUTHORITY, 4545 N. LINCOLN BLVD., OKLAHOMA CITY, OK 73105 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:
Agency rules are revised to eliminate the Oklahoma Medicaid Medically Needy Program. States have the option under the Medicaid program to extend coverage to individuals categorized as Medically Needy. Due to state government budget constraints, the OHCA Board voted on December 12, 2002, to eliminate coverage of medically needy individuals effective February 1, 2003. Other revisions: (1) remove duplicate language in OAC 317:35 as these rules are found in OAC 317:30; (2)remove language regarding the Qualifying Individuals-2 (QI-2) as the United States Congress chose not to extend the QI-2 program beyond December 31, 2002; (3) remove reference to non-existant forms and update definitions; and (4) provide clarification to rules used by the workers at the Oklahoma Department of Human Services when determining an individual's Medicaid eligibility.

[OAR Docket #04-1021; filed 5-24-04]

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

[OAR Docket #04-1022]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
Subchapter 7. Medical Services
Part 7. Certification, Redetermination and Notification
317:35-7-62. [AMENDED]
(Reference APA WF # 03-07 and 03-08)

AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.911; 42 CFR 435.916; Article 10, Section 23 of the Oklahoma Constitution

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 12, 2004

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 7. Medical Services
Part 7. Certification, Redetermination and Notification
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(Reference APA WF # 03-07)

Gubernatorial approval:
May 26, 2003

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20 Ok Reg 2797
Docket number:
03-3008
SUPERSEDED EMERGENCY ACTIONS:
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Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
(Reference APA WF # 03-08)
Gubernatorial approval:
May 26, 2003
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20 Ok Reg 2793
Docket number:
03-3007
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

Medical Assistance for Adults and Children-Eligibility rules regarding the length of certification periods for the group of children in custody and subsidized adoptions are revised at the request of DHS to lengthen the Medicaid certification period. Current Medicaid rules state that in general, the Medicaid certification period for children related to Aid to Families with Dependent Children is six months. Children and Family Service Division of DHS have requested a twelve month certification for the limited group of children in custody and subsidized adoptions. Due to state budget constraints, DHS has a small number of specialized workers to complete the Medicaid eligibility determinations for these children. Due to numerous factors, the number of custody children continues to grow, increasing the workloads of the DHS eligibility specialists. By lengthening the certification period for this small group of recipients, DHS will be able to meet established timeliness deadlines and better contain their administrative costs.

Medical Assistance for Adults and Children-Eligibility rules are revised to comply with federal regulations related to citizenship and alienage. In order for DHS workers to make valid Medicaid eligibility determinations, agency rules must provide accurate information. These revisions are needed to comply with federal regulation and remove obsolete language from the rules.

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 25, 2004.

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS

317:35-5-25. Citizenship requirements

(a) **Establishment of citizenship and alienage.** ~~Title XIX medical~~ Medicaid services are provided to the defined groups provided in this subsection if they meet all other factors of eligibility.

(1) **U. S. Citizens~~,~~ and aliens admitted for permanent residence ~~or permanently residing under color of law.~~** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services.

(A) U.S. Citizens~~, qualified~~;

(B) aliens admitted for permanent residence ~~prior to August 22, 1996~~ who have resided in the United States for a period greater than five years from the date of entry; and ~~or permanently residing under color of law prior to August 22, 1996 are eligible for Title XIX. Also included in this group are~~

(C) certain parolees, refugees, Western Hemisphere aliens, immigrants, conditioned entries, Kickapoo Indians and American Indians born in Canada. ~~Persons meeting the definitions are entitled to the full range of Title XIX medical services.~~

(2) **~~Qualified~~ Eligible aliens (qualified aliens).** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services. A qualified alien is:

(A) an alien who was admitted to the United States ~~prior to August 22, 1996~~ and has resided in the United States for a period greater than five years from the date of entry and who was:

(i) ~~was~~ lawfully admitted for permanent residence under the Immigration and Nationality Act;

(ii) ~~was~~ paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;

(iii) was granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or

(iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.

~~(iv) was granted asylum under Section 208 of such Act regardless of the date asylum is granted;~~

~~(v) was a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted; or~~

~~(vi) was an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;~~

(B) an alien who was admitted to the United States and who was:

(i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;

(ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted; or

(iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;

(~~B~~ iv) a Cuban or Haitian entrant ~~who was in the United States prior to August 22, 1996~~ as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;

(~~C~~ v) an alien who is a veteran as defined in 38 U.S.C. § 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;

(~~D~~ vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;

(E vii) the spouse of or unmarried dependent child of an individual described in (C) or (D) of this subsection~~; or~~

~~(F) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act, and has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with 40 qualifying quarters as provided under Section 435, and in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, the alien did not receive any Federal means-tested public benefit, as provided under Section 403, during any such period~~

(viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or

(ix) admitted as an Amerasian immigrant.

(C) permanent residents who first entered the country under (2)(B) of this subsection and who later converted to lawful permanent residence status.

(3) **~~Non-qualified~~ Other aliens lawfully admitted for permanent residence (non-qualified aliens).** Non-qualified aliens are those individuals who were admitted to the United States ~~on or after August 22, 1996~~ and who do not meet any of the definitions in (1)-(2) of this subsection. Non-qualified aliens are ineligible for Medicaid for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention.

(4) **Illegal aliens.** Illegal aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention.

(5) **Ineligible aliens.** Ineligible aliens who do not fall into the categories in (1)-(4) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ~~eligible~~ ineligible for ~~emergency medical services only as described in (4) of this subsection for illegal aliens~~ Medicaid, including emergency services, because of the temporary nature of their admission status. ~~These individuals are generally issued Form I-94, Arrival Departure Record, on which an expiration date is entered. (This form is not the same Form I-94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I-94 that is titled "Arrival-Departure Record - Parole Edition" (see (c)(3) of this Section. Two other forms that do not give the individual "Immigrant" (see (c)(1) of this Section) status are Form I-186, Nonresident Alien Mexican Border Crossing Card, and Form SW-434, Mexican Border Visitors Permit.)~~

(6) **Declaration.** A declaration of citizenship/alien status is required for all adults and children ~~in the case~~ approved for Medicaid. This requirement is met when all adults in the case or person acting in behalf of individual(s) in the case have signed the application form attesting to the status indicated for all case members on ~~page one of~~ the application form. ~~Signatures on Form PS-4, Declaration of Citizenship Status, are required only if there are adults in the case who did not sign the application form or when there is a change of payee.~~ Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE). ~~When Form PS-4, Declaration of Citizenship Status, has been used to meet the declaration requirement for any individual in the case, it also becomes a part of the application and becomes a part of the case record for subsequent applications.~~

(7) **Preauthorization.** Preauthorization is required for payment of emergency medical services rendered to ~~legalized~~ non-qualified and illegal aliens ~~who are not eligible for full Title XIX coverage, illegal aliens or ineligible aliens~~. ~~The case is certified or denied after the preauthorization decision is received from OHCA. The certification period for these cases based on preauthorized medical services is for the month(s) of service only. Due to the variable Title XIX coverage for the groups defined in this subsection, identifying the group with complete documentation and/or verification of appropriate proof of status and identification of the group is recorded in the case record.~~

(b) **Citizenship.** An individual may be a citizen of the United States by being born in the United States or by being born in some other country but moving to the United States and being granted United States citizenship through the ~~Immigration and Naturalization Service (INS)~~ Bureau of Citizenship and Immigration Services (BCIS). The area defined by ~~Title XIX~~ Medicaid regulations pertaining to United States citizenship include the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands and the Northern Marianas. Nationals from American Samoa or Swain's Island are also regarded as U.S. citizens for ~~Title XIX~~ Medicaid purposes. ~~Persons from the Marshall Islands are classified as "permanent non-immigrants" and eligible the same as citizens or nationals.~~

(1) When the situation indicates a need to verify citizenship, birth in the United States may be verified by a birth certificate, religious or similar proof of birth, or a United States passport.

(2) If the individual's birth occurred in some other country and he/she entered the United States as an alien but has become a United States citizen, this must be verified by a certificate of citizenship or certificate of naturalization provided by ~~INS~~ BCIS.

(3) If the Social Security Administration has already determined the individual meets the citizenship and alienage requirement for SSI or Medicare eligibility, DHS accepts this determination. In such an instance, the individual's notification of eligibility for SSI, SSI check, or Medicare card must be seen and an entry made in the ~~case record~~ FACS Case Notes as to which of these documents was seen as verification.

(4) In all other instances in which the adult (or a parent of a minor) was an alien who has become a naturalized citizen of the United States, the citizenship papers of the individual must be seen and the exact name shown and any pertinent numbers, dates, etc., must be recorded in the ~~case record~~ FACS Case Notes.

(c) **Alienage.** ~~Documents that constitute verification of the individual's meeting the alienage requirement are described in paragraphs (1)-(7) of this subsection.~~ A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the ~~INS~~ BCIS. These are individuals who entered this country with the express intention of residing here permanently.

~~(A) Acceptable proof of immigration status is Form I-151 or Form I-551, Alien Registration Receipt Cards. Earlier versions of this form, AR-3A, Alien Registration Receipt Card, and AR-3, which carries the same name, are proof of permanent residency if specifically endorsed as such. Also, a Reentry Permit is acceptable proof inasmuch as permanent residency is a requirement of its issuance. Possession of any of these cards verifies that the individual meets the citizenship and alienage requirement.~~

~~(B) An individual who comes to the United States after marriage to, or to marry, a member of the armed forces of the United States would have been admitted with the right of permanent residence and should have the necessary papers to show this status. Subsequent divorce would not affect this right, even though he/she has not become a citizen in his/her own right, and would meet the citizenship and alienage requirement.~~

~~(2) **Permanent Residence Under Color of Law.** A Permanent Resident Under Color of Law (PRUCOL) is an alien who entered the United States before January 1, 1972, has maintained continuous residence since then, and intends to continue living here. PRUCOL is defined by INS to include aliens who are living in the United States with the knowledge and permission of INS. Certain deportable aliens are considered PRUCOL if deportation is deferred, unlikely, or the individual has been granted voluntary departure for an indefinite time period based on INS determination. INS forms or documents which support or may indicate PRUCOL status include, but are not limited to: Forms I-84, I-220B, I-210, I-181, orders from an Immigration Judge, INS letters or local INS documents.~~

(~~3~~ 2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement. ~~Individuals in this category should have Form I-94, Arrival-Departure Record, which identifies by stamped information that the alien has been paroled pursuant to Section 212 (d)(5) of the Immigration and Nationality Act. The case record must include a statement that the form identifies the individual as a parolee on Form I-94.~~

(~~4~~ 3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist-dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. ~~Verification of the individual's entry under this section of the law is made by seeing his/her Form I-94, Arrival-Departure Record, which contains stamped information to the effect that the individual was paroled into the United States indefinitely (no expiration date) as a refugee and specifies the country from which he/she is a refugee.~~ These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for ~~Title XIX~~ Medicaid if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I-94 endorsed "Voluntary Departure Granted-Employment Authorized", or

(B) The following court-ordered notice sent by ~~INS~~ BCIS to each of those individuals permitted to remain in the United States: "Due to a Court Order in Silva vs. Levi, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice. Your employment in the United States is authorized".

(~~5~~ 4) **Conditioned entries of aliens made available by the U. S. Attorney General for emergent reasons or for reasons deemed strictly in the public interest.** Conditioned entries of aliens may be made available by the U.S. Attorney General for emergent reasons or for reasons deemed strictly in the public interest. Because the reasons for conditioned entries differ, a decision regarding eligibility can not be made until clearance is received from ~~INS~~ BCIS.

(~~6~~ 5) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I-94, Arrival-Departure Record (Parole Edition). If Form I-94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of

the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement ~~because they are in the United States "under color of law"~~. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoos who have entered the United States from Mexico who carry Form I-151 or Form I-551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I-151 or Form I-551 and therefore, meet the citizenship and alienage requirements. Still other Kickapoos are classified as Mexican Nationals by the ~~Immigration and Naturalization Service~~ BCIS. They carry Form I-94, Arrival-Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the non-immigrant status described in (c)(1) of this Section.

(~~7~~6) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least one-half American Indian blood. This does not include the non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50 percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

~~(d) **Qualified aliens.** The Immigration Reform Act of 1986 [PL 99-603] allows aliens who have resided illegally in this country since January 1, 1982 to begin a legalization process beginning May, 1987 and ending May, 1988. If the individual meets INS requirements under this law, temporary resident status is granted. Qualified alien status begins with the date that temporary resident status is granted. After 18 months of temporary status, application for permanent status can be made. Granting of permanent status does not change Title XIX entitlements for five years from the date that temporary resident status was granted. Documents in the possession of the alien should reflect status and date status was granted.~~

~~(e) **Ineligible aliens.** Aliens who are eligible for emergency services only are ineligible for other Title XIX benefits because of the temporary nature of their admission status. These aliens would have the following types of documentation: student visa; Form I-94 Arrival-Departure Record; Form I-185,, Canadian Border Crossing Card; Form I-186, Mexican Border Crossing Card; Form SW-434, Mexican Border Visitor's Permit; or Form I-85A, Crewman's Landing Permit.~~

SUBCHAPTER 7. MEDICAL SERVICES

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-62. Special redetermination procedures for children in ~~DHS~~ custody or subsidized adoptions

A ~~six month short-term medical care review~~ periodic redetermination of eligibility for Medical Services is required every twelve months for children in ~~DHS~~ custody ~~is completed and changes between reviews for continuing eligibility are made~~ or subsidized adoptions as reported by DHS.

[OAR Docket #04-1022; filed 5-24-04]

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

[OAR Docket #04-1023]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41. [AMENDED]
(Reference APA WF # 03-45)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1917(d)(f)(B) of the Social Security Act
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Medical Assistance for Adults and Children-Eligibility rules regarding resources for individuals categorically related to ABD are revised to clarify and correct procedures for establishing Medicaid Income Pension Trusts which are also known as Miller Trusts. Other revisions are made to provide consistency in rule 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 25, 2004.

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41. Determination of capital resources for individuals categorically related to aged, blind and disabled

(a) **General.** The term capital resources is a general term representing any form of real and/or personal property which has an available money value. All available capital resources, except those required to be disregarded by law or by policies of the OHCA or ~~DHS~~ OKDHS are considered in determining need. Available resources are those resources which are in hand or under the control of the individual.

(1) In defining need, OHCA and ~~DHS~~ OKDHS recognize the importance of a recipient retaining a small reserve for emergencies or special need and has established a maximum reserve a client or family may hold and be considered in need.

(2) Capital resources are evaluated on a monthly basis in determining eligibility for an applicant for medical services. An applicant is determined ineligible for any month resources exceed the resource standard at any time during that month. When a recipient has resources which exceed the resource standard, case closure action is taken for the next possible effective date.

(3) State law is specific on the mutual responsibility of spouses for each other. Therefore, if husband and wife are living together, a capital resource and/or income available to one spouse constitutes a resource and/or income to the other. When there is a break in the family relationship and the husband and wife are separated, but not divorced or legally separated, they constitute a possible resource to each other and this possible resource is explored to determine what, if any, resource can be made available. When spouse is in a nursing facility, see Subchapter 9 and 19 of this Chapter.

(4) Household equipment used for daily living is not considered a resource.

(5) Each time that need is determined, gross income and the equity of each capital resource are established. Equity equals current market value minus indebtedness. The recipient may change the form of capital resources from time to time without affecting eligibility so long as the equity is not decreased in doing so or increased in excess of the allowable maximum reserve. In the event the equity is decreased as the result of a sale or transfer, the reduction in the equity is evaluated in relation to policy applicable to resources disposed of while receiving assistance.

(b) **Eligibility.** In determining eligibility based on resources, only those resources available for current use or those which the client can convert for current use (no legal impediment involved) are considered as countable resources. Examples of legal impediments include, but are not limited to, clearing an estate, probate, petition to sell or appointment of legal guardian.

(1) Generally, a resource is considered unavailable if there is a legal impediment to overcome. However, the client must agree to pursue all reasonable steps to initiate legal action within 30 days. While the legal action is in process, the resource is considered unavailable.

(2) If a determination is made and documented that the cost of making a resource available exceeds the gain, the client will not be required to pursue action to make it available.

(3) Determination of available and unavailable resources must be well documented in the case record.

(4) The major types of capital resources are listed in (c) and (d) of this Section. The list is not intended to be all inclusive and consideration must be given to all resources.

(c) **Home/real property.** Home property is excluded from resources regardless of value. For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile. Home property includes all property which is adjacent to the home. Home property in a revocable trust under the direct control of the individual, spouse, or legal representative retains the exemption as outlines in OAC 317:35-5-41(c)(6). Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered.

(1) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. The OHCA has not set a definite time limit to the client's absence from the home. When it is determined that the client does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the reserve. The client is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the client is making an effort to make the resource available, a reasonable period of time is given (not to exceed 90 days) to convert the resource. He/she is advised in writing that the 90-day period begins with the determination that the property be considered in relation to the reserve. The 90-day period is given only if efforts are in progress to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the client, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the client. A written notification is also provided to the client at any time an extension is allowed. Detailed documentation in the case record is required.

(2) If the client fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the client is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum reserve provided other conditions of eligibility continue to be met.

(3) When a recipient sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to be not in excess of a 90-day period. Extensions beyond the 90 days may be justified only after interviewing the client, determining that a good faith effort is still being made and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(4) At the point a recipient decides not to reinvest the proceeds from the sale of his/her home in another home, the recipient's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(5) A home traded for another home of equal value does not affect the recipient's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(6) Absences from home for up to 90 days for trips or visits of six months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence. Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The Acknowledgment of Temporary Absence/Home Property Policy form is completed at the time of application for nursing facility care when the applicant has home property. After explanation of temporary absence, the client, guardian or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable resource. For recipients in nursing facilities, a lien may be filed in accordance with OAC 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the recipient when it has been determined, after notice and opportunity for a hearing, that the recipient cannot reasonably be expected to be discharged and return home. However, a lien shall not be filed on the home property of the recipient while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the 12 months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for Medicaid benefits, and

(ii) after 12 months of nursing care, it is assumed there is no reasonable expectation the recipient will be discharged from the facility and return home and a lien may be filed against real property owned by the client for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the 12-month period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the client to return to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A client who leaves the nursing facility must remain in the home at least three months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, minor child(ren) under 18, or relative who is aged, blind or disabled or a recipient of ~~AFDC~~ TANF resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse or relative lives there (regardless of whether the absence is temporary).

(G) For purpose of this reference a relative is defined as: son, daughter, grandson, granddaughter, stepson, stepdaughter, in-laws, mother, father, stepmother, stepfather, halfsister, halfbrother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.

(H) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(7) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource. However, mineral rights which are not associated with the home property are considered as a resource. Since evaluation and salability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property.

(8) The market value of real estate other than home property owned by the client or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the client of a

merchantable title to be determined when the reserve approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral and/or written information which the applicant has on hand **and** counsel with persons who have specialized knowledge about this kind of resource. Refer to (12) of this subsection for exclusion of real estate that produces income.

(9) Land which is held by an enrolled member of an Indian tribe is excluded from resources as it cannot be sold or transferred without the permission of other individuals, the tribe, or a federal agency. If permission is needed, the land is excluded as a resource.

(10) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the client's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the client does not accept as valid the value of the life estate as established through this method, the client will secure written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the client will jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current market values and who is acceptable to both the client and the worker.

(11) Homestead rights held by a client in real estate provide the client with shelter (or shelter and income) so long as he/she resides on the property. Payment for care in a nursing facility provided to the recipient through Medicaid constitutes a waiver of the homestead rights of the recipient. If the client moves from the property, a lien is filed, or the client otherwise abandons his/her homestead rights, the property becomes subject to administration. Since a homestead right cannot be sold, it does not have any value.

(12) Real and/or personal property which produces income is excluded if it meets the following conditions.

(A) **Trade or business property.** The existence of a trade or business may be established through business tax returns that would be used to compute self-employment earnings. If the current business tax return is unavailable, the existence of the business may be determined through other business forms, records, partnership, a detailed description of the business and its activities, etc. Once it is established that a trade or business exists, any property (real or personal) connected to it and in current use is excluded. This exclusion includes liquid assets, such as a bank account(s) necessary for the business operation. All property used by a trade or business and all property used by an employee in connection with employment is excluded as property essential to self support. The income from the trade or business is determined as any other self-employment income.

(B) **Non-trade or non-business property.** Property which produces income but is not used in a trade or business is excluded if the total equity value does not exceed $6000, and the net return equals at least 6% of the equity annually. An equity value in excess of $6000 is a countable resource. If the equity exceeds $6000 and 6% return is received on the total equity, only the amount in excess of $6000 is a countable resource. An annual return of less than 6% is acceptable if it is beyond the individual's control, and there is a reasonable expectation of a future 6% return. Liquid resources cannot be excluded as income producing property or meeting the $6000/6% rule (mortgages, including contract for deed, and notes which are income producing are considered as liquid resources). The $6000/6% rule applies to all resources in total, and not separately. Examples of non-business income producing property are rental property, timber rights, mineral rights, etc.

(d) **Personal property.**

(1) **Property used to produce goods and services.** Personal property necessary to perform daily activities or to produce goods for home consumption is excluded if the equity value does not exceed $6000. An equity value in excess of $6000 is a countable resource. The property does not have to produce a 6% annual return. The $6000 equity maximum includes all such resources in total and does not pertain to each item separately. Examples of property used to produce goods and services are tractors, woodcutting tools, mechanized equipment for gardening, livestock grown for home consumption, etc.

(2) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as reserve. The client's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the client does not have records to verify the amount on deposit, verification is obtained from bank records. Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing

eligibility for assistance or services must be furnished without cost to the client or the Agency.

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the client to establish what, if any, portion of the account represents savings. Any income which has been deposited during the current month is not considered unless it exceeds what is considered as ordinary maintenance expense for the month.

(B) Accounts which are owned jointly by the client and a non-recipient person are considered available to the client in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the recipient is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.

(3) **Life insurance policies.** If the total face value of all life insurance policies owned by an individual is $1500 or less, the policies (both face value and cash surrender value) are excluded as resources.

(A) If the total face value of all policies owned by an individual exceeds $1500, the net cash surrender value of such policies must be counted as resources. Life insurance policies which do not provide a cash surrender value (e.g., term insurance) are not used in determining whether the total face value of all policies is over $1,500.

(B) The face value of a life insurance policy which has been assigned to fund a prepaid burial contract must be evaluated and counted according to the policy on burial funds or, if applicable, the policy on the irrevocable burial contract.

(C) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the client's possession or by use of the Request to Insurance Company form.

(D) Dividends which accrue and which remain with the insurance company increase the amount of reserve. Dividends which are paid to the client are considered as income.

(E) If an individual has a life insurance policy which allows death benefits to be received while living, and the individual meets the insurance company's requirements for receiving such proceeds, the individual is not required to file for such proceeds. However, if the individual does file for and receive the benefits, the payment will be considered as income in the month it is received and countable as a resource in the following months to the extent it is available. The payment of such benefits is not considered a conversion of a resource because the cash surrender value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.

(4) **Burial spaces.** The value of burial spaces for an individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources. "Burial spaces" means conventional gravesites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons. "Immediate family" means individual's minor and adult children, including adopted children and step-children; and individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member.

(5) **Burial funds.** Revocable burial funds not in excess of $1500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the individual's spouse. Any amount in excess of $1500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies.

(A) "Burial funds" means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the individual's or spouse's burial expenses.

(B) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (5)(A) of this subsection.

(C) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the individual or spouse; and amounts in an irrevocable trust or other irrevocable arrangement.

(D) Interest earned or appreciation on the value of any excluded burial funds are excluded if left to accumulate and become a part of the burial fund.

(E) If the client did not purchase his/her own prepaid burial, even if his/her money was used for the purchase, the client is not the "owner" and the prepaid burial funds cannot be considered a resource to him/her. However, if the client's money was used by another to purchase the prepaid burial, the rules on transfer of property must be applied since the purchaser (owner) could withdraw the funds any time.

(6) **Irrevocable burial contract.** Oklahoma law provides that a purchaser (buyer) of a prepaid funeral contract may elect to make the contract irrevocable. The irrevocability cannot become effective until 30 days after purchase.

(A) If the irrevocable election was made prior to July 1, 1986 and the client received assistance on July 1, 1986, the full amount of the irrevocable contract is not considered a countable resource. This exclusion applies only if the client does not add to the amount of the contract. Interest accrued on the contract is not considered as added by the client. Any break in assistance will require that the contract be evaluated

at the time of reapplication according to rules in (B) of this paragraph.

(B) If the effective date for the irrevocable election or application for assistance is July 1, 1986 or later:

(i) the face value amount in an irrevocable contract cannot exceed $7,500, plus accrued interest.

(ii) a client may exclude the face value, up to $7,500, plus accrued interest in any combination of irrevocable contract, revocable prepaid account, designated account or cash value in life insurance policies not used to fund the burial policy, regardless of the face value, provided the cash value in policies and designated accounts does not exceed $1500. When the amount exceeds $7,500, the client is ineligible for assistance. Accrued interest is not counted as a part of the $7,500 limit regardless of when it is accrued.

(iii) the face value of life insurance policies used to fund burial contracts is counted towards the $7,500 limit.

(C) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner).

(D) In instances where Management of Recipient's Funds form is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the client.

(7) **Medical insurance.** When a client has medical insurance, the available benefits are applied toward the medical expense for which the benefits are paid. The type of insurance is clarified in the record. If an assignment of the insurance is not made to the provider and payment is made directly to the client, the client is expected to apply the payment to the cost of medical services. Any amount remaining after payment for medical services is considered in relation to the reserve.

(8) **Stocks, bonds, mortgages and notes.** The client's equity in stocks and bonds (including U.S. Savings Bonds series A thru EE) is considered in relation to the reserve. The current market value less encumbrances is the equity. In general, determination of current market value can be obtained from daily newspaper quotations, brokerage houses, banks, etc.

(A) The current value of U.S. Savings bonds which have been held beyond the maturity date is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached. If the bond has been held beyond maturity date, it has continued to draw interest. An acceptable determination of the value may be made by checking against a chart at the bank.

(B) The amount which can be realized from notes and mortgages and similar instruments, if offered for immediate sale, constitutes a reserve. Notes and mortgages and similar instruments have value regardless of whether there is an actual offer. Appraisals obtained from bankers, realtors, loan companies and others qualified to make such estimates are obtained in determining current market value. When a total reserve approaches the maximum, it is desirable to get two or more estimates.

(C) Mortgages (including contracts for deed) and notes which are income producing are liquid countable resources.

(9) **Trust accounts.** Monies held in trust for an individual applying for or receiving Medicaid must have the availability of the funds determined. Funds held in trust are considered available when they are under the direct control of the individual or his/her spouse, and disbursement is at their sole discretion. Funds may also be held in trust and under the control of someone other than the individual or his/her spouse, such as the courts, agencies, other individuals, etc., or the Bureau of Indian Affairs (BIA).

(A) **Availability determinations.** The social worker should be able to determine the availability of a trust using the definitions and explanations listed in (B) of this subsection. However, in some cases, the worker may wish to submit a trust to the ~~DHS~~ OKDHS State Office for determination of availability. In these instances, all pertinent data is submitted to Family Support Services Division, Attention: Health Related and Medical Services Section, for a decision.

(B) **Definition of terms.** The following words and terms, when used in this paragraph, shall have the following meaning, unless the context clearly indicates otherwise:

(i) **Beneficiary.** Beneficiary means the person(s) who is to receive distributions of either income or principal, or on behalf of whom the trustee is to make payments.

(ii) **Corpus/principal.** Corpus/principal means the body of the trust or the original asset used to establish the trust, such as a sum of money or real property.

(iii) **Discretionary powers.** Discretionary powers means the grantor gives the trustee the power to make an independent determination whether to distribute income and/or principal to the beneficiary(ies) or to retain the income and add it to the principal of the trust.

(iv) **Distributions.** Distributions means payments or allocations made from the trust from the principal or from the income produced by the principal (e.g., interest on a bank account).

(v) **Grantor (trustor/settlor).** Grantor (trustor/settlor) means the individual who establishes the trust by transferring certain assets.

(vi) **Irrevocable trust.** Irrevocable trust means a trust in which the grantor has expressly not retained the right to terminate or revoke the trust and reclaim the trust principal and income.

(vii) **Pour over or open trust.** Pour over or open trust means a trust which may be expanded from time to time by the addition to the trust principal (e.g., a trust established to receive the monthly payment of an annuity, a workers' compensation settlement, a disability benefit or other periodic receivable). The principal may accumulate or grow depending upon whether the trustee distributes the receivable or permits it to accumulate. Generally, the terms of the trust will determine the availability of the income in the month of receipt and the availability of the principal in subsequent months.

(viii) **Primary beneficiary.** Primary beneficiary means the first person or class of persons to receive the benefits of the trust.

(ix) **Revocable trust.** Revocable trust means a trust in which the grantor has retained the right to terminate or revoke the trust and reclaim the trust principal and income. Unless a trust is specifically made irrevocable, it is revocable. Even an irrevocable trust is revocable upon the written consent of all living persons with an interest in the trust.

(x) **Secondary beneficiary.** Secondary beneficiary means the person or class of persons who will receive the benefits of the trust after the primary beneficiary has died or is otherwise no longer entitled to benefits.

(xi) **Testamentary trust.** Testamentary trust means a trust created by a will and effective upon the death of the individual making the will.

(xii) **Trustee.** Trustee means an individual, individuals, a corporation, court, bank or combination thereof with responsibility for carrying out the terms of the trust.

(C) **Documents needed.** To determine the availability of a trust for an individual applying for or receiving Medicaid, copies of the following documents are obtained:

(i) Trust document;

(ii) When applicable, all relevant court documents including the Order establishing the trust, Settlement Agreement, Journal Entry, etc.; and

(iii) Documentation reflecting prior disbursements (date, amount, purpose).

(D) **Trust accounts established on or before August 10, 1993.** The rules found in (i) - (iii) of this subparagraph apply to trust accounts established on or before August 10, 1993.

(i) **Support trust.** The purpose of a support trust is the provision of support or care of a beneficiary. A support trust will generally contain language such as "to provide for the care, support and maintenance of ...", "to provide as necessary for the support of ...", or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort and general welfare." Except as provided in (I)-(III) of this unit, the amount from a support trust deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee(s) for distribution of the maximum amount to the beneficiary. The beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise discretion with respect to distributions, may show that the amounts deemed available are not actually available by:

(I) Commencing proceedings against the trustee(s) in a court of competent jurisdiction;

(II) Diligently and in good faith asserting in the proceedings that the trustee(s) is required to provide support out of the trust; and

(III) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount deemed available. If the beneficiary makes the showing, the amount deemed available from the trust is the amount determined by the court. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing to make the Agency or the State of Oklahoma a party to the proceeding, or to show to the court that Medicaid benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required.

(ii) **Medicaid Qualifying Trust (MQT).** A Medicaid Qualifying Trust is a trust, or similar legal device, established (other than by will) by an individual or an individual's spouse, under which the individual may be the beneficiary of all or part of the distributions from the trust and such distributions are determined by one or more trustees who are permitted to exercise any discretion with respect to distributions to the individual. A trust established by an individual or an individual's spouse includes trusts created or approved by a representative of the individual (parent, guardian or person holding power of attorney) or the court where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse. This includes trust accounts or similar devices established for a minor child pursuant to Title 12 Oklahoma Statute § 83. In addition, a trust established jointly by at least one of the individuals who can establish an MQT and another party or parties (who do not qualify as one of these individuals) is an MQT as long as it meets the other MQT criteria. The

amount from an irrevocable MQT deemed available to the individual is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the individual assuming the full exercise of discretion by the trustee(s). The provisions regarding MQT apply even though an MQT is irrevocable or is established for purposes other than enabling an individual to qualify for Medicaid; and, whether or not discretion is actually exercised.

(I) **Similar legal device.** MQT rules listed in of this subsection also apply to "similar legal devices" or arrangements having all the characteristics of an MQT except that there is no actual trust document. An example is the client petitioning the court to irrevocably assign all or part of his/her income to another party (usually the spouse). The determination whether a given document or arrangement constitutes a "similar legal device" should be made by the ~~DHS~~ OKDHS Office of General Counsel, Legal Unit.

(II) **MQT resource treatment.** For revocable MQTs, the entire principal is an available resource to the client. Resources comprising the principal are subject to the individual resource exclusions (e.g., the home property exclusion) since the client can access those resource items without the intervention of the trustee. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the client, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the client (or to use it for the client's benefit), the entire principal is an available resource to the client. Resources transferred to such a trust lose individual resource consideration (e.g., home property transferred to such a trust is no longer home property and the home property exclusions do not apply). The value of the property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to the client (or to be used for his/her benefit), but those distributions are not made, the client's countable resources increase cumulatively by the undistributed amount.

(III) **Income treatment.** Amounts of MQT income distributed to the client are countable income when distributed. Amounts of income distributed to third parties for the client's benefit are countable income when distributed.

(IV) **Transfer of resources.** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the trustee's access to the principal (for purposes of distributing it to the client or using it for the client's benefit) is restricted (e.g., if the trust stipulates that the trustee cannot access the principal but must distribute the income produced by that principal to the client, the principal is not an available resource and has, therefore, been transferred).

(iii) **Special needs trusts.** Some trusts may provide that trust benefits are intended only for a beneficiary's "special needs" and require the trustee to take into consideration the availability of public benefits and resources, including Medicaid benefits. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including Medicaid benefits. If a trust contains such terms and is not an MQT, the trust is not an available resource.

(E) **Trust accounts established on or after August 11, 1993.** The rules found in (i) - (iii) of this subparagraph apply to trust accounts established on or after August 11, 1993.

(i) For purposes of this subparagraph, the term "trust" includes any legal document or device that is similar to a trust. An individual is considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if the trust was established other than by will and by any of the following individuals:

(I) the individual;

(II) the individual's spouse;

(III) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(IV) a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(ii) Where trust principal includes assets of an individual described in this subparagraph and assets of any other person(s), the provisions of this subparagraph apply to the portion of the trust attributable to the assets of the individual. This subparagraph applies without regard to the purposes for which the trust is established, whether the trustees have or exercise any discretion under the trust, and restrictions on when or whether distributions may be made from the trust, or any restrictions on the use of the distribution from the trust.

(iii) There are two types of trusts, revocable trusts and irrevocable trusts.

(I) In the case of a revocable trust, the principal is considered an available resource to the individual. Home property in a revocable trust under the direct control of the individual,

spouse or legal representative retains the exemption as outlined in OAC 317:35-5-41(c)(6). Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the 60 months look back period.

(II) In the case of an irrevocable trust, if there are any circumstances under which payments from the trust could be made to or for the benefit of the individual, the portion of the principal of the trust, or the income on the principal, from which payment to the individual could be made shall be considered available resources. Payments from the principal or income of the trust shall be considered income of the individual. Payments for any other purpose are considered a transfer of assets by the individual and are subject to the 60 months look back period. Any portion of the trust from which, or any income on the principal from which no payment could under any circumstances be made to the individual is considered as of the date of establishment of the trust (or if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of the asset transfer rules and are subject to the 60 months look back period.

(F) **Exempt trusts.** Subparagraph (E) of this paragraph shall not apply to the following trusts:

(i) A trust containing the assets of a disabled individual under the age of 65 which was established for the benefit of such individual by the parent, grandparent, legal guardian of the individual or a court if the State receives all amounts remaining in the trust on the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual. This type of trust requires:

(I) The trust may only contain the assets of the disabled individual.

(II) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the Oklahoma Department of Human Services or the Oklahoma Health Care Authority.

(III) Trust records shall be open at all reasonable times to inspection by an authorized representative of the OHCA or ~~DHS~~ OKDHS.

(IV) The exception for the trust continues after the disabled individual reaches age 65. However, any addition or augmentation after age 65 involves assets that were not the assets of an individual under age 65; therefore, those assets are not subject to the exemption.

(V) Establishment of this type of trust does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under the age of 65.

(VI) Payments from the trust are counted according to SSI rules. According to these rules, countable income is anything the individual receives in cash or in kind that can be used to meet the individual's needs for food, clothing and shelter. Accordingly, any payments made directly to the individual are counted as income to the individual because the payments could be used for food, clothing, or shelter for the individual. This rule applies whether or not the payments are actually used for these purposes, as long as there is no legal impediment which would prevent the individual from using the payments in this way. In addition, any payments made by the trustee to a third party to purchase food, clothing, or shelter for the individual can also count as income to the individual. For example, if the trustee makes a mortgage payment for the individual, that payment is a shelter expense and counts as income.

(VII) A corporate trustee may charge a reasonable fee for services in accordance with its published fee schedule.

(VIII) The ~~DHS~~ OKDHS Supplemental Needs Trust form is an example of the trust. Social workers may give the sample form to the client or his/her representative to use or for their attorney's use.

(IX) To terminate or dissolve a Supplemental Needs Trust, the social worker sends a copy of the trust instrument and a memorandum to ~~DHS~~ OKDHS Family Support Services Division, Attention: HR&MS explaining the reason for the requested termination or dissolution of the Supplemental Needs Trust, and giving the name and address of the trustee. The name and address of the financial institution and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(ii) A trust (known as the Medicaid Income Pension Trust) established for the benefit of an individual if:

(I) The individual is in need of long-term care and has countable income above the categorically needy standard for long-term care (~~DHS~~ OKDHS Appendix C-1) but less than $2500 per month.

(II) The Trust is composed only of pension, social security, or other income of the individual along with accumulated income in the trust. Resources can not be included in the trust.

(III) All income is paid into the trust and the applicant is not eligible until the trust is established and the monthly income has been paid into the trust.

(IV) The trust must ~~state the monthly income released to the client or person acting on behalf of the client will equal one dollar less than~~ retain an amount equal to the client's gross monthly income less the current categorically needy standard of ~~DHS~~ OKDHS Appendix C-1~~, or the net amount of the income, whichever is less~~. The Trustee shall distribute the remainder.

(V) The income disbursed from the trust is considered as the monthly income to determine the cost of their care, and can be used in the computations for spousal diversion.

(VI) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the ~~Oklahoma Department of Human Services~~ OHCA. Trust records shall be open at all reasonable times to inspection by an authorized representative of the OHCA or ~~DHS~~ OKDHS.

(VII) The State will receive all amounts remaining in the trust ~~on the death of the individual~~ up to an amount equal to the total Medicaid benefits paid on behalf of the individual subsequent to the date of establishment of the trust.

(VIII) Accumulated funds in the trust may only be used for medically necessary items not covered by Medicaid, or other health programs or health insurance and a reasonable cost of administrating the trust. Reimbursements cannot be made for any medical items to be furnished by the nursing facility. Use of the accumulated funds in the trust for any other reason will be considered as a transfer of assets and would be subject to a penalty period.

(IX) The trustee may claim a fee of up to 3% of the funds ~~remaining in~~ added to the trust ~~monthly~~ that month as compensation.

(X) An example trust is included on ~~DHS Appendix~~ OKDHS form M-11. Social Workers may give this to the client or his/her representative to use or for their attorney's use as a guide for the Medicaid Income Pension Trust.

(XI) To terminate or dissolve a Medicaid Income Pension Trust, the social worker sends a memorandum with a copy of the trust to ~~DHS~~ OKDHS Family Support Services Division, Attention: HR&MS, explaining the reason for the requested termination or dissolution of the Medicaid Income Pension Trust, and giving the name and address of the trustee. The name and address of the financial institution, account number, and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(iii) A trust containing the assets of a disabled individual when all of the following are met:

(I) The trust is established and managed by a non-profit association;

(II) The trust must be made irrevocable;

(III) The trust must be approved by the Department of Human Services and may not be amended without the permission of the Department of Human Services;

(IV) The disabled person has no ability to control the spending in the trust;

(V) A separate account is maintained for each beneficiary of the trust but for the purposes of investment and management of funds, the trust pools these accounts;

(VI) The separate account on behalf of the disabled person may not be liquidated without payment to OHCA for the medical expenses incurred by the recipients;

(VII) Accounts in the trust are established by the parent, grandparent, legal guardian of the individual, the individual, or by a court;

(VIII) To the extent that amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts an amount equal to the total medical assistance paid on behalf of the individual. A maximum of 30% of the amount remaining in the beneficiary's account at the time of the beneficiary's death may be retained by the trust.

(G) **Funds held in trust by Bureau of Indian Affairs (BIA).** Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program.

(H) **Disbursement of trust.** At any point that disbursement occurs, the amount disbursed is counted as a non-recurring lump sum payment in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received.

(10) **Retirement funds.** The rules regarding the countable value, if any, of retirement funds are found in subparagraph (A) - (B) of this paragraph:

(A) **Annuities.** An annuity gives the right to receive fixed, periodic payments either for life or a term of years. An annuity also meets the general definition of a trust, because it is a legal entity created by a grantor for the benefit of designated beneficiaries, under the management of some individual or entity with fiduciary responsibility to manage the trust for the benefit of the beneficiaries. Because an annuity meets this definition of a trust, it is treated as a trust. This means the annuity instrument itself must be examined to determine the provisions and requirements

of the annuity. For example, it is determined whether the individual can access the principal of the annuity; e.g., can it be cashed in. If so, the annuity is treated as a revocable trust (OAC 317:35-5-41(d)(9)(E)(iii)(I). If the individual cannot access the principal, the annuity is treated as an irrevocable trust. In this instance, it must also be determined what part of the annuity can, under any circumstances, be paid to, or for the benefit of the individual. When making such a determination, the date of application is used or, if later, the date of institutionalization (for an institutionalized individual) or the date of creation of the annuity (for a non-institutionalized individual). Also, these dates are used in determining whether the transfer of asset provisions apply to a particular annuity. If the annuity provides for payments to be made to the individual, those payments would be considered income to the individual. Any portion of the principal of the annuity that could be paid to or on behalf of the individual would be treated as a resource to the individual and portions of the annuity that cannot be paid to or for the benefit of the individual are treated as transfers of assets. Annuities may also be a transfer of assets for less than fair market value. The worker determines, in accordance with the ~~DHS~~ OKDHS life expectancy tables, whether the client will receive fair market value from the annuity during his/her projected lifetime. Any funds used to purchase the annuity that will not be repaid to the client during his/her projected lifetime, are a transfer of assets and the appropriate penalty period is imposed.

(B) **Other retirement investment instruments.** This subparagraph relates to individual retirement accounts (IRA), Keogh plans, profit sharing plans, and work related plans in which the employee and/or employer contribute to a retirement account.

(i) **Countability of asset.** In each case, the document governing the retirement instrument must be examined to determine the availability of the retirement benefit at the time of application. Retirement benefits are considered countable resources if the benefits are available to the applicant and/or spouse. Availability means that the applicant and/or spouse has an option to receive retirement benefits or is actually receiving benefits. For example, a retirement instrument may make a fund available at the time of termination of employment, at age 65, or at some other time. A retirement fund is not a countable resource if the applicant is currently working and must terminate employment in order to receive benefits. An individual may have the choice of withdrawing the monies from the retirement fund in a single payment or periodic payments (i.e., monthly, quarterly, etc.). If the individual elects to receive a periodic payment, the payments are considered as income as provided in OAC 317:35-5-42(c)(3). If the monies are received as a lump sum, the rules at OAC 317:35-5-42(c)(3)(C)(i) apply.

(ii) **Asset valuation.** Valuation of retirement benefits is the amount of money that an individual can currently withdraw from the fund or is actually receiving. Valuation does not include the amount of any penalty for early withdrawal. Taxes due on the monies received by the applicant are not deducted from the valuation.

(iii) **Timing of valuation.** Retirement funds are a countable resource in the month that the funds are available to the applicant. For purposes of this subsection, the month that the funds are available means the month following the month of application for the funds. For example, the retirement instrument makes retirement funds available at age 65. The applicant turns 65 on January 1st. The applicant makes a request for the funds on February 1st and the monies are received on June 1st. The retirement fund would be considered as a countable resource in the month of March. The resource would not be counted in the month in which it is later received.

(11) **Automobiles, pickups, and trucks.** Automobiles, pickups, and trucks are considered in the eligibility determination for Medicaid benefits.

(A) **Exempt automobiles.** One automobile is excluded from counting as a resource to the extent its current market value (CMV) does not exceed $4,500. The CMV in excess of $4,500 is counted against the resource limit; or exempt one automobile, pickup or truck per family regardless of the value if it is verified that the car is used:

(i) for medical services 4 times a year to obtain either medical treatment or prescription drugs; or

(ii) for employment purposes; or

(iii) especially equipped for operation by or transportation of a handicapped person.

(B) **Other automobiles.** The equity in other automobiles, pickups, and trucks is considered in relation to the reserve. The current market value, less encumbrances on the vehicle, is the equity. Only encumbrances that can be verified are considered in computing equity.

(i) The market value of each year's make and model is established on the basis of the "av'g. Trade In" value as shown in the current publication of the National Automobile Dealers Association (NADA) on "Cars, Trucks, and Imports" which is provided monthly to each county office by the ~~DHS~~ OKDHS State Office.

(ii) If a vehicle's listing has been discontinued in the NADA book, the household's estimate of the value of the vehicle is accepted unless the worker has reason to believe the estimate is incorrect.

(iii) The market value of a vehicle no longer operable is the verified salvage value.

(iv) In the event the client and worker cannot agree on the value of the vehicle, the client secures written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals or between the book value and one or more of these appraisals, the worker and the client jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and who is acceptable to both the client and the worker.

(12) **Resource disregards.** In determining need, the following are not considered as resources:

(A) The coupon allotment under the Food Stamp Act of 1977;

(B) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(C) Education grants (excluding Work Study) scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(D) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide. If the loan agreement is not written, Form Adm-103, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or Form Adm-103 are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(E) Indian payments or items purchased from Indian payments (including judgement funds or funds held in trust) distributed per capita by the Secretary of the Interior (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this Subchapter, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(F) Special allowance for school expenses made available upon petitions (in writing) from funds held in trust for the student;

(G) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

(H) Payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Services Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(I) Payment to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(J) The value of supplemental food assistance received under the Child Nutrition Act or the special food services program for children under the National School Lunch Act;

(K) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(L) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(M) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(N) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(O) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;

(P) Interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or the restricted lands are considered as income;

(Q) Resources set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of resources excluded and the period of time approved. A plan can be approved

for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(R) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(S) A migratory farm worker's out-of-state homestead is disregarded if the farm worker's intent is to return to the homestead after the temporary absence;

(T) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in interment camps during World War II;

(U) Dedicated bank accounts established by representative payees to receive and maintain retroactive SSI benefits for disabled/blind children up to the legal age of 18. The dedicated bank account must be in a financial institution, the sole purpose of which is to receive and maintain SSI underpayments which are required or allowed to be deposited into such an account. The account must be set up and verification provided to SSA before the underpayment can be released; and

(V) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed against the individual if he/she disposes of part or all of the payment. The rules at OAC:35-5-41(d)(9) regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment.

(e) **Changes in capital resources.** Rules on transfer or disposal of capital resources are not applicable. See OAC 317:35-9, OAC 317:35-17, and OAC 317:35-19 if the individual enters a nursing home or receives Home and Community Based Waiver Services, HCBWS/MR or ADvantage waiver services.

(1) **Resources of an applicant.** If the resource(s) of an applicant is in a form which is not available for immediate use, such as real estate, mineral rights, or one of many other forms, and the applicant is trying to make the resource available, the applicant may be certified and given a reasonable amount of time to make this available. A reasonable amount of time would normally not exceed 90 days. The client is notified in writing that a period of time not to exceed 90 days will be given to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the client, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the client.

(2) **Capital resources acquired while receiving assistance.** If the recipient acquires resources which increase his/her available reserve above the maximum, he/she is ineligible for assistance unless there are specific plans for using the resources in compliance with rules on "resources disposed of while receiving assistance". The term "using the resource" is construed to mean that the resource has been encumbered or actually transferred. If the facts show a reasonable delay in executing the plan to use the required resource or if the resource is in a form which is not available for immediate use (such as real estate, mineral rights, or one of many other forms), and if efforts are in progress to make the resource available, the recipient is given a reasonable amount of time to make this available. The client is notified in writing that a period of time not to exceed 90 days will be given to make the resources available.

(A) Any extension beyond the initial 90 day period is justified only after interviewing the client, determining that a good faith effort is still being made and that failure to make the resource available is due to circumstances beyond the control of the client.

(B) Money borrowed on any of the client's resources, except the home, merely changes his/her resource from one form to another. Money borrowed on the home is evaluated in relation to the reserve.

(f) **Maximum reserve.** Maximum reserve is a term used to designate the largest amount which a recipient can have in one or more nonexempt resources, and still be considered to be in need. A recipient's reserve may be held in any form or combination of forms. If the resources of the applicant or recipient exceed the maximums listed on ~~DHS~~ OKDHS Appendix C-1, he/she is not eligible.

(1) For each minor blind or disabled child up to the legal age of 18 living with parent(s) whose needs are not included in an ~~AFDC~~ TANF grant, or receiving SSI and/or SSP, the resource limit is the same as the individual limit as shown on ~~DHS~~ OKDHS Appendix C-1. If the parent's resources exceed the maximum amount, the excess is deemed available to the child (resources of an ineligible child are not deemed to an eligible child). If there is more than one eligible child, the amount is prorated.

(2) If the minor blind or disabled child up to the legal age of 18 is residing in a nursing facility, or a medical facility if the confinement lasts or is expected to last for 30 days, the parent(s)' resources are not deemed to the child.

(3) Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents resources are not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(4) when both parents are in the home and one parent is included in an aged, blind or disabled case and the spouse is included in an ~~AFDC~~ TANF case with the children, the resources of both parents are evaluated in relation to eligibility for SSI and therefore not considered on the AFDC case. All resources of the parents would be shown on the aged, blind or disabled case.

[OAR Docket #04-1023; filed 5-24-04]

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

[OAR Docket #04-1024]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Personal Care Services
317:35-15-4. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-2. through 317:35-17-5. [AMENDED]
317:35-17-6. [REVOKED]
317:35-17-7. [REVOKED]
317:35-17-8.1. [REVOKED]
317:35-17-11. through 317:35-17-12. [AMENDED]
317:35-17-14. [AMENDED]
317:25-17-16. [AMENDED]
317:35-17-19. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-2. [AMENDED]
317:35-19-7.1. [AMENDED]
317:35-19-9. [AMENDED]
317:35-19-18. [AMENDED]
317:35-19-20. [AMENDED]
317:35-19-22. [AMENDED]
(Reference APA WF # 03-05 and 03-22B)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1025.1 through 1025.3 pf Title 56 of Oklahoma Statutes
DATES:
Comment period:
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Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 12, 2004
Final adoption:
May 12, 2004
Effective:
June 25, 2004
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 15. Personal Care Services
317:35-15-4. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-2. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-7.1. [AMENDED]
(Reference APA WF # 03-05)
Gubernatorial approval:
April 1, 2003
Register publication:
20 Ok Reg 1062
Docket number:
03-605
INCORPORATIONS BY REFERENCE:
N/A

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

Medical Providers-Fee for Service, ADvantage Program Waiver Services specific, and Medical Assistance for Adults and Children-Eligibility, ADvantage Program Waiver and Nursing Facility Services specific, rules are revised to: (1) update service codes consistent with HIPAA national code requirements; (2) eliminate special code reimbursement for Adult Day Health Facility based respite care; (3) remove the Pre-admission Screening and Resident Review (PASRR) requirement for individuals applying for ADvantage Waiver services; (4) clarify the date used to determine the value of resources for married applicants of ADvantage services; (5) clarify ADvantage waiting list procedures; (6) add consistency concerning case management services in areas where no case management is available; (7) remove physician order requirements for the medical eligibility determination; and (9) clarify UCAT criteria for level of care determinations.
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 25, 2004.

SUBCHAPTER 15. PERSONAL CARE SERVICES

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

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

(1) have adequate informal supports that contribute to care, or decision making ability as documented on the UCAT, to remain in his/her home without risk to his/her health, safety, and well-being:

(A) the individual must have the decision making ability to respond appropriately to situations that jeopardize his/her health and safety or available supports that compensate for his/her lack of ability as documented on the UCAT, or

(B) the individual who has his/her decision making ability, but lacks the physical capacity to respond appropriately to situations that jeopardize health and safety and has been informed by the LTC nurse of potential risks and consequences may be eligible;

(2) require a care plan involving the planning and administration of services delivered under the supervision of professional personnel;

(3) have a physical impairment or combination of physical and mental impairments. An individual who poses a threat to self or others as supported by professional documentation may not be approved for Personal Care services;

(4) not have members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors;

(5) lack the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and

(6) require assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

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

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

(A) bathing,
(B) eating,
(C) dressing,
(D) grooming,
(E) transferring (includes getting in and out of a tub, bed to chair, etc.),
(F) mobility,
(G) toileting, and
(H) bowel/bladder control.

(2) **"ADLs score of three or greater"** means the client cannot do one ADL at all or needs some help with two ADLs.

(3) **"ADLs score is two"** means the client needs some help with one ADL.

(4) **"Client support very low need"** means the client's UCAT Client Support score is zero which indicates in the UCAT assessor's clinical judgment, formal and informal sources are sufficient for present level of client need in most functional areas.

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

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

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

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

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

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

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

(~~10~~ 12) "**IADLs score of ~~six~~ eight or greater**" means the client ~~cannot do two IADLs at all or the client~~ needs some help with ~~three~~ four IADLs or the client cannot do ~~one IADL~~ two IADLs at all and needs some help with ~~two~~ one other IADLs.

(~~11~~ 13) "**Instrumental activities of daily living**" means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

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

(14) **"Medicaid personal care services provider"** means a program, corporation, or individual who provides services under the state's Medicaid personal care program or ADvantage Waiver to individuals who are elderly or who have a physical disability.

(~~12~~ 15) **"MSQ"** means the mental status questionnaire.

(~~13~~ 16) **"MSQ moderate risk range"** means a total weighted score of ~~five~~ seven or more which indicates ~~two or more positive indications (out of six probes) of significant~~ an orientation-memory-concentration impairment or a ~~very significant indication of~~ memory impairment.

(~~14~~ 17) **"Nutrition moderate risk"** means the total weighted UCAT Nutrition score is 8 or more which indicates poor appetite or weight loss combined with special diet requirements, medications or difficulties in eating.

(~~15~~ 18) **"Social resources score is ~~six~~ eight or more"** means the client lives alone or has no informal support

when sick or needs assistance, or has little or no contact with others.

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

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

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

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

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

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

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

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

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

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

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

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

(C) If multiple household members are applying for DHS Personal Care services, the UCAT assessment is done for all the client household members at the same time. Individual care plans and service plans are discussed and developed with the group of clients who appear eligible so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of service allocated to each individual is distributed between family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home.

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

(7) The LTC nurse scores the UCAT III. Within five working days of the assessment visit, the nurse forwards

the UCAT and the completed Personal Care plan and service plan forms to the area nurse, or designee, for medical eligibility determination. The client's Personal Care service plan and care plan include:

(A) goals and tasks;

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

(C) frequency of service visits;

(D) the effective date for services; and

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

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

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

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

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

The ~~DHS~~ OKDHS area nurse, or nurse designee ~~(OHCA, LOCEU makes some determinations when PASRR is involved)~~, determines medical eligibility for ADvantage program services based on ~~the physician's written order of the need for care,~~ the Long Term Care (LTC) nurse's Uniform Comprehensive Assessment Tool (UCAT) III assessment and the determination that the client has unmet care needs that require ADvantage or NF services to assure client health and safety. ADvantage services are initiated to support the informal care that is being provided in the client's home, or, that based on the UCAT, can be expected to be provided in the client's home upon discharge of the client from a NF or hospital. These services are not intended to take the place of regular care provided by family members and/or by significant others. When there is an informal (not paid) system of care available in the home, ADvantage service provision will supplement the system within the limitations of ADvantage Program policy.

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

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

(i) bathing,

(ii) eating,

(iii) dressing,

(iv) grooming,

(v) transferring (includes getting in and out of a tub, bed to chair, etc.),

(vi) mobility,

(vii) toileting, and

(viii) bowel/bladder control.

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

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

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

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

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

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

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

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;
(iii) is likely to continue indefinitely;
(iv) results in substantial functional limitations in three or more of the following areas of major life activity:
(I) self-care;
(II) receptive and expressive language;
(III) learning;
(IV) mobility;
(V) self-direction;
(VI) capacity for independent living; and
(VII) economic self-sufficiency; and
(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

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

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

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

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

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

(~~L~~ N) **"IADL"** means the instrumental activities of daily living.

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

(~~N~~ P) **"Instrumental activities of daily living"** means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:
(i) shopping,
(ii) cooking,
(iii) cleaning,
(iv) managing money,
(v) using a telephone,
(vi) doing laundry,
(vii) taking medication, and
(viii) accessing transportation.

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

(~~P~~ R) **"MSQ"** means the mental status questionnaire.

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

(~~R~~ T) **"MSQ score at the high end of the moderate risk range"** means the client's total weighted UCAT MSQ score is ~~8~~ (10) or ~~9~~ (11) which indicates ~~2 or more positive indications of significant~~ an orientation-memory-concentration impairment, or a ~~very~~ significant ~~indication of~~ memory impairment.

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

(V) **"Progressive degenerative disease process that responds to treatment"** means a process such as, but not limited to, Multiple Sclerosis (MS), Parkinson's Disease, Human Immunodeficiency Virus (HIV), or Acquired Immunodeficiency Syndrome (AIDS), that, untreated, systematically

impairs normal body function which leads to acute illness and/or disability but that reacts positively to a medically prescribed treatment intervention (usually medication) which arrests or significantly delays the destructive action of the process.

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

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

(A) ~~Health Assessment is in the moderate risk range; or~~ The UCAT documents need for assistance to sustain health and safety as demonstrated by:

(~~B~~ i) either the ADLs or MSQ score is in the high risk range; or

(~~C~~ ii) any combination of two or more of the following:

(~~i~~ I) ADLs score is at the high end of moderate risk range; or,

(~~ii~~ II) MSQ score is at the high end of moderate risk range; or,

(~~iii~~ III) IADLs score is in the high risk range; or,

(~~iv~~ IV) Nutrition score is in the high risk range; ~~and~~ or,

(V) Health Assessment is in the moderate risk range, and, in addition,

(B) The UCAT documents absence of support or adequate environment to meet the needs to sustain health and safety as demonstrated by:

(~~D~~ i) Client Support is moderate risk; or,

(~~E~~ ii) Environment is high risk; or,

(~~F~~ iii) Environment is moderate risk and Social Resources is in the high risk range~~.~~ ; or, regardless of whether criteria under (A) of need and (B) of absence of support are met;

(C) The UCAT documents that:

(i) the client has a clinically documented progressive degenerative disease process that will produce health deterioration to an extent that the person will meet OAC 317:35-17-2(2)(A) criteria if untreated; and

(ii) the client previously has required Hospital or NF level of care services for treatment related to the condition; and

(iii) a medically prescribed treatment regimen exists that will significantly arrest or delay the disease process; and

(iv) only by means of ADvantage Program eligibility will the individual have access to the required treatment regimen to arrest or delay the disease process.

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

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

(B) have a physical impairment or combination of physical, mental and/or functional impairments;

(C) require professional nursing supervision (medication, hygiene and/or dietary assistance);

(D) lack the ability to adequately and appropriately care for self or communicate needs to others;

(E) require medical care and treatment in order to minimize physical health regression or deterioration;

(F) require care that is not available through family and friends, Medicare, Veterans Administration, or other federal entitlement program with the exception of Indian Health Services; and

(G) require care that cannot be met through Medicaid State Plan Services, including Personal Care, if financially eligible.

317:35-17-3. ADvantage program services

(a) The ADvantage program is a Medicaid Home and Community Based Waiver used to finance noninstitutional long-term care services for elderly and a targeted group of physically disabled adults ~~who~~ when there is a reasonable expectation that within a 30 day period, the person's health, due to disease process or disability, would, without ~~those~~ appropriate services, deteriorate and ~~would~~ require nursing facility care to arrest the deterioration. ADvantage program clients must be Medicaid eligible and must not reside in an institution, room and board, licensed residential care facility, or licensed assisted living facility. The number of clients who may receive ADvantage services is limited.

(1) To receive ADvantage services, individuals must meet one of the following categories:

(A) be age 65 years or older, or

(B) be age 21 or older if physically disabled and not developmentally disabled or if the person has a clinically documented, progressive degenerative disease process that responds to treatment and previously has required hospital or NF level of care services for treatment related to the condition and requires ADvantage

services to maintain the treatment regimen to prevent health deterioration, or

(C) if developmentally disabled and between the ages of 21 and 65, not have mental retardation or a cognitive impairment related to the developmental disability.

(2) In addition, the individual must meet ~~both of~~ the following criteria:

(A) require nursing facility level of care [see OAC 317:35-17-2]; ~~and~~

(B) meet service eligibility criteria [see OAC 317:35-17-3(d)]; and

(C) meet program eligibility criteria [see OAC 317:35-17-3(e).

(b) Home and Community Based Waiver Services are outside the scope of state plan Medicaid services. The Medicaid waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of persons who are categorically needy (refer to ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1.) and without such services would be institutionalized. The estimated cost of providing an individual's care outside the nursing facility cannot exceed the annual cost of caring for that individual in a nursing facility. When determining the ADvantage service plan cost cap for an individual, the comparable Medicaid cost to serve that individual in a nursing facility is estimated. If the individual has Acquired Immune Deficiency Syndrome (AIDS) or if the individual requires ventilator care, the appropriate Medicaid enhanced nursing facility rate to serve the individual is used to estimate the ADvantage cost cap. To meet program cost effectiveness eligibility criteria, the annualized cost of a client's ADvantage services cannot exceed the ADvantage program services expenditure cap unless approved by the Administrative Agent (AA) under one of the exceptions listed in (1)-(4) of this subsection. The cost of the service plan furnished to a client may exceed the expenditure cap only when all of the increased expenditures above the cap are due solely to:

(1) a one-time purchase of home modifications and/or specialized medical equipment; and/or

(2) documented need for a temporary (not to exceed a 60-day limit) increase in frequency of service or number of services to prevent institutionalization; or

(3) expenditures are for ADvantage Hospice services; and/or,

(4) expenditures in excess of the cap are for prescribed drugs, which would be paid by Medicaid if the individual were receiving services in a nursing home, and the annualized expenditures for ADvantage services to a client under these circumstances can reasonably be expected to be no more than 200% of the individual cap.

(c) Services provided through the ADvantage waiver are:

(1) case management or Comprehensive Home Care (CHC) case management;

(2) respite or CHC in-home respite;

(3) adult day health care;

(4) environmental modifications;

(5) specialized medical equipment and supplies;

(6) physical therapy/occupational therapy/respiratory therapy/speech therapy or consultation;

(7) advanced supportive/restorative assistance or CHC advanced supportive/restorative assistance;

(8) skilled nursing or CHC skilled nursing;

(9) home delivered meals;

(10) hospice care;

(11) medically necessary prescription drugs within the limits of the waiver;

(12) personal care (state plan), ADvantage personal care, or CHC personal care; ~~and~~

(13) Personal Emergency Response System (PERS); and

(~~13~~ 14) Medicaid medical services for individuals age 21 and over within the scope of the State Plan.

(d) The ~~DHS~~ OKDHS area nurse or nurse designee makes a determination of service eligibility prior to evaluating the UCAT assessment for nursing facility level of care. The following criteria are used to make the service eligibility determination:

(1) an open ADvantage Program waiver slot, as authorized by the waiver document approved by the Centers for Medicare and Medicaid Services (CMS), is available to assure federal participation in payment for services to the client. If the AA determines all ADvantage waiver slots are filled, the client cannot be certified on the ~~DHS~~ OKDHS computer system as eligible for ADvantage services and the client's name is placed on a waiting list for entry as an open slot becomes available. ADvantage waiver slots and corresponding waiting lists, if necessary, are maintained for persons that have a developmental disability and those that do not have a developmental disability.

(2) the client is in the ADvantage targeted service group. The target group is an individual who is frail and 65 years of age or older or age 21 or older with a physical disability and who does not have mental retardation or a cognitive impairment.

(3) the client does not pose a physical threat to self or others as supported by professional documentation.

(4) members of the household or persons who routinely visit the household, as supported by professional documentation, do not pose a threat of harm or injury to the client or other household visitors.

(e) The AA ~~in conjunction with the DHS area nurse~~ determines ADvantage ~~Program~~ program eligibility through the service plan ~~development~~ approval process. The following criteria are used to make the ADvantage program eligibility determination that a client is not eligible:

(1) if the client's needs as identified by UCAT~~, Preadmission Screening and Resident Review (PASRR)~~ and other professional assessments ~~can~~ cannot be met through ADvantage program services, Medicaid State Plan services and other formal or informal services. The State, as part of the waiver program approval authorization, assures CMS that each waiver client's health, safety, or welfare can be maintained in their home. If a client's identified needs cannot be met through provision of ADvantage program or

Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the client's health, safety or welfare in their home cannot be assured ~~and the client cannot receive ADvantage program services~~.

(2) if the client poses a physical threat to self or others as supported by professional documentation~~, he/she is not eligible~~.

(3) if other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors~~, the client is not eligible~~.

(4) ~~the client has the potential to remain safely in the community with services~~ if the client's needs are being met, or do not require ADvantage services to be met, or if the client would not require institutionalization if needs are not met.

(5) if, after the service and care plan is developed, the risk to client health and safety is not acceptable to the client, or to the interdisciplinary service plan team, or to the AA.

(f) The case manager provides the AA with professional documentation to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the service plan as provider safety permits until the client is removed from the ADvantage program. As a part of the procedures requesting redetermination of program eligibility, the AA will provide technical assistance to the Provider for transitioning the client to other services.

(~~f~~g) Individuals determined ineligible for ADvantage program services are notified in writing by ~~DHS~~ OKDHS of the determination and of their right to appeal the decision.

(h) The AA provides OKDHS with notification that the client is no longer program eligible.

317:35-17-4. Application for ADvantage services

(a) **Application procedures for ADvantage services.** If waiver slots are available, the application process is initiated by the receipt of a UCAT, Part I or by an oral request for services. A written financial application is not required for an individual who has an active Medicaid case. A financial application for ADvantage services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

(1) All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(2) An individual residing in an NF or requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using ~~DHS~~ OKDHS form MA-11, Assessment of Assets, when Medicaid application is not being made. The individual and/or spouse must provide documentation of resources. The assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of Medicaid long-term care eligibility is made.

(3) When Medicaid application is being made, an assessment of resources must be completed if it was not completed when the individual entered the NF or began receiving waiver services. For applicants of the ADvantage waiver, ~~the spousal share of resources is determined by those resources owned by the couple the month the service began~~ those resources owned by the couple the month the application was made determines the spousal share of resources. If the individual applies for Medicaid at the time of entry into the ADvantage waiver, Form MA-11 is not appropriate. However, the spousal share must be determined using the resource information provided on the Medicaid application form and computed using ~~DHS~~ OKDHS form MA-12, Title XIX Worksheet.

(b) **Date of application.**

(1) The date of application is:

(A) the date the applicant or someone acting in his/her behalf signs the application in the county office; or

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or

(C) the date when the request for Medicaid is made orally and the financial application form is signed later. The date of the oral request is entered in "red" above the date the form is signed.

(2) An exception is when ~~DHS~~ OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contracted provider forwards the application and documentation to the ~~DHS~~ OKDHS county office of the client's county of residence for Medicaid eligibility determination. The application date is the date the client signed the application form for the provider.

(c) **ADvantage waiting list procedures.** ADvantage Program "available capacity in the month" is the number of additional clients that may be enrolled in the Program in a given month without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. The available capacity in the month for any particular month is calculated as follows: Available capacity in the month equals [(Waiver year C value) minus (unduplicated number during the current waiver fiscal year served as of the last day of the previous month)] divided by (the number of months remaining in the waiver year). Upon notification from the AA that ~~95%~~ 102% of the available capacity in the previous month ~~has been attained~~ was exceeded, ~~DHS~~ OKDHS Aging Services Division (~~DHS/ASD~~ OKDHS/ASD) notifies ~~DHS~~ OKDHS county offices and contract agencies approved to complete the UCAT, Parts I and II that, until further notice,

requests for ADvantage services are not to be processed as applications, but referred to AA to be placed on a waiting list of requests for ADvantage services. Up to a maximum of five requests for ADvantage Program services from individuals who have resided in a nursing facility for a minimum of two months and who are transitioning from nursing facility to home-based care under Oklahoma's Real Choice Systems Change Nursing Facility Transition Services Pilot are exempt from waiting list procedures. Upon implementation and for the duration of waiting list procedures, the SPEED policy described under OAC 317:35-17-17 is suspended except for persons identified through the Nursing Facility Transition Services Pilot as being exempt from waiting list procedures.

(1) ~~As~~ Each month as additional waiver slots are available, the AA forwards requests from the waiting list to the appropriate ~~DHS~~ OKDHS county office for processing the application.

~~(2) If elapsed days between UCAT, Parts I and II date and notification to DHS to process Medicaid application for ADvantage is more than 14 calendar days, the AA updates the UCAT, Parts I and II prior to forwarding to the appropriate DHS county office.~~

(~~3~~ 2) The criterion for suspending waiting list procedures is the occurrence of two consecutive months in which no person is retained on the waiting list the entire month and less than 95% of the available capacity in the month is attained. Upon notification from the AA that waiting list procedures are no longer necessary, ~~DHS/ASD~~ OKDHS/ASD notifies ~~DHS~~ OKDHS county offices and contract agencies approved to complete the UCAT, Parts I and II to process requests for ADvantage services as applications.

317:35-17-5. ADvantage program medical eligibility determination

The ~~DHS~~ OKDHS area nurse, or nurse designee, makes the medical eligibility determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT), Part III, and other available medical information.

(1) When ADvantage care services are requested or the UCAT is received in the county office:

(A) the LTC nurse is responsible for completing the UCAT~~, LTC Preadmission Level I screen, and securing a physician's primary, secondary and other current diagnoses and order for ADvantage Waiver services~~.

(B) the social worker is responsible for contacting the individual within three working days to initiate the financial eligibility application process.

~~(C) When a physician's order for ADvantage services cannot be obtained due to lack of medical information on the individual, the local office county director, or designee, authorizes a medical examination if current medical information is not available. When authorization is necessary, the county director issues DHS form ABCDM-16, Authorization for Examination, and DHS form ABCDM-80, Report of Physician's Examination, to a licensed medical or osteopathic physician as defined in OAC 317:30-5-1. A physician does not include those physicians in the full time employment of the Veterans Administration, Public Health Service or other agency.~~

(2) Categorical relationship must be established for determination of eligibility for ADvantage services. If categorical relationship to disability has not already been established, the local social worker submits the same information described in OAC 317:35-5-4(2) to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship to the disabled using the same definition used by SSA. A follow-up is required by the ~~DHS~~ OKDHS social worker with the Social Security Administration to be sure their disability decision agrees with the decision of LOCEU.

(3) Community agencies complete the UCAT, Part I and forwards the form to the county office. If the UCAT, Part I indicates that the applicant does not qualify for Medicaid long-term care services, the applicant is referred to appropriate community resources.

(4) The LTC nurse ~~conducts the PASRR Level I screen for MI/MR and~~ completes the UCAT, Part III assessment visit with the client within 10 working days of receipt of the referral for ADvantage services for a client who is Medicaid eligible at the time of the request. The LTC nurse completes the UCAT, Part III assessment within 20 working days of the date the Medicaid application is completed for new clients.

(5) During the assessment visit, the LTC nurse informs the client of medical eligibility and provides information about the different long-term care service options. If there are multiple household members applying for the ADvantage program, the UCAT assessment is done for the applicant household members during the same visit. The LTC nurse documents whether the client chooses NF program services or ADvantage program services. In addition, the LTC nurse makes a level of care and service program recommendation.

(6) The LTC nurse informs the client and family of agencies certified to deliver ADvantage case management and in-home care services in the local area to obtain the client's primary and secondary informed choices.

(A) If the client and/or family declines to make a provider choice, the LTC nurse documents that decision on the client choice form.

(B) The AA uses a rotating system to select an agency for the client from a list of all local certified case management and in-home care agencies.

(7) The LTC nurse documents the names of the chosen agencies and the agreement (by dated signature) of the client to receive services provided by the agencies.

(8) If the needs of the client require an immediate interdisciplinary team (IDT) meeting with home health agency nurse participation to develop a care plan and service plan, the LTC nurse documents the need.

(9) The LTC nurse scores the UCAT, Part III ~~and follows up to facilitate physician completion and timely return of the LTC 300, Long Term Care Assessment~~

~~form, or the recommendation for ADvantage services~~. ~~Upon receipt of certification of level of care completed by the applicant's physician, the~~ The LTC nurse forwards ~~the completed assessment form,~~ the UCAT, Parts I and III, documentation of financial eligibility, and documentation of the client's case management and in-home care agency choices to the area nurse, or nurse designee, for medical eligibility determination.

(10) If, based upon the information obtained during the assessment, the LTC nurse determines that the client may be at risk for health and safety, ~~DHS~~ OKDHS Adult Protective Services (APS) staff are notified immediately and the referral is documented on the UCAT.

(11) Within ten working days of receipt of a complete ADvantage application ~~not requiring a PASRR level II preadmission screen~~, the area nurse, or nurse designee, determines medical eligibility using NF level of care criteria and service eligibility criteria [refer to OAC 317:35-17-2 and OAC 317:35-17-3] and enters the medical decision on the system. The original documents are sent with the MS-52 to the AA ~~and copies of the UCAT and identified pages of the original Level I preadmission screening are sent to the OHCA~~.

(12) Upon notification of financial eligibility from the social worker, medical eligibility (MS-52) and approval for ADvantage entry from the area nurse, or nurse designee, the AA communicates with the client and case management provider to begin care plan and service plan development. The AA communicates to the client's case management provider the client's name, address, case number and social security number, the units of case management and, if applicable, the number of units of home health agency nurse evaluation authorized for care plan and service plan development, whether the needs of the client require an immediate IDT meeting with home health agency nurse participation and the effective date for client entry into ADvantage.

(13) If the services must be in place to ensure the health and safety of the client upon discharge to the home from the NF, the ~~LTC nurse or~~ AA provides administrative case management to develop and implement the care plan and service plan. For administrative case management, the ~~LTC nurse,~~ AA, or a nurse case manager from an ADvantage case management provider selected by the client and referred by the AA follows ADvantage case management procedures for care plan and service plan development and implementation. If the ~~LTC nurse of~~ AA has provided transition case management services, when the client returns home, the ~~LTC nurse or~~ AA begins transitioning case management to the ADvantage case management provider chosen by the client.

(14) If a client in a hospital requests ADvantage services, the hospital initiates a request for Medicaid ADvantage services by contacting the AA for intake and screening.

(A) The ~~LTC nurse,~~ AA, or a nurse case manager from an ADvantage case management provider selected by the client and referred by the AA completes the UCAT, Part III assessment visit, if possible, with the hospitalized applicant. If the local OKDHS office receives the request for Medicaid ADvantage services for a client in a hospital it is referred to the AA. During the assessment visit, the ~~LTC nurse,~~ AA, or ADvantage nurse case manager informs the client of financial and medical eligibility criteria and provides information about the different long-term care service options. The ~~LTC nurse,~~ AA, or ADvantage nurse case manager documents the client's choice on the UCAT, Part III. The ~~LTC nurse,~~ AA, or ADvantage nurse case manager will review forms documenting the selection of provider(s), agreement with the service plan and release of information with the client and obtain the client's dated signature on the forms.

(B) If the UCAT indicates the client is eligible for ADvantage services and financial eligibility has been determined, the ~~LTC nurse,~~ AA, or ADvantage nurse case manager, in consultation with the hospital discharge planner provides administrative case management. The ~~LTC nurse,~~ AA, or ADvantage nurse case manager develops a temporary care plan and service plan if services must be in place to ensure the health and safety of the client upon discharge from the hospital. When the client returns home, the ~~LTC nurse,~~ AA, or ADvantage nurse case manager transitions case management to the ADvantage case management provider chosen by the client.

(C) The completed assessment forms are submitted to the OKDHS area nurse who makes the medical eligibility decision, enters it on the system and notifies the AA of the decision.

(D) If the applicant is determined not eligible for ADvantage, providers follow special procedures specified by the AA to bill for services provided. If authorized by the AA, case management providers may bill using an administrative case management procedure code for services delivered and not reimbursable under any other ADvantage case management procedure code.

(15) If the client has a current certification and requests a change from Personal Care Services to ADvantage services, a new UCAT ~~and a physician's order are~~ is required. The UCAT is updated when a client requests a change from ADvantage services to Personal Care services, or when a client requests a change from the nursing facility to ADvantage services. If a client is receiving ADvantage services and requests to go to a nursing facility, ~~the LTC nurse will obtain the physician's order and primary and secondary diagnoses to submit to the area nurse. A~~ a new medical level of care decision is not needed.

(16) When a UCAT assessment has been completed more than 90 days prior to submission to the area nurse or nurse designee for a medical decision, a new assessment is required.

317:35-17-6. Pre-admission screening [REVOKED]

~~(a) Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) of individuals with mental illness and mental retardation. PASRR applies to the screening or reviewing of all individuals with mental illness or mental retardation or related conditions who are seeking entry into the ADvantage program.~~

~~(b) Medical and financial eligibility determinations are also required.~~

317:35-17-7. PASRR screening process [REVOKED]

~~(a) **Level I screen for PASRR.**~~

~~(1) Form LTC 300A, Long Term Care Pre-admission Screen, must be completed by an authorized official of DHS, of the AA, of the nursing facility, of the hospital or a physician. An authorized official is defined as:~~

~~(A) A licensed nurse from DHS;~~

~~(B) A social worker or licensed nurse from the AA;~~

~~(C) The nursing facility administrator or co-administrator;~~

~~(D) A licensed nurse from the nursing facility, hospital, or physician's office;~~

~~(E) A social service director from the nursing facility or hospital; or~~

~~(F) A social worker from the nursing facility or the hospital.~~

~~(2) The authorized official as defined in (1) of this subsection must evaluate the properly completed OHCA Form LTC 300A and/or the UCAT Part III, as well as all other readily available medical and social information, to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. This evaluation constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II Screen is necessary prior to allowing the client to receive ADvantage services.~~

~~(3) Upon receipt and review of the medical eligibility information packet, the area nurse, or designee, evaluates whether a Level II PASRR assessment may be required by consultation with LOCEU staff. If a Level II assessment is not required, as determined by LOCEU, the area nurse, or designee, documents this and determines medical eligibility within ten days of receipt. If a Level II is required, a medical decision is not made until the area nurse, or designee, is notified of the outcome of the Level II screening. If a Level II assessment is required, the area nurse, or designee, makes the medical eligibility decision within five working days of notice if appropriate.~~

~~(b) **Level II assessment for PASRR.** The authorized official as defined in (a)(1) of this Section is responsible for consulting with the OHCA LOCEU in determining whether a Level II screening is necessary. The decision for Level II assessment is made by the LOCEU.~~

~~(1) Any one of the following two circumstances will allow a client to enter the ADvantage program without being subjected to a Level II PASRR assessment.~~

~~(A) The client has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.~~

~~(B) The client has a primary or secondary diagnosis of dementia including dementia of the Alzheimer's type documented in writing by a physician and does not have a diagnosis of mental retardation or related condition or a primary diagnosis of mental illness.~~

~~(2) If the client has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the client's past, the client cannot be admitted to the ADvantage program. Instead, a Level II PASRR assessment must be performed and the results must indicate that the client does not have mental retardation and that NF level of care is appropriate prior to allowing the client to be admitted into the ADvantage program.~~

~~(3) The State MR (DHS/Developmental Disabilities Services Division) and MI (Department of Mental Health and Substance Abuse Services) authorities have developed advance group determinations by category that take into account certain diagnoses, levels of severity of illness, or need for a particular service which clearly indicate that admission to a NF is normally needed, or that the provision of specialized services (SS) is not normally needed. These determinations are actual Level II decisions and not exemptions from the screening process. For those for whom a categorical determination is made, both the level of care determination and the specialized services determination must be addressed. All positive determinations concerning the need for specialized services must be based on a more extensive individualized evaluation. The cost of specialized services may prohibit admission into the ADvantage program (see OAC 317:35-17-3(b).~~

~~(c) **Results of Level II assessment.** Through contractual arrangements between the Oklahoma Health Care Authority and the Mental Illness/Mental Retardation authorities, individualized evaluations are conducted and findings presented in written evaluative reports. The reports recommend if nursing facility level of care is needed, if specialized services or lesser than specialized services are needed and what types, and if the individual meets the federal PASRR definition of mental illness or mental retardation or related conditions. Evaluative reports are delivered to the Authority LTC Unit within federal regulatory and state contractual timelines to allow the LOCEU to process formal, written notification to the patient, interested parties, and county office.~~

317:35-17-8.1. PASRR appeals process [REVOKED]

~~(a) Any individual who has been adversely affected by any PASRR determination made by the State in the preadmission screening may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county DHS office to discuss a hearing. Forms for requesting a fair hearing (OAC 340:2, Appendix G, Request for a Fair Hearing), as well as assistance in~~

~~completing the forms, can be obtained at the local county office. Any request for a hearing must be made no later than 30 days following the date of written notice. Level I determinations are not subject to appeal.~~

~~(b) When the individual is found to experience MR or MI through the Level II screen, the PASRR determination made by the MR/MI authorities cannot be countermanded by the state Medicaid agency, either in the claims process or through other utilization control/review processes. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the MR/MI authorities.~~

317:35-17-11. Determining financial eligibility for ADvantage program services

Financial eligibility for individuals in ADvantage program services is determined according to whether or not a spouse remains in the home.

(1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility.

(A) **Income eligibility.** To determine the income of the individual, the rules in (i) through (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for ADvantage services. If the individual's gross income exceeds that standard, refer to Medicaid rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41(d)(9)(F)(ii)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for ADvantage services, his/her countable resources cannot exceed the maximum reserve standard for an individual listed in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** For individuals in the ADvantage program there is not a spenddown calculation as the client does not pay a vendor payment.

(D) **Equity in capital resources.** If the equity in the individual's capital resources is in excess of the maximum reserve standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources can not reasonably be expected to come within standards in one month, the application is denied.

(2) **Individual with a spouse who receives ADvantage or HCBW/MR services, or is institutionalized in a NF or ICF/MR, or is 65 or over and in a mental health hospital.** For an individual with a spouse who receives ADvantage or HCBW/MR services, or is institutionalized in a NF or ICF/MR, or is 65 or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during the receipt of ADvantage program services.

(A) **Income eligibility.** Income is determined separately for an individual and his/her spouse if the spouse is in the ADvantage or HCBW/MR program, or is institutionalized in a NF or ICF/MR, or is 65 or older and in a mental health hospital. The income of either spouse is not considered as available to the other during the receipt of ADvantage services. The rules in (i) - (v) of this subparagraph apply in this situation:

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for ADvantage services. If the individual's gross income exceeds this standard, refer to Medicaid rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41(d)(9)(F)(ii)].

(B) **Resource eligibility.** In order for an individual with a spouse who receives ADvantage or HCBW/MR services, or is institutionalized in a NF or ICF/MR, or is 65 or older and in a mental health hospital to be eligible for ADvantage services, his/her countable resources cannot exceed the maximum reserve standard for an individual listed in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** For individuals in the ADvantage program, there is no spenddown calculation as the client does not pay a vendor payment.

(D) **Equity in capital resources.** If the equity in the individual's capital resources is in excess of the maximum reserve standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is

made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resouces came within the standard. If the excess capital resources can not reasonably be expected to come within standards in one month, the application is denied.

(3) **Individual with a spouse in the home who is not in the ADvantage or HCBW/MR program.** When only one individual of a couple in their own home is in the ADvantage or HCBW/MR program, income and resources are determined separately. However, the income and resources of the individual who is not in the ADvantage or HCBW/MR program (community spouse) must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in ADvantage program services, the income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the rules in (i) - (v) of this subparagraph apply.

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual in the ADvantage program services cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for care. If the individual's gross income exceeds this standard, refer to Medicaid rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41(d)(9)(F)(ii)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of resources for both spouses for the month of the individual's ~~entry into~~ application for the ADvantage program. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse receiving ADvantage program services. The amount determined as the spousal share is used for all subsequent applications for Medicaid, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. When application for Medicaid is made at the same time the individual begins receiving ADvantage program services, Form MA-12, Title XIX Worksheet, is used.

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the ~~first~~ month of ~~the entry~~ application of the spouse into the ADvantage program services (regardless of payment source).

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value that can be protected for the community spouse, as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule XI.

(iii) The minimum resource standard for the community spouse, as established by the OHCA, is found on ~~DHS~~ OKDHS Appendix C-1, Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse, the amount that is deemed must be legally transferred to the community spouse within one year of the effective date of certification for Medicaid. At the first redetermination of eligibility, the worker must document that the resources have been transferred. After the first year of Medicaid eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standard and the institutionalized spouse is determined eligible for benefits, no resources of the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for Medicaid, the community spouse's share of resources is protected and the remainder considered available to the spouse receiving ADvantage program services.

(vii) The resources determined in (i) - (vi) of this subparagraph for the individual receiving ADvantage program services cannot exceed the maximum reserve for an individual as shown in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the

month of the other spouse's entry into the ADvantage program service, that amount is used when determining resource eligibility for a subsequent Medicaid application for Long-Term Care for either spouse.

(ix) Once a determination of eligibility for Medicaid is made, either spouse is entitled to a fair hearing. A fair hearing regarding the determination of the community spouse's resource allowance shall be held within 30 days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

(I) the community spouse's monthly income allowance;

(II) the amount of monthly income otherwise available to the community spouse;

(III) determination of the spousal share of resource;

(IV) the attribution of resources (amount deemed); or

(V) the determination of the community spouse's resource allowance.

(x) The rules on determination of income and resources are applicable only when an individual receiving ADvantage program services is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if ~~it is interrupted by a hospital stay~~ a hospital stay interrupts it or the individual is deceased before the 30-day period ends.

(C) **Vendor payment.** There is not a spenddown calculation for individuals receiving ADvantage program services as the client does not pay a vendor payment.

(D) **Excess resources.** If the equity in the individual's capital resources is in excess of the maximum reserve standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources cannot reasonably be expected to come within standards in one month, the application is denied.

317:35-17-12. Certification for ADvantage program services

(a) **Application date.** If the applicant is found eligible for Medicaid, certification may be effective the date of application. The first month of the certification period must be the first month the recipient was determined eligible for ADvantage, both financially and medically.

(1) As soon as eligibility or ineligibility for ADvantage program services is established, the social worker updates the computer form and the appropriate notice is computer generated to the client and the Administrative Agent. Notice information is retained on the notice file for county use.

(2) An applicant approved for ADvantage program services as categorically needy is mailed a Medical Identification Card.

(b) **Financial certification period for ADvantage program services.** The financial certification period for the ADvantage program services is 12 months. Although "medical eligibility number of months" on the computer input record will show 99 months, redetermination of eligibility is completed according to the categorical relationship.

(c) **Medical Certification period for ADvantage program services.** The area nurse, or nurse designee, determines the medical certification period for medical services and establishes a medical redetermination review date. This certification period may be up to 36 months. The area nurse, or nurse designee, may determine a certification period less than 36 months if documentation supports a reasonable expectation that the client will not continue to meet medical eligibility criteria or have a need for long term care services for a 36 month period. A medical eligibility period of less than 36 months may be appropriate in circumstances in which rehabilitation from surgery or injury is expected or if services are needed on a temporary basis to assist the client to regain independence.

317:35-17-14. Case Management services

(a) Case management services involve ongoing assessment, service planning and implementation, service monitoring and evaluation, client advocacy, and discharge planning.

(1) Within one working day of receipt of an ADvantage referral from the AA, the case management supervisor assigns a case manager to the client. Within three working days of being assigned an ADvantage client, the case manager makes a home visit to review the ADvantage program (its purpose, philosophy, and the roles and responsibilities of the client, service provider, case manager, Administrative Agent and ~~DHS~~ OKDHS in the program), and review, update and complete the UCAT assessment, and to discuss service needs and ADvantage service providers. The Case Manager notifies in writing the client's UCAT identified primary physician that the client has been determined eligible to receive ADvantage services. The notification is via a preprint form that contains the client's signed permission to release this health information and requests physician's office verification of primary and secondary diagnoses and diagnoses code obtained from the UCAT.

(2) Within 10 working days of the receipt of ADvantage referral, or the annual re-assessment visit, the case manager completes and submits to the case management supervisor an individualized care plan and service plan for the client. The care plan and service plan are based on the client's service needs identified by the UCAT, Part III, and includes only those ADvantage services required to sustain and/or promote the health and safety of the client. The case manager uses an interdisciplinary team (IDT) planning approach for care plan and service plan development. If in-home care is the primary service, the IDT

includes, at a minimum, the client, a nurse from the ADvantage in-home care provider chosen by the client, and the case manager. Otherwise, the client and case manager constitute a minimum IDT.

(3) The case manager identifies long-term goals, challenges to meeting goals, and service goals including plan objectives, actions steps and expected outcomes. The case manager identifies services, service provider, funding source, units and frequency of service and service cost, cost by funding source and total cost for ADvantage services. The client signs and indicates review/agreement with the care plan and service plan by indicating acceptance or non-acceptance of the plans. The client, the client's legal guardian or legally authorized representative shall sign the service plan in the presence of the case manager. The signatures of two witnesses are required when the client signs with a mark. If the client refuses to cooperate in development of the service plan, or, if the client refuses to sign the service plan, the case management agency refers the case to the AA for resolution. In addition, based on the UCAT and/or case progress notes that document chronic uncooperative or disruptive behaviors, the LTC nurse or AA may identify clients that require AA intervention.

(A) For clients that are uncooperative or disruptive, the AA develops an individualized Addendum to the Rights and Responsibilities Agreement to try to modify the client's uncooperative/disruptive behavior. The rights and responsibilities addendum focuses on behaviors, both favorable and those that jeopardize the consumer's well-being and includes a design approach of incremental plans and addenda that allow the client to achieve stepwise successes in the modification of their behavior.

(B) The AA may implement a service plan without the client's signature if the AA has developed an Addendum to the Rights and Responsibilities Agreement for the client. For these clients the presence of a document that "requires" their signature may itself trigger a "conflict". In these circumstances, mental health/behavioral issues may prevent the client from controlling their behavior to act in their own interest. Since the person by virtue of level of care and the IDT assessment, needs ADvantage services to assure their health and safety, the AA may implement the service plan if the AA demonstrates effort to work with and obtain the client's agreement through an individualized Addendum to the Rights and Responsibilities Agreement. Should negotiations not result in agreement with the care plan and service plan, the client may withdraw their request for services or request a fair hearing.

(4) The case manager submits the care plan and service plan to the case management supervisor for review. The case management supervisor documents the review/approval of the plans within two working days of receipt from the case manager or returns the plans to the case manager with notations of errors, problems, and concerns to be addressed. The case manager re-submits the corrected care plan and service plan to the case management supervisor within two working days. The case management supervisor returns the approved care plan and service plan to the case manager. Within one working day of receiving supervisory approval, the case manager makes a copy of the plans and other client original documents for the client file, faxes a copy of the plan to the AA and forwards the original care plan and service plan and required documents.

(5) Within one working day of notification of care plan and service plan authorization, the case manager communicates with the service plan providers and with the client to facilitate service plan implementation. Within one working day of receipt of a copy or the computer-generated authorized service plan from the AA, the case manager sends (by mail or fax) copies of the authorized service plan or computer-generated copies to providers. Within five working days of notification of an initial or new service plan authorization, the case manager visits the client, gives the client a copy of the service plan or computer-generated copy of the service plan and evaluates the progress of the service plan implementation. The case manager evaluates service plan implementation on the following minimum schedule:

(A) within 30 calendar days of the authorized effective date of the service plan or service plan addendum amendment; and

(B) monthly after the initial 30 day follow-up evaluation date.

(b) **Authorization of service plans and amendments to service plans.** The Administrative Agent certifies the individual service plan and all service plan amendments for each ADvantage client. When the AA verifies client ADvantage eligibility, plan cost effectiveness, that service providers are ADvantage authorized and Medicaid contracted, and that the delivery of ADvantage services are consistent with the client's level of care need, the service plan is authorized. Family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the client (spouse or parent of a minor child).

(1) If the service plan authorization or amendment request packet received from case management is complete and the service plan is within cost effectiveness guidelines, the AA authorizes or denies authorization within three working days of receipt of the request. If the service plan authorization or amendment request packet received from case management is complete and the service plan is not within cost-effectiveness guidelines, the plan is referred for administrative review to develop an alternative cost-effective plan or assist the client to access services in an alternate setting or program. If the request packet is not complete, the AA notifies the case manager immediately and puts a "hold" on authorization until the required additional documents are received from case management.

(2) The AA authorizes the service plan by entering the authorization date and signing the submitted service

plan. Notice of authorization and a copy of the authorized plan or a computer-generated copy of the authorized plan are provided to case management. AA authorization determinations are provided to case management within one working day of the certification date. A service plan may be authorized and implemented with specific services temporarily denied. The AA communicates to case management the conditions for approval of temporarily denied services. The case manager submits revisions for denied services to AA for approval.

(3) For audit purposes (including SURS reviews), the computer-generated copy of the authorized service plan is documentation of service authorization for ADvantage waiver and State Plan Personal Care services. State or Federal quality review and audit officials may obtain a copy of specific service plans with original signatures by submitting a request to the AA.

(c) **Change in service plan.** The process for initiating a change in the service plan is described in this subsection.

(1) The service provider initiates the process for an increase or decrease in service to the client's service plan. The requested changes and justification for them are documented by the service provider and, if initiated by a direct care provider, submitted to the client's case manager. If in agreement, the case manager requests the service changes on a care plan and service plan amendment submitted to the AA. The AA approves or denies the care plan and service plan changes within two working days of receipt of the plan.

(2) A significant change in the client's physical condition or caregiver support, one that requires additional goals, deletion of goals or goal changes, or requires a four-hour or more adjustment in services per week, requires a UCAT reassessment by the case manager. The case manager, in consultation with AA, makes the determination of need for reassessment. Based on the reassessment and consultation with the AA, the client may, as appropriate, be authorized for a new service plan or be eligible for a different service program. If the client is significantly improved from the previous assessment and does not require ADvantage services, the case manager obtains the client's dated signature indicating voluntary withdrawal for ADvantage program services. If unable to obtain the client's consent for voluntary closure, the case manager requests assistance from the AA. The AA requests that the ~~DHS~~ OKDHS area nurse initiate a reconsideration of level of care. If the client's service needs are different or have significantly increased, the case manager develops an amended or new service plan and care plan, as appropriate, and submits the new/amended plans for authorization.

317:35-17-16. Client annual level of care re-evaluation and annual re-authorization of service plan

(a) As part of the fourth quarter monitoring of the service plan for years 1 and 2 for the client, the case manager reassesses the client's needs and ~~re-evaluates~~ the client's care plan and service plan, especially with respect to progress of the client toward care plan and service plan goals and objectives. Based on the ~~re-evaluation~~ reassessment, the case manager develops a new care plan and service plan with the client and service providers, as appropriate, and submits the new care plan and service plan to the AA for certification. Along with the care plan and service plan submitted for annual recertification, the case manager forwards to AA the supporting documentation and the ~~evaluation~~ assessment of the existing service plan and care plan. The case manager initiates the fourth quarter monitoring to allow sufficient time for certification of a new care plan and service plan prior to the expiration date on the existing care plan and service plan.

(b) For ADvantage, annual medical recertification of the client is not required. However, the AA will evaluate whether the client continues to meet minimum criteria for medical eligibility as part of the care plan and service plan recertification process. If the client appears not to meet NF level of care, the AA requests the LTC nurse to complete a UCAT, Parts I and III. The LTC nurse submits the UCAT to the area nurse, or nurse designee, for determination of medical eligibility. The area nurse, or nurse designee, sends the client's redetermined MS-52 to the AA. If the client no longer meets medical eligibility, the AA communicates this to the client's case manager. The case manager communicates with the client and if requested, helps the client to arrange alternate services in place of ADvantage. [See OAC 317:35-17-19(b)]

(c) At a maximum of every 36 months, the LTC nurse makes a home visit to ~~assess~~ evaluate the ADvantage client using the UCAT, Parts I and III. The LTC nurse ~~assessment~~ evaluation substitutes for the case manager's fourth quarter assessment in the client's third year. The LTC nurse submits the UCAT ~~assessment~~ evaluation to the area nurse, or nurse designee, for a determination of continued medical eligibility before case management develops a care plan and new service plan. The LTC nurse initiates the third year ~~assessment~~ evaluation to allow sufficient time for certification of a new care plan and service plan prior to the expiration date on the existing care plan and service plan.

317:35-17-19. Closure or termination of ADvantage services

(a) **Voluntary closure of ADvantage services.** If the client requests a lower level of care than ADvantage services or if the client agrees that ADvantage services are no longer needed to meet his/her needs, a medical decision by the area nurse, or nurse designee, is not needed. The closure request is completed and signed by the client and the case manager and sent to the AA to be placed in the client's case record. The AA notifies the ~~DHS~~ OKDHS county office of the voluntary closure and effective date of closure. The case manager documents in the case record all circumstances involving the reasons for the voluntary termination of services and alternatives for services if written request for closure cannot be secured.

(b) **Closure due to financial or medical ineligibility.** The process for closure due to financial or medical ineligibility is described in this subsection.

(1) **Financial ineligibility.** Anytime the local ~~DHS~~ OKDHS office determines a client does not meet the financial eligibility criteria, the local ~~DHS~~ OKDHS office notifies the client, provider, and AA of financial ineligibility. A medical eligibility redetermination is not required when a financial ineligibility period does not exceed the medical certification period.

(2) **Medical ineligibility.** Any time the local ~~DHS~~ OKDHS office is notified through MEDATS of a decision that the individual is no longer medically eligible for ADvantage services, the local office notifies the individual, AA and provider of the decision.

(c) **Closure due to other reasons.** ~~This subsection provides the reasons and the process for the termination of ADvantage services.~~ Refer to OAC 317:35-17-3(e) - (h).

~~(1) ADvantage services may be terminated if:~~

~~(A) the client poses a threat to self or others as supported by professional documentation;~~

~~(B) other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the client or other household visitors;~~

~~(C) the client does not have available supports, as documented on the UCAT, to remain in their home without risk to their health, safety, and well-being. The individual does not have the decision making ability to respond appropriately to situations that jeopardize their health and safety or available supports that compensate for their lack of ability as documented on the UCAT;~~

~~(D) the client has been in an NF for more than three weeks and the date for the client's ability to return home is indeterminate; or~~

~~(E) the client or family member fails to cooperate with ADvantage services delivery.~~

~~(2) The AA forwards a request to reconsider a client's ADvantage eligibility to the Aging Services Division. The memo includes a specific description of the problem(s), facts substantiating the problem(s), and actions taken previously to correct the problem(s). Depending upon the severity of the allegations, and the risk to the client's health and safety if the services are disrupted, the provider may be required to continue providing service until a decision is made. Upon review of the information submitted, the Aging Services Division (ASD) takes one of the actions in (A) - (B) of this paragraph.~~

~~(A) ASD may terminate ADvantage services. ASD prepares a letter advising the client of the reason for termination of ADvantage services and the effective date of termination. The letter is mailed to the client with copies to the local DHS OKDHS county office, area nurse, AA and case management provider. The case management provider will notify the in-home care service provider. The social worker updates the computer system by closing the authorization and sending official notice to the client with required client rights.~~

~~(B) ASD may notify the AA and case management provider in writing that ADvantage eligibility is to continue. The case management provider will notify the in-home care provider agency.~~

(d) **Resumption of ADvantage services.** If a client approved for ADvantage services has been without services for less than 90 days and has a current medical and financial eligibility determination, services may be resumed using the previously approved service plan. If a client decides he/she desires to have his/her services restarted after 90 days, the client must request the services as a new referral through the county office.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-2. Nursing Facility (NF) program medical eligibility determination

The ~~DHS~~ OKDHS area nurse, or nurse designee (OHCA, LOCEU makes some determinations when PASRR is involved), determines medical eligibility for nursing facility (NF) services based on the Long Term Care (LTC) nurse's UCAT, Part III assessment of the client's needed level of care, the outcome of the Level II Preadmission Screening and Resident Review (PASRR), if completed, and professional ~~judgement~~ judgment. ~~A physician's recommendation is required for NF level of care including the diagnoses.~~ Refer to OAC 317:35-19-7.1(3) for nursing facility level of care medical eligibility requirements.

(1) When NF care services are requested prior to admission, the same rules related to medical eligibility determination identified in OAC 317:35-17-5 for ADvantage services are followed.

(2) The LTC nurse submits the UCAT, Part III, ~~the physician's level of care certification,~~ the Long-Term Care Preadmission Screen form (PASRR), and the NF request for assessment to the area nurse, or nurse designee, for medical eligibility determination.

(3) PASRR requirements are identified in OAC 317:35-19-8 and 317:35-19-9.

(4) When it is not possible for the UCAT assessment to be completed prior to admission, the NF is responsible for notifying the ~~Department of Human Services~~ OKDHS of the admission. Notification will be by mailing or by faxing the ~~DHS~~ OKDHS form ABCDM-83 (Notification Regarding Patient In A Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice), ~~DHS~~ OKDHS form ABCDM-96 (Management of Recipient's Funds), and ~~DHS~~ OKDHS form ABCDM-83-A, Request for Title XIX Nursing Assessment, to the local ~~DHS~~ OKDHS county office. Upon receipt, the ~~DHS~~ OKDHS county office processes the ABCDM-83, ABCDM-96, and the ABCDM-83-A and completes and forwards the ~~DHS~~ OKDHS form ABCDM-37D (Notice Regarding Financial Eligibility) to the NF. Identified sections of the UCAT reflecting the domains for meeting medical criteria are completed for applicants residing in the NF at the

time of assessment. The area nurse, or nurse designee, determines the date of medical eligibility and records it on the system based on the date of financial eligibility. The facility is responsible for performing the PASRR Level I screen and consulting with staff of the OHCA as to whether a need exists for a Level II screen. The LTC nurse will conduct the assessment visit within 15 working days of request for assessment if the individual's needs are included in an active ABCDM case. If the individual's needs are not included in an active ABCDM case, the assessment is conducted within 20 working days of the date of the signed application. The LTC nurse forwards the completed preadmission screen, the ABCDM-83-A, and the UCAT, Part III to the area nurse or nurse designee.

(5) The area nurse, or nurse designee, will evaluate the PASRR Level I screen and the UCAT, Part III and consult with staff of the OHCA as to whether a need exists for a Level II screen as necessary.

(6) The area nurse, or nurse designee, will evaluate the UCAT, Parts I and III, the Long-Term Care Preadmission Screen form and the physician's diagnosis to determine whether the applicant meets the medical eligibility criteria for NF level of care. Individuals may be medically certified for NF level of care for various lengths of time depending upon the needs of the client. The area nurse, or nurse designee, enters the medical eligibility decision, and when required, the medical certification review date on the system within ten working days. A medical eligibility redetermination is not required when a client is discharged from the NF for a period not to exceed 90 days and the original certification is current.

(7) If the LTC nurse recommends NF level of care and the client is determined by the area nurse, or nurse designee, not to be medically eligible for NF level of care, the LTC nurse can submit additional information to the area nurse, or nurse designee. When necessary, a visit by the LTC nurse to obtain additional information can be initiated at the recommendation of the area nurse, or nurse designee.

(8) Categorical relationship must be established for determination of eligibility for NF services. If categorical relationship to disability has not already been established, the worker submits the same information described in OAC 317:35-5-4(2) to the LOCEU to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship to the disabled using the same definition used by SSA. A follow-up with the SSA by the OKDHS worker is required to be sure that the SSA disability decision agrees with the decision of LOCEU.

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

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

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

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

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

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

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

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

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

(F) **"Environment high risk"** means the client's UCAT Environment score is 25 which indicates in the UCAT assessor's clinical ~~judgement~~ judgment,

the physical environment is strongly negative or hazardous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The UCAT documents need for assistance to sustain health and safety as demonstrated by:

(~~A~~ i) either the ADLs or MSQ score is in the high risk range; or,

(~~B~~ ii) any combination of two or more of the following:

(~~i~~ I) ADLs score is at the high end of moderate risk range; or,

(~~ii~~ II) MSQ score is at the high end of moderate risk range; or,

(~~iii~~ III) IADLs score is in the high risk range; or,

(~~iv~~ IV) Nutrition score is in the high risk range; ~~and~~ or,

(V) Health Assessment is in the moderate risk range, and, in addition,

(B) The UCAT documents absence of support or adequate environment to meet the needs to sustain health and safety as demonstrated by:

(~~C~~ i) Client Support is moderate risk; or,

(~~D~~ ii) Environment is high risk; or,

(~~E~~ iii) Environment is moderate risk and Social Resources is in the high risk range.

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

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

(B) have a physical impairment or combination of physical and mental impairments;

(C) require professional nursing supervision (medication, hygiene and/or dietary assistance);

(D) lack the ability to care for self or communicate needs to others;

(E) require medical care and treatment to minimize physical health regression and deterioration;

(F) require care that is not available through family and friends, Medicare, Veterans Administration, or other federal entitlement program with the exception of Indian Health Service; and,

(G) require care that cannot be met through Medicaid state plan services, including Personal Care, if financially eligible.

317:35-19-9. PASRR screening process

(a) **Level I screen for PASRR.**

(1) OHCA Form LTC-300A, Long Term Care Pre-admission Screen, must be completed by an authorized

official of ~~DHS~~ OKDHS, of the nursing facility, of the hospital or a physician. An authorized official is defined as:

(A) A licensed nurse from ~~DHS~~ OKDHS;

(B) The nursing facility administrator or co-administrator;

(C) A licensed nurse from the nursing facility, hospital, or physician's office;

(D) A social service director from the nursing facility or hospital; or

(E) A social worker from the nursing facility or the hospital.

(2) The authorized official as defined in (1) of this subsection must evaluate the properly completed OHCA Form LTC-300A and the Minimum Data Set (MDS), as well as all other readily available medical and social information, to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. This evaluation constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II is necessary prior to allowing the patient to be admitted.

(3) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A yes response to any question from the Level I Screen will result in a consultation with LOCEU for the Level II assessment prior to admission.

(4) Upon receipt and review of the medical eligibility information packet, the area nurse re-evaluates whether a Level II PASRR assessment may be required by consultation with LOCEU staff. If a Level II assessment is not required, as determined by LOCEU, the area nurse, or nurse designee, documents this and continues with the process of determining medical eligibility. If a Level II is required, a medical decision is not made until the area nurse is notified of the outcome of the Level II assessment. The results of the Level II assessment are considered in the medical eligibility decision. The area nurse, or nurse designee, makes the medical eligibility decision within ten working days of receipt of the medical information when a Level II assessment is not required. If a Level II assessment is required, the area nurse makes the decision within five working days if appropriate.

(b) **Pre-admission Level II assessment for PASRR.** The authorized official as defined in (a)(1) of this Section is responsible for consulting with the OHCA LOCEU in determining whether a Level II assessment is necessary. The decision for Level II assessment is made by the LOCEU.

(1) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR assessment.

(A) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.

(B) The patient does not have a diagnosis of mental retardation or related condition, does not have a primary diagnosis of a major mental illness, and a primary or secondary diagnosis of dementia including dementia of the Alzheimer's type is documented in writing by a physician.

(C) The patient has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery (exempted hospital discharge). If an individual is admitted to an NF based on Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed if the following three conditions are met:

(i) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(ii) The individual must require NF services for the condition for which he/she received care in the hospital; and

(iii) The attending physician must certify before admission to the facility that the individual is likely to require less than 30 days of nursing facility services.

(2) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility. Instead, a Level II PASRR assessment must be performed and the results must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(3) The State MR (~~DHS/Developmental~~ OKDHS/Developmental Disabilities Services Division) and MI (Department of Mental Health and Substance Abuse Services) authorities have developed advance group determinations by category that take into account certain diagnoses, levels of severity of illness, or need for a particular service which clearly indicate that admission to a NF is normally needed, or that the provision of specialized services (SS) is not normally needed. These determinations are actual Level II decisions and not exemptions from the screening process. For those for whom a categorical determination is made, both the level of care determination and the specialized services determination must be addressed. Only negative categorical specialized services determinations can be made. All positive determinations concerning the need for specialized services must be based on a more extensive individualized evaluation.

(A) The State MI or MR authority may make an advance group determination that NF services are needed in the following categories (after NF receives approval from LOCEU):

(i) **Provisional admission in cases of delirium.** Any person with mental illness, mental retardation or related condition who is not a danger

to self and/or others, may be admitted to a Medicaid certified NF if the individual is experiencing a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(I) A Level II evaluation is completed immediately after the delirium clears. LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(II) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(ii) **Provisional admission in emergency situations.** Any person with a mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Medicaid certified nursing facility for a period not to exceed seven days pending further assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer stay is anticipated. LOCEU must be provided with written documentation from Adult Protective Services or the nursing facility which supports the individual's emergency admission. Payment for NF services will not be made beyond the emergency admission ending date.

(iii) **Respite care admission.** Any person with mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Medicaid certified nursing facility to provide respite to in-home caregivers to whom the individual is expected to return following the brief NF stay. Respite care may be granted up to 15 consecutive days per stay, not to exceed 30 days per calendar year.

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

(II) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(c) **PASRR Level II resident review.** The resident review is used primarily as a followup to the pre-admission assessment.

(1) The nursing facility's routine resident assessment will identify those individuals previously undiagnosed as MR or MI. A new condition of MR or MI must be referred to LOCEU by the NF for determination of the need for the Level II. The facility's failure to refer such individuals for a Level II assessment may result in recoupment of funds and/or penalties from HCFA.

(2) A Level II resident review must be conducted for each resident of a nursing facility who has mental illness or mental retardation or other related condition when there is a significant change in the resident's physical or mental condition.

(3) If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to notify the LOCEU of the need to conduct a resident review.

(4) Individuals who were determined to have a serious mental illness (as defined by HCFA) on their last PASRR Level II evaluation will receive a resident review at least within one year of previous evaluation.

(d) **Results of pre-admission Level II assessment and Resident Review.** Through contractual arrangements between the Oklahoma Health Care Authority and the Mental Illness/Mental Retardation authorities/Community Mental Health Centers, individualized assessments are conducted and findings presented in written evaluative reports. The reports recommend if nursing facility services are needed, if specialized services or lesser than specialized services are needed and what types, and if the individual meets the federal PASRR definition of mental illness or mental retardation or related conditions. Evaluative reports are delivered to the Authority LOCEU within federal regulatory and state contractual timelines to allow the LOCEU to process formal, written notification to patient, guardian, NF and significant others.

(e) **Evaluation of pre-admission Level II or Resident Review assessment to determine Medicaid medical eligibility for long term care.** The determination of medical eligibility for care in a nursing facility is made by the area nurse (or nurse designee) unless the individual has mental retardation or related condition or a serious mental illness (as defined by HCFA). The procedures for obtaining and submitting information required for a decision are outlined in this subsection. When an active long term care patient enters the facility and nursing care is being requested:

(1) The pre-admission screening process must be performed and must allow the patient to be admitted.

(2) The facility will notify the local county office by the ~~DHS~~ OKDHS form ABCDM-83, Notification Regarding Patient in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice and ABCDM-96 form, Management of Recipient's Funds, of the client admission.

(3) The local county office will send the NF the ~~DHS~~ OKDHS form ABCDM-37D, Notice to Nursing Care Facility or LTCA, indicating actions that are needed or have been taken regarding the client.

317:35-19-18. Change in level of long-term medical care

(a) When a client is receiving Personal Care services and requests nursing facility care or when a client is in a nursing facility and requests Personal Care services, a new UCAT is required. The UCAT is updated if the client is in the nursing facility and requests ADvantage waiver services. ~~For a change from ADvantage waiver to nursing facility care, doctor's orders and diagnosis are needed for submission to the area nurse.~~ No new medical decision is needed. Also, no new medical decision is needed for admission to a nursing facility from home if the period of absence from the nursing facility is less than 90 days. No new medical decision is needed if the client loses financial eligibility but maintains medical eligibility by having a current medical decision and by remaining in the facility during the period of financial ineligibility.

(b) When there is a decision that a client approved for one level of long term care is eligible for a different level of care, the local office is advised by update of the file. If the change is from facility care to Personal Care, a new UCAT, Part III care plan, service plan, and other required forms are submitted to the area nurse, or nurse designee. If the Personal Care recipient requests a decision regarding facility care prior to admission to a facility, the LTC nurse is responsible for submitting the UCAT, Part III, ~~a physician's order for NF of care,~~ and LTC-300A to the area nurse, or nurse designee for a decision. When the area nurse, or nurse designee, determines that a nursing care recipient no longer needs this level of care, payment may be continued while the recipient, or other responsible person, makes other arrangements. The length of such continuation of payment depends upon the circumstances, but must allow time for the appropriate advance notice to the recipient and cannot exceed 60 days from the date of the decision.

317:35-19-20. Determining financial eligibility of categorically needy individuals

Financial eligibility for NF medical care is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.**

(A) In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(i) spouse; and

(ii) parent(s) and minor children of their own.

(I) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the ~~DHS~~ OKDHS Appendix C-1, Schedule X.

(II) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the ~~DHS~~ OKDHS Appendix C-1, Schedule I. A.

(B) Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see paragraph (2) of OAC 317:35-19-20 to determine financial eligibility.

(A) The categorically needy standard on ~~DHS~~ OKDHS Appendix C-1, Schedule VI., is applicable for individuals related to ABD. If the individual is in an NF and has received services for 30 days or longer, the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B.1., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule ~~VIII. A.~~ VI., is used. The rules on determination of income and resources are applicable only when an individual has entered a NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(B) An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the recipient and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(3) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF ICF/MR or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for Medicaid if the individual is eligible at institutionalization. If the individual is not eligible for Medicaid at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for Medicaid. Any subsequent transfer is also subject to this policy. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty

period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's minor child who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to ~~DHS~~ OKDHS State Office for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other Medicaid services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the client to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, HCBWS/MR, or ADvantage waiver services for a period of resource ineligibility.

(4) **Transfer of assets on or after August 11, 1993.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for Medicaid. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for Medicaid. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of Medicaid if the individual qualifies for Medicaid as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's minor child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to ~~DHS~~ OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other Medicaid services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the client to benefits for the period of time that the asset remain transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(5) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the client's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

317:35-19-22. Certification for NF

(a) **Application date.** The date of the application for NF care is most important in determining the date of eligibility. If the applicant is found eligible for Medicaid, certification may be made retroactive for any service provided on or after the first day of the third month prior to the month of application and for future months.

(1) As soon as eligibility or ineligibility for long-term medical care is established the local office updates the computer form and the appropriate notice is computer generated to the client and vendor. Notice information is retained on the notice file for county use.

(2) An applicant approved for long-term medical care under Medicaid as categorically needy is mailed a Medical Identification Card.

(3) When eligibility is established for care in an NF, the certification is not teleprocessed until the Management of Recipient's Funds form has been received from the administrator of the facility providing the care.

(b) **Time limited approvals for nursing care.** A medical certification period of a specific length may be assigned for an individual who is categorically related to ABD or AFDC. This time limit is noted on the system. It is the responsibility of the nursing facility to notify the area nurse 30 days prior to the end of the certification period if an extension of approval is required by the client. Based on the information from the NF the area nurse, or nurse designee, determines whether or not an update of the UCAT is necessary for the extension. The area nurse, or nurse designee, coordinates with appropriate staff for any request for further UCAT assessments.

(c) **Certification period for long-term medical care.** A financial certification period of 12 months is assigned for an individual categorically related to ABD who is approved for long-term care. When the individual determined eligible for long-term medical care is categorically related to AFDC, a certification period of six months is assigned. Although "medical eligibility number of months" on the computer input record will show 99 months, redetermination of eligibility is completed according to the categorical relationship.

[OAR Docket #04-1024; filed 5-24-04]

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

[OAR Docket #04-1025]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Client Services
317:40-5-112. [NEW]
(Reference APA WF # 03-29)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 10 O.S. § 1415.1; 63 O.S. § 5006
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Subchapter 5. Client Services
317:40-5-112. [NEW]
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December 29, 2003
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21 Ok Reg 512
Docket number:
04-66
(Reference APA WF # 03-29)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Developmental Disability Services rules are being revised at the request of the Oklahoma Department of Human Services to establish guidelines for the new Home and Community-Based waiver for Homeward Bound class members. The Centers for Medicare and Medicaid Services (CMS) have approved a new waiver for members of the Homeward Bound class that allow federalization of various services that must be provided in accordance with the Homeward Bound consent decree. The revisions will: (1) add rules establishing guidelines for the new waiver for Homeward Bound class members; (2) specify time frames relating to information presented when requesting services; (3) clarify the reasons for which a person is removed from the DDSD waiting list; (4) specify situations in which a person is changed from one waiver to another; (5) require re-determination of a child's eligibility at age six and at age 18; (6) clarify the reasons for case closure and for reinstatement of services; and (7) provide guidance regarding delivery of dental services to members of the Homeward Bound class.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-1. Home and Community-Based Waiver Services for persons with certain developmental disabilities

(a) **Applicability.** The rules in this Section apply to services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by the Oklahoma Department of Human Services DHS, Developmental Disabilities Services Division (DDSD). ~~, specifically~~ The specific waivers are the In-Home Supports Waivers (IHSW), ~~and~~ the ~~Intermediate Care Facility for the Mentally Retarded Waiver (~~Community Waiver~~)~~, and the Homeward Bound Waiver.

(b) **Program Administration.** Services funded through a Home and Community-Based Waiver ~~(HCBW)~~ for persons with mental retardation or related conditions are administered by DDSD, under the oversight of the Oklahoma Health Care Authority (OHCA), the ~~state's~~ State Medicaid agency. The rules in this subsection shall not be construed as a limitation of the rights of class members set forth in the Consent Decree in Homeward Bound vs. The Hissom Memorial Center.

(1) HCBW services are subject to annual appropriations by the Oklahoma Legislature.

(2) DDSD must limit the utilization of the HCBW services based on:

(A) the federally-approved capacity of the HCBW services for the individual Waivers;

(B) cost-effectiveness of the HCBW services for the individual Waivers; and

(C) ~~state~~ State appropriations.

(3) DDSD must limit enrollment when utilization of the HCBW services program is projected to exceed the spending authority.

(c) **Program provisions.** Each individual ~~applying for~~ requesting HCBW services and his or her family or guardian are responsible for:

(1) accessing, with the assistance of DHS staff, all benefits available under Oklahoma's Medicaid State Plan or other payment sources prior to accessing funding for those same services under the Home and Community-Based Waiver program;

(2) cooperating in the determination of medical and financial eligibility, including prompt reporting of changes in income or resources; and

(3) choosing between Home and Community-Based Waiver ~~Services~~ services and institutional care.

(d) **Waiver Eligibility ~~determination~~.** ~~HCBW services are available to Oklahoma citizens meeting eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources.~~

(1) ~~Home and Community Based Waiver Services may be offered to an individual who meets the criteria given in this paragraph.~~ HCBW services are available to Oklahoma residents meeting Medicaid eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible for and receive services funded through any of the Waivers listed in subsection (a) of this Section, a person must first be determined financially eligible for Medicaid through the DHS Family Support Services Division. The Medicaid eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, nursing facility, residential care facility as described in Section 1-819 of Title 63 of Oklahoma Statutes, or ICF/MR facility. The individual may also not be receiving DDSD state-funded services such as the Family Support Assistance Payment, sheltered workshop services, community integrated employment services, or assisted living without waiver supports as described in OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

~~(A) To be eligible for and receive services funded through any of the Waivers listed in subsection (a) of this Section, a person must:~~

~~(i) be a resident of the State of Oklahoma;~~

~~(ii) be determined financially eligible through the DHS Family Support Services Division;~~

~~(iii) not be simultaneously enrolled in any other Medicaid Waiver program;~~

~~(iv) not be residing in a hospital, nursing facility, or ICF/MR;~~

~~(v) meet other Waiver specific eligibility criteria, as given in other subparagraphs of this paragraph.~~

(~~B~~A) **In-Home Supports Waivers.** To be eligible for services funded through the In-Home Supports Waivers (IHSW), a person must:

(i) meet all criteria for HCBW services given in ~~subparagraph (A) of this paragraph~~ subsection (d) of this Section;

(ii) be determined to have a disability, with a diagnosis of mental retardation, by:

(I) the Social Security Administration; or

(II) the Oklahoma Health Care Authority, Level of Care Evaluation Unit;

(iii) be three years of age or older;

(iv) be determined by the Oklahoma Health Care Authority, Level of Care Evaluation Unit, to meet the ICF/MR Institutional Level of Care requirements in accordance with OAC 317:30-5-122;

(v) reside in:

(I) the home of ~~the person's~~ a family member or friend~~, or~~;

(II) his or her own home; ~~and~~

(III) a DHS Children and Family Services Division (CFSD) foster home; or

(IV) a CFSD group home; and

(vi) have critical support needs that can be met through a combination of non-paid, non-Waiver, and State Plan resources available to the individual, and within the annual per capita Waiver limit agreed between the ~~state~~ State of Oklahoma and ~~HCFA~~ the Centers for Medicare and Medicaid Services (CMS).

(~~C~~B) **Community Waiver.** To be eligible for services funded through the ~~Intermediate Care Facility For the Mentally Retarded Waiver (~~Community Waiver~~)~~, the person must:

(i) meet all criteria given in ~~subparagraph (A) of this paragraph~~ subsection (d) of this Section;

(ii) be age three or older;

(iii) have critical support needs ~~that meet the criteria for an emergency given in paragraph (1) of subsection (g) of this Section~~ that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDSD Division Director or designee;

(iv) be determined, in accordance with either subunit I or both subunits II and III of this unit:

(I) to have mental retardation or a related condition by the Mental Retardation Authority and to have resided in a nursing facility, in accordance with the provisions of 42 CFR 483.100 *et seq*; or

(II) to have ~~both~~ a disability, with a diagnosis of mental retardation, by the Social Security Administration or the Oklahoma Health Care Authority, Level of Care Evaluation Unit; and

(III) to meet the ICF/MR Institutional Level of Care requirements by the Oklahoma Health Care Authority, Level of Care Evaluation Unit.

(C) To be eligible for services funded through the Homeward Bound Waiver, the person must:

(i) be certified by the United States District Court for the Northern District of Oklahoma as a

member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;

(ii) meet all criteria for HCBW services given in subsection (d) of this Section; and

(iii) be determined to:

(I) have mental retardation or a related condition by the Mental Retardation Authority and to have resided in a nursing facility, in accordance with the provisions of 42 CFR 483.100 et seq; or

(II) meet the ICF/MR Institutional Level of Care requirements by the Oklahoma Health Care Authority, Level of Care Evaluation Unit.

(2) The person desiring services through any of the Waivers listed in subsection (a) of this Section participates in diagnostic evaluations and provides information necessary to determine HCBW services eligibility, including:

(A) a psychological evaluation~~;~~, current within one year, which includes:

(~~B~~i) a functional assessment; and

(ii) a statement of age of onset of the disability;

(~~C~~B) a social service summary, current within one year, which includes a developmental history; and

(~~D~~C) a medical evaluation current within 90 days.

(3) The Oklahoma Health Care Authority reviews the diagnostic reports listed in paragraph (2) of this subsection and makes a determination of eligibility for DDSD services and ICF/MR level of care for the services funded through the IHSW or the Community Waiver.

(4) For ~~the~~ individuals who are determined to have mental retardation or a related condition by the Mental Retardation Authority in accordance with the provisions of 42 CFR 483.100 *et seq*, DDSD reviews the diagnostic reports listed in paragraph (2) of this subsection and, on behalf of the OHCA, makes a determination of eligibility for DDSD services and ICF/MR level of care.

(5) A determination of need for ICF/MR Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.

(e) **Waiting list.** When State DDSD resources are unavailable for new persons to be added to services funded through a Home and Community-Based Waiver, persons are placed on a statewide waiting list for services.

(1) The waiting list is maintained in chronological order based on the date of receipt of a written request for services.

(2) The waiting list for persons requesting HCBW services is administered by DDSD uniformly throughout the state.

(3) ~~If an~~ An individual ~~on~~ is removed from the waiting list if the individual:

(A) is found to be ineligible for services;

(B) cannot be located by DHS;

(C) does not provide required information to DHS;

(D) is not a resident of the state of Oklahoma; or

(E) is offered Waiver services through either the In-Home Supports Waiver or the Community Waiver and declines services~~, the individual is removed from the waiting list~~.

(f) **Applications.** When resources are sufficient for initiation of HCBW services, DDSD action regarding ~~an application~~ a request for services occurs within 45 days. If action is not taken within the required 45 days, the applicant may seek resolution as described in OAC 340:2-5.

(1) Applicants are allowed 60 days to provide information requested by DDSD to determine eligibility for services.

(2) If requested information is not provided within 60 days, the applicant is notified that the request has been denied, and the individual is removed from the waiting list.

(g) **Admission protocol.** Initiation of services funded through a Home and Community-Based Waiver occurs in chronological order from the waiting list in accordance with subsection (e) of this Section based on the date of DDSD receipt of a completed ~~application~~ request for services, as a result of the informed choice of the person ~~receiving~~ requesting services or his or her legal guardian, and upon determination of eligibility, in accordance with subsection (d) of this Section. Exceptions to the chronological requirement may be made when:

(1) an emergency situation exists in which the health or safety of the person needing services, or of others, is endangered, and there is no other resolution to the emergency. An emergency exists when:

(A) the person is unable to care for himself or herself and:

(i) the person's caretaker, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes:

(I) is hospitalized;

(II) has moved into a nursing facility;

(III) is permanently incapacitated; or

(IV) has died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) the Department of Human Services finds that the person needs protective services ~~sufficient to warrant removal from the home including, but not limited to,~~ due to experiencing ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example, the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so.

(2) the Legislature has appropriated special funds with which to serve a specific group or a specific class of individuals;

(3) ~~Community~~ Waiver services are required for people who transition to the community from ~~NORCE or SORC~~ a public intermediate care facility for persons with mental retardation (ICF/MR) or who are children in the State's custody receiving services from DHS; or

(4) individuals residing in nursing facilities prior to January 1, 1989, who are determined by PASRR evaluation conducted pursuant to the provisions of 42 CFR 483.100 *et seq* to have mental retardation or a related condition, choose to receive services funded through the Community Waiver.

(h) **Movement within DDSD HCBW services.** A person's movement from services funded through one Home and Community-Based Waiver to services funded through another DDSD-administered Waiver is explained in this subsection.

(1) When a child receiving services funded through the IHSW becomes 18 years of age, IHSW services for adults become effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when: ~~an emergency situation exists, as defined in paragraph (g)(1) of this Section.~~

(A) a person has critical support needs which cannot be met by IHSW services, non-Waiver services, or other resources as determined by the DDSD Director or designee; and

(B) funding is available in accordance with subsection (b) of this Section.

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when an individual's history of annual service utilization has been within the per capita allowance of the IHSW.

(4) When an individual served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(i) **Continued eligibility for HCBW services.** Eligibility for children receiving HCBW services is re-determined when:

(1) a child who is receiving HCBW services prior to age six reaches age six. The child must be determined to continue to have a disability with a diagnosis of mental retardation. The determination must be made no later than the first Plan of Care review after the seventh birthday. A new diagnostic evaluation is required in accordance with paragraph (d)(2) of this subsection;

(2) a child who is receiving HCBW services reaches age 18. The service recipient must be determined to continue to have a disability with a diagnosis of mental retardation if a determination has not been made by Social Security. The determination must be made at the first Plan of Care review after the nineteenth birthday. A new diagnostic evaluation is required in accordance with paragraph (d)(2) of this subsection; and

(3) required by DDSD. DDSD may require a new diagnostic evaluation in accordance with paragraph (d)(2) of this subsection and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status determined under paragraph (d)(2) of this Section has been noted.

(~~i~~j) ~~**Termination of**~~ **HCBW services case closure.** HCBW services are terminated when an individual receiving services:

(1) or the service recipient's legal guardian chooses to no longer receive Waiver services;

(2) is incarcerated ~~for a period of 90 days or more~~;

(3) is financially ineligible to receive Waiver services;

(4) is determined by the Social Security Administration to no longer have a disability;

(5) is determined by the Oklahoma Health Care Authority Level of Care Evaluation Unit to no longer be eligible; ~~or~~

(6) moves out of state, or the ~~family~~ custodial parent or guardian of a minor moves out of state;

(7) is admitted to a nursing facility, ICF/MR, residential care facility, or mental health facility for more than 30 consecutive days;

(8) or the guardian of a minor or adjudicated adult fails to cooperate during the annual review process as described in OAC 340:100-5-50 through 100-5-58;

(9) or the guardian of a minor or adjudicated adult fails to cooperate in the implementation of DHS policy or service delivery in a manner that places the health or welfare of the service recipient at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services have not been effective; or

(10) is determined to no longer be Medicaid eligible.

(~~j~~k) **Reinstatement of services.** ~~If Waiver services to a member of the Homeward Bound vs. The Hissom Memorial Center class are terminated for any reason, services are reinstated when the situation is resolved.~~ Waiver services are reinstated when:

(1) the situation resulting in case closure of a Hissom class member is resolved;

(2) a service recipient is incarcerated for 90 days or less;

(3) a service recipient is admitted to a nursing facility, ICF/MR, residential care facility, or mental health facility for 90 days or less; or

(4) a service recipient's Medicaid eligibility is re-established within 90 days of the date of the DDSD Notice of Action.

SUBCHAPTER 5. CLIENT SERVICES

PART 9. SERVICE PROVISIONS

317:40-5-112. Dental Services for Homeward Bound Class Members

(a) **Service Description.** Dental services include oral examinations, appropriate radiographs, prophylaxis, development of a written treatment plan, and routine training of the service recipient or primary care giver regarding oral hygiene, and other services recommended by a dentist. Preventative, restorative, replacement and repair services to achieve or restore functionality are provided after appropriate review, if required as identified in subsection (e).

(b) **Applicability.** This section applies only to members of the Homeward Bound vs. The Hissom Memorial Center class certified in Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma.

(c) **Standard of Care.** Developmental Disabilities Services Division (DDSD) arranges for provision of comprehensive diagnostic and treatment services for each person eligible to receive such services from qualified personnel, including licensed dentists and dental hygienists. OAC 317:30, Part 79, and any dental guidelines published by the Oklahoma Health Care Authority must be followed.

(d) **Providers.** Providers of dental services must hold a non-restrictive license to practice dentistry in the State of Oklahoma or the State where treatment is rendered.

(e) **Treatment Plans.** A dental treatment plan for proposed treatment must be submitted to the service recipient and Personal Support Team (Team) for review. The DDSD Area Medical Director or designee must approve treatment plans exceeding $650.00.

(f) **Frequency of Examination.** The provider dentist and the Team determine frequency of examination on an individual basis.

(g) **Documentation of Dental Services.** The dental provider summarizes a record of dental services provided on OKDHS Form DDS-5, Referral Form for Examination or Treatment, or comparable form.

(h) **Prevention.** The Individual Plan must identify outcomes for the prevention of dental disease and the promotion of dental health. Independence in oral hygiene care is promoted. If the service recipient is unable to maintain adequate oral hygiene as determined by the provider dentist and the Team, effective direct assistance and responsibility must be assigned to appropriate Team members in the Individual Plan.

[OAR Docket #04-1025; filed 5-24-04]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #04-1048]

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PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
330:36-1-3.2. [AMENDED]
330:36-1-4. [AMENDED]
330:36-1-7. [AMENDED]
330:36-1-9. [AMENDED]
330:36-1-11. [AMENDED]
Subchapter 2. Allocation Procedures
330:36-2-1. [AMENDED]
330:36-2-2. [AMENDED]
330:36-2-3. [AMENDED]
330:36-2-11. [AMENDED]
330:36-2-13. [AMENDED]
330:36-2-15. [AMENDED]
330:36-2-16. [NEW]
Subchapter 4. Development Applications and Selection
330:36-4-2. [AMENDED]
330:36-4-2.1. [AMENDED]
330:36-4-3. [AMENDED]
Subchapter 6. Program Administration
330:36-6-1. [AMENDED]
330:36-6-3. [AMENDED]
330:36-6-5. [AMENDED]
330:36-6-7. [AMENDED]

AUTHORITY:
These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

DATES:
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Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a federal tax credit (the "Credit") may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential rental property rented to qualified low-income tenants at restricted rental rates, if said owner has been approved for an allocation of Credits by the state housing credit agency. OHFA is Oklahoma's housing credit agency. The Code further provides that each state's Credit annual authority is to be allocated by that state's housing credit agency pursuant to a qualified allocation plan. These Chapter 36 Affordable Housing Tax Credit Program Rules (the "Rules") embody Oklahoma's qualified allocation plan. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act ("APA"), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (the "Credit Program"). The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

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 2, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-3.2. Scope

During each program year, Tax Credit Allocations ("TCAs") will be made available to eligible entities for the purpose of implementing specific projects that further the stated purpose of the OAHTC Program. Eligible entities include, but are not limited to, for-profit developers, non-profits, public agencies, Native American Tribes and local governments.

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code. When a conflict exists between the following definitions and the Code the Code shall control.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person and specifically shall include parents and/or subsidiaries of the Person who is an Affiliate of the first Person.

"Applicant" means any Person, and each Affiliate of such Person, that submits an Application to OHFA requesting a TCA pursuant to these Rules and the Application, and includes the Development owner(s) and the original or successor Applicant and each of their successors in interest in the Development, regardless as to whether any such successors in interest in the Development have obtained the approval of transfer of such interest in the Development as required by the Rules or the Application.

"Application" means an application in the form prescribed by OHFA, from time to time, in the AP, including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA from time to time, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit public input on the Application Packet, and provide explanation of any significant changes. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, environmental assessments, market studies, commitments, extensions, Carryover Allocations, Agreements, Elections, Set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, credit amounts, tax exempt bond financed projects, compliance monitoring, and other matters deemed by OHFA Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Code" means the Internal Revenue Code of 1986, as amended, together with applicable rules and regulations, revenue rulings, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"Consultant" means any person (which is not an owner or Affiliate of an owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost certification documents filings with OHFA.

"Control" (including the terms "controls", "controlling", "controlled by", and/or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies or any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Development" means a site or sites, together with any building or buildings that are proposed, or are, to be assisted with tax credits as a single undertaking.

"Development Team" means the Applicant, Owner, Developer, property management company and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Due Date" if a due date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the due date becomes the next business day.

"Elderly" means any person sixty-two years of age or older. The sixty-two year old age limit does not apply to spouses or immediate family members for purposes of qualifying as an Elderly Development. It is intended that Elderly Developments will be ~~operated for occupancy~~ occupied by at least one person sixty-two (62) years of age or older per unit to satisfy this criteria. State or Federal definitions ~~are not superseded by those~~ established for other housing supersedes this definition.

"Eligible Basis" means generally the depreciable basis in the property.

"Empty Unit" means a Tax Credit unit that has never been rented.

"Hard Construction Costs" means the following types of activities, but not limited to, earthwork/sitework, on-site

utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation.

"Homeless" means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining homeless status. Homeless individuals are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

"Large Development" means a Development with more than sixty (60) units.

"Nonprofit" means a private nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing at the local level, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

"OAHTC" means the affordable housing tax credit provided by Section 42 of the Code.

"OHFA" means Oklahoma Housing Finance Agency. OHFA has been designated by the Governor to administer the State's OAHTC Program.

"Person" means, without limitation, any natural person, corporation, partnership~~.~~, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

"Phased development" means two or more properties that share certain characteristics, including but not limited to close or contiguous physical proximity to each other, similar architecture or size, common developer or development team, or common ownership or financing.

"Qualified Allocation Plan (QAP)" means these Chapter 36 Rules plus the Application Packet (AP) as defined and other materials provided by OHFA.

"Qualifying Households" means households whose annual incomes do not exceed the chosen setaside (which is either 50% or 60%) of the median family income for the area.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by state, federal or local law and these OAHTC Rules.

"Review Report" means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs.

"Rural Development" means a Development that is, or will be located within a Rural Area. RHS 538 projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the applicable AP), to determine the Development's qualifications, and which are the bases for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by OHFA Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the OHFA Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" means the exercise of dominion or control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the extended use period), receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Owner has obtained Site Control.

"Special Housing Development(s)" means any Development specifically designed and developed for persons with Special Needs.

"Special Needs" means such targeted populations as may be designated from time to time in an Application Packet by official action of OHFA, which designations may include, but are not necessarily limited to, the homeless, the elderly, persons with mental and physical disabilities and/or disabled or handicapped persons.

"TCA" means a tax credit allocation by OHFA to a Development owner pursuant to the Code, these Rules, the applicable AP, the Application, and formal action by OHFA.

"Threshold Criteria" means the criteria set out herein and in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP, to determine the qualifications of the Applicant and the owner and the Proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Failure to timely satisfy all Threshold Criteria set out in the applicable AP shall result in the disqualification of the Application for further consideration, and shall require OHFA to not apply the Selection Criteria to the Application, and to notify the Applicant of the disqualification.

"Transitional Housing" for purposes of these OAHTC Program Rules means transitional housing for the homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

"Trustees" means the Board of Trustees of OHFA.

"**Vacant Unit"** means a Tax Credit unit that was last occupied by a qualified household.

330:36-1-7. National standards incorporated by reference

(a) The national standards for Development of the OAHTC Program are hereby incorporated by reference, including Code Section 42 and all federal regulations, promulgated thereunder, including, but not limited to, 26 CFR Sections 1.42-5, 1.42-6, 1.42-11, 1.42-13 and 1.42-17.

(b) Copies of Code Section 42 and applicable federal regulations may be obtained from OHFA, during regular business hours Monday through Friday 8:00 a.m. to 4:45 p.m., excluding legal holidays. They can also be accessed at www.ohfa.org.

330:36-1-9. Regulatory Agreement/Compliance Manual/Compliance with Applicable Laws

(a) **Regulatory Agreement.** TCA recipients (owners) must enter into a written Regulatory Agreement with OHFA. Requirements, procedures, and processes provided in the applicable Regulatory Agreement and amendments to it shall apply to Developments and the owner(s) thereof selected to receive a TCA.

(b) **Compliance Manual.** OHFA shall provide each owner upon request with a Compliance Manual at a cost ~~of~~ sufficient to defray the cost of production ~~$30.00~~. The Compliance Manual will also be available on OHFA's website at www.ohfa.org.

(c) **Compliance with Applicable Laws.** The Applicant, the Development, the owner(s) of the Development, the Development Team and the Affiliates of each must comply with all applicable federal, state and local laws, rules, regulations and ordinances, including but not limited to, Code Section 42, and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the owner(s) of a Development, the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability or handicap in the lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and/or management of any Development. The owner(s) of a Development will be required to covenant and agree in the Regulatory Agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

330:36-1-11. Technical assistance

OHFA will, from time to time, designate staff members who shall be available to provide OAHTC Program technical assistance regarding the Code, these Rules, the AP and their implementation and proposed Development concepts. The names of staff members designated from time to time to provide technical assistance may be obtained by contacting OHFA's Housing Development Team. Interested parties ~~must~~ are strongly encouraged to make appointments for technical assistance sessions.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-1. TCAs distribution

(a) OAHTCs allocated annually to the State by the IRS shall be awarded to Applicants selected through a formal application process governed by ~~a~~ the Qualified Allocation Plan (QAP).~~, which is contained in these Rules, and an Annual Program Description which shall contain the Application form and instructions for completion and filing of the same with OHFA (collectively referred to as the "AP"). Each AP will be developed using a process of informal public input sessions and one formal public hearing. OHFA will make a draft AP publicly available for comment to all interested parties. Comments received will be considered by OHFA in the design of the AP that may become applicable for the OAHTC Program for the next succeeding calendar year.~~ The deadline for all informal input sessions and the formal public hearing will be published by OHFA's Staff.

(b) TCAs will be awarded according to the Act, Code, these Chapter 36 Rules, the applicable AP, and the discretion of the OHFA Trustees, by their formal action.

(c) The AP shall be made available to parties considering the filing of an Application and interested parties upon request. Requests for the AP should be directed to OHFA's Housing Development Team~~.~~ or accessed at OHFA's website www.ohfa.org.

330:36-2-2. Additional Credits

(a) Applications for additional Credits on new construction developments are not allowed. Although discouraged, applications for additional credits on rehabilitation developments may be allowed, but only under extenuating circumstances not easily identifiable or ascertainable at the time of initial credit award. The OHFA Board of Trustees may award additional credits at their sole discretion. Maximum award amount cannot exceed ten percent (10%) of the original tax credit allocation amount. Applicants who have received approval of a Carryover Allocation in a prior year for a specific Development may request additional Credits for that Development. The Applicant may supplement the Applicant's prior Application; however, the Application as supplemented must:

(1) Be made by the applicable reservation cycle deadline;

(2) Be accompanied by the Application fee;

(3) Meet all Threshold requirements of the Credit Program Rules in effect as of the deadline of the reservation cycle in which the request for additional Credits is made; and

(4) Each page clearly tabbed in conformity with the current form of Application.

(b) The supplemented Application will be scored and ranked in accordance with the Credit Program Rules in effect as of the deadline of the reservation cycle in which the request is made.

(c) An additional feasibility analysis will be undertaken. The Applicant must prepare an in-depth analysis of why additional Credits are required. OHFA may request information from the Applicant's lender(s), accountants, legal advisors or financial Consultants to confirm representations contained in the Application.

(d) Neither the Applicant nor OHFA shall be required to give additional notice pursuant to 330:36-2-11 and 330:36-4-2(b)(2) ~~330:36-5-3.1~~ of these Chapter 36 Rules if the notice requirements of the Credit Program Rules in ~~if~~ effect as of the date of the Applicant's original filing of an Application were met.

330:36-2-3. Set-aside categories for TCAs

(a) The annual allocation of OAHTC Program tax credits made available to the State shall be divided into various set-aside categories, including but not necessarily limited to, specific set-aside categories of non-profits, rural areas, elderly, and such other categories as OHFA Trustees, in their complete discretion, may adopt from time to time for inclusion in an applicable AP. Non-profits competing in the nonprofit set aside must be, at a minimum, a fifty-one percent (51%) Controlling general partner.

(b) The amount of the State's annual allocation of credits devoted to each set-aside category will be determined by the Code, these Chapter 36 Rules and from time to time by formal action of OHFA. Specific set-aside categories and amounts for each category may be determined from time to time by formal action of OHFA and shall be set out in the applicable AP. OHFA may, in its discretion, at any time and from time to time, modify the amount of the State's annual allocation of credits devoted to any or all of each set-aside in the AP if, in the complete discretion of the OHFA Trustees, they determine that the housing needs of the State so warrant, except for the maximum ninety percent (90%) allocation limitation to those other than non-profits as ~~minimum 10% set aside for non profits~~ required by the Code.

330:36-2-11. OHFA Development notification

OHFA shall, within fifteen (15) ~~ten (10) working~~ business days of receipt of an Application, but not less than sixty (60) calendar days prior to OHFA Trustee consideration thereof, notify, in writing, by certified mail or other form of traceable delivery system to provide proof of mailing and receipt, the Chief Executive Officer of each Local Governing Body of the jurisdiction within which the proposed Development is to be located and the official elected tribal governing body, if the Development will be located on tribal property, and the legislators who are entitled to such Notice, regarding the characteristics of the proposed Development to be located within their jurisdiction/district. OHFA Trustees shall afford not less than a thirty (30) calendar-day comment period to such Chief Executive Officers and legislators. OHFA's Trustees shall consider all comments received from such Chief Executive Officers and legislators in their deliberations concerning whether or not to award any TCA to the Applicant.

330:36-2-13. Review Report

(a) Upon completion of its review of all applications, OHFA will forward OHFA's Review Report to the contact person identified by the Applicant in the Application. OHFA will mail the Review Report by certified mail with return receipt requested mail or other form of traceable delivery system to provide proof of mailing and receipt. The Applicant must provide OHFA with any clarifying information requested therein within ten (10) business days of the date of the Report. In the event the Applicant disputes any matter contained in the Review Report, including without limitation any finding, determination, recommendation or scoring, the Applicant must respond to the Review Report in writing. Information requested by OHFA and/or the Applicant's response must be forwarded to OHFA, postmarked no later than ten (10) business days following the date of the Review Report. Applicants are encouraged to use certified mail, Federal Express or another carrier providing a return receipt. Electronic transmissions will not be accepted.

(b) The Applicant's response to the Review Report must identify with specificity the disputed matter, finding, determination, recommendation, scoring, etc, and the Applicant's reason for disputing same, including any evidence which controverts the Review Report's determination. Any applicable statutes, rules, regulations or ordinances should be cited. Documentary evidence should be attached.

(c) OHFA will consider the Applicant's response to the Review Report prior to making its recommendations to the Trustees. The Applicant will be informed of OHFA's recommendations prior to the meeting of the Trustees where the Application is being considered.

(d) Failure to respond to staff's Review Report in a timely manner may result in the adoption of the Review Report by the Trustees, including any recommendation contained therein to deny the Application.
(e) The Trustees will not entertain Applications for Rehearing or Reconsideration based upon any matter contained in the Review Report which could have been asserted under this subsection 330:36-2-13.

330:36-2-15. Communications with OHFA during Application Review

(a) Following submission of an Application, neither the Applicant nor any representative or affiliate of the Applicant shall contact any OHFA employee, with the exception of the Housing Development Team Leader, concerning the Application or any other Applications filed in the same cycle. This prohibition includes telephone and electronic transmissions. All communications concerning the Application must be directed to the Housing Development Team Leader, be in writing and executed by the contact person identified in the Application. Only written ~~transmissions~~ communications will be accepted.
(b) Upon issuance of the Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13. Failure to comply with this subsection 330:36-2-15 may result in termination of the review process and denial of the Application.
(c) OHFA reserves the right to grant or deny requests for meetings with the staff of OHFA at any time during the Application process. Any requests must be in writing.

330:36-2-16. Carryover Allocations

(a) **Code reference.** Code Section 42(h)(1)(E) provides that an Allocation may be made to a Qualified Building, as defined by Section 42(h)(1)(E)(ii), which has not yet been placed in service, provided the Qualified Building is placed in service not later than the close of the second calendar year following the calendar year of the Allocation.
(b) **Carryover Allocation requests.** An eligible Applicant must request in writing the approval of a carryover of an Allocation of the applicable calendar year, at a date specified in the AP. The Owner must satisfy all requirements of the Code and this section and file proof of same with OHFA, except the verifications required by 330:36-2-16(d) of the calendar year in which a Carryover Allocation is sought. The certifications and opinions required by 330:36-2-16(d) must be received by OHFA the later of the date which is one hundred eighty (180) calendar days after the date that the allocation was made or the close of the calendar year in which the allocation is made. All documents requested by OHFA must be provided by the Owner.
(c) **Carryover Allocation basis.** To qualify for a Carryover Allocation, the Owner must demonstrate that the Owner's basis in the Development, the later of one hundred eighty (180) calendar days after the date of allocation or the close of the calendar year in which the Allocation is made, is more than ten percent (10%) of the Owner's reasonably expected basis in the Development.
(d) **Verification of basis.** The Code requires OHFA to verify that the Owner has, by the later of one hundred eighty (180) calendar days after the date of allocation or the close of the calendar year in which a Carryover Allocation is made, incurred more than ten percent (10%) of the reasonable expected basis in the Development (Land and depreciable basis). The Owner must file with OHFA a written certification, under penalty of perjury and in the form prescribed by OHFA, certifying that more than ten (10)% has been expended, in the year in which the Carryover Allocation was made or one hundred eighty (180) calendar days later. The certification must be accompanied by a written opinion of the Owner's certified public accountant, in a form acceptable to OHFA. It must state that said certified public accountant has examined all eligible costs incurred with respect to the Development and that, based upon this examination, it is the certified public accountant's belief that the taxpayer has incurred more than ten percent (10%) of its reasonable expected basis in the Development by the close of the calendar year of the Allocation or one hundred eighty (180) calendar days later as determined in conformity with the Code and Treasury Regulations. OHFA's determination as to the satisfaction of the ten-percent (10%) requirement is not binding upon the IRS and does not constitute a representation by OHFA to the Owner or any other party to that effect.
(e) **Carryover Allocation Agreement.** The Owner must submit to OHFA an executed Carryover Allocation Agreement, in a form approved by the Trustees of OHFA, in the year in which the Carryover Allocation is requested.
(f) **Notification of placed in service date.** Applicant must notify OHFA within thirty (30) calendar days of the date the Development is placed in service or be subject to loss of any Allocation. Notice will consist of submission of copies of the Certificates of Occupancy for each building.
(g) **Development based Allocation.** An Allocation pursuant to Code Section 42(h)(1)(F) must meet the requirements of Code Section 42(h)(1)(F), all applicable Treasury Regulations, and these Chapter 36 Rules.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold Criteria items. However, each AP must contain, as a minimum standard for approval of any Applications for the award of any TCAs, for any applicable AP, the Threshold Criteria set out herein below in this section.
(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application will result in the Application being

rejected without further review. The Threshold Criteria shall include, but are not necessarily limited to the following:

(1) **Prohibition of Phased Developments.** Phased Developments are permitted in MSAs only if they are described and contemplated in the original Application and if all phases contain fifty (50%) or more market rate units, or the development is part of a HUD approved revitalization plan and the financing includes HUD HOPE VI Program funding.

(2) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA, including the owners of Developments to be located on tribal property(ies). All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. Every application cycle requires notice.

(A) **Written Notices.** ~~**Developments located within a MSA.**~~ The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer of the local Governing Body, Chairman of the appropriate county commissioners, state legislators within whose district the application ~~proposed Development~~ is to be located regarding their intent to submit an application ~~Development proposal~~. This written notice shall serve to provide a reasonable opportunity to comment on the application ~~proposed Development~~. All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. Every application cycle requires notice.

(B) ~~**Developments located outside of a MSA.** The Applicant must notify, in writing and by certified mail, the local Chief Executive Officers of the Local Governing Body, the Chairman of the appropriate county commissioners, and state legislators within whose district the proposed Development is to be located regarding their intent to submit a Development proposal. This written notice shall serve to provide a reasonable opportunity to comment on the proposed Development. All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice.~~ **Additional notice requirements.** If the site for the application is not located within the specific corporate limits of an incorporated town or city, but is proposed to be located within two (2) miles of an incorporated town(s) or city(ies) limits, Applicant must provide the same notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. Every application cycle requires notice.

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in a newspaper of general circulation in the area wherein the Development will be located. All notice requirements must be satisfied not less than thirty (30) calendar days prior to submission of an Application. Every application cycle requires notice. At a minimum all such notices must contain the ~~following~~ reasonably anticipated information below:

(i) the name and the legal description or street address of the proposed Development;

(ii) the names, business addresses and telephone numbers of the Applicant and the Applicant's designated contact person in regard to the proposed Development;

(iii) whether the Development is new construction, acquisition and rehabilitation and/or substantial rehabilitation;

(iv) the maximum number of ~~U~~units, bedroom mix, and percentage of income restricted units ~~proposed and their characteristics~~;

~~(v) the amount of credits requested;~~

~~(vi) the Cycle and year for which the Application will be submitted;~~

(~~vii~~v) the month in which the Applicant reasonably expects the Application to be considered by the OHFA Trustees for an award of a TCA;

(~~viii~~vi) the name, business address, telephone number and extension number of the contact person at OHFA to whom all inquiries about the hearing on the Application and the proposed Development should be directed.

~~(D) **Additional notice requirements.** If the site for the proposed Development is not located within the specific corporate limits of an incorporated town or city, but is proposed to be located within two (2) miles of an incorporated town or city(ies) limits, Applicant must provide the same notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice.~~

(3) **Market analysis.** All Applicants must submit third party, independent housing market analyses conforming to the Threshold Criteria set forth in the applicable AP, demonstrating and documenting the status of the market demand for the type and number of housing units proposed to be developed. The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA. ~~An update, including at a minimum, new federal subsidized housing must be included.~~

(4) **Nonprofit owners.** Applicants proposing Developments under the nonprofit set-aside must demonstrate and document that the Nonprofit owner and/or Nonprofit ownership participant meet the definition of a nonprofit as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) has a~~n~~ fifty-one (51%) ownership interest (either directly or through a Partnership) in the Development;

(B) is at least a co-general partner, co-managing member, or a controlling stockholder, or can otherwise demonstrate ownership of, or the contractual obligation to acquire a controlling interest in the proposed Development by not later than the date the Development is substantially completed and commences business;

(C) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire compliance period pursuant to 26 CFR § 1.469 ~~469(h) of the Code~~;

(D) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(E) is duly authorized to do business within the State; and

(F) has at least one year of housing experience in the State.

(5) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is to be located, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA's General Counsel. If there are any conditions in the resolution, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions. In the case of Developments to be located on tribal property, the resolution of support may be issued by the official elected tribal governing body.

(6) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and owner in the use of TCAs and the Development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, and their Affiliates, including all Development team members, shall be examined in regard to their existing Developments, and the record of compliance performance within Oklahoma and other states in which the Development team members have developed or are developing affordable housing. The removal as a General Partner may be considered lack of capacity and performance. Applicants with existing Developments are ~~shall be~~ ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, owner, or any of their Affiliates, including any of their Development team, including without limitation:

(A) failure to meet and maintain minimum property standards;

(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;

(C) have been involved in uncured financing defaults, foreclosures, or placement on ~~US~~HUD's list of debarred contractors;

(D) events of material uncorrected non-compliance with any Federal~~ly~~ or State assisted housing programs within the prior seven (7) years; or

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years.

~~(F) the removal as a General Partner may be considered lack of capacity and performance.~~

(7) **Acquisition credits/ten-year holding requirement.** Applicants requesting acquisition credits must provide an opinion of counsel, in a form satisfactory to OHFA, that the ten-year holding requirement of Code Section 42(d)(2)(B)(ii) has been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the applicant's Development proposal.

~~(8) **Appraisal.** Applicants must provide an appraisal of the Development prepared no more than twelve (12) months prior to the date an Application is filed with OHFA. The appraisal must be on an "as built" basis and must be prepared by a State Certified General Appraiser.~~

(8~~9~~) **Phase ~~1~~ I environmental study.** Applicants must submit a Phase ~~1~~ I Environmental Assessment of the Development prepared no more than twelve (12) months prior to the date an Application is filed with OHFA. In lieu of assessment for existing RHS-financed properties to be acquired and rehabilitated, the Applicant and RHS must certify that there are no adverse environmental concerns. Any remediation requirements should be detailed and costs identified in the budget.

(9~~10~~) **Financial feasibility and viability.** Applicants must provide a plan that demonstrates and makes commitments to the Development's financial feasibility and viability as a qualified low-income housing Development throughout the extended use period. Projects financed through the RHS programs must submit a Multiple Family Housing Obligation-Fund Analysis, Form FmHA 1944-51, or other evidence of firm commitment. Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Financing rates and the terms of the commitment must have been approved by the lending institutions and the commitment conditioned only on the award of TCAs.

(10~~11~~) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness shall include but not be limited to:

~~(A) obtaining firm financing commitments. Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100 percent) of the project's total estimated construction and permanent financing. Financing rates and the terms of the commitment must~~

~~have been approved by the lending institutions and the commitment conditioned only on the award of TCAs;~~

(A~~B~~) site control;

(B~~C~~) land preparation. Applicant must provide preliminary plans or specifications for those activities commonly necessary to make a site ready for building, i.e. clearing, grading, infrastructure (streets, utilities, and the like), etc.

~~(D) completion of all environmental impact and assessment activities with remediation requirements detailed and costs identified in the budget; and~~

(C~~E~~) proper zoning for the proposed Development.

(11) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local public housing authority documents the presence of a client waiting list for affordable housing units.

(12) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a capital needs assessment performed by a qualified independent third-party (architect, engineer, contractor, Rural Housing Services) which considers the proposed rehabilitation activities to ensure that the proposed improvements have a useful life that meets the full term of affordability based on extended use agreements.

(c) ~~**Code preference s**~~ **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and shall include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a commitment to target lower-income populations. Points will be awarded based on the percentage of total AHTC units targeted to persons at or below fifty percent (50%) AMFI to the total number of AHTC units in the project. ~~A maximum of 10 points is available under this criteria on a~~ A sliding scale for points will be established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. ~~A maximum of 5 p~~Points will be awarded for an extension of the term of affordability beyond the minimum required by the Code and established in the annual AP.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. Examples of location and condition variables may include but are not necessarily limited to locating Developments within Difficult Development Areas, areas with rent burdens and/or Qualified Census Tracts the development of which contributes to a concerted community revitalization plan, including but not limited to ~~US~~HUD or RDC designated Empowerment Zones, Enterprise Communities and/or Champion~~ship~~ Communities. ~~A maximum of 10 points is available f~~For projects satisfying targeted locations, points will be ~~as~~ established in the annual AP.

~~(d) **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and shall include, but not necessarily be limited to the following:~~

(4~~1~~) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it ~~incorporates Development beneficial participants that~~ results in tangible, cost beneficial investments or contributions to the proposed Development. ~~Such investments and contributions may include, but are not necessarily limited to: funding under the HOME Investment Partnership Program, the Native American Housing Assistance and Self-Determination Act (NAHASD) Program, the Affordable Housing Program of the Federal Home Loan Banks, the Rural Housing Services 515 Program and other comparable funding sources, for which an application process exists, and the application has been approved or filed, which may be incorporated in the assets and liabilities, income or deductions from expenses of the Development in accordance with generally accepted accounting principles.~~ Leverage shall be considered as the proportion or percentage of leverage resources to total eligible basis. ~~A maximum of 10 points is available under~~ Points for this criterion ~~as~~ will be established in the annual AP.

(5~~2~~) **Community Support.** Examples of community support include, but are not necessarily limited to: fee waivers, tax abatements, public improvements directly related to a Development, donations of property and/or materials, and other contributions of direct value to the proposed Development. ~~that are under the control of the unit of local government providing such assistance or support. A maximum of 10 points is available under this criterion.~~ Support must be directly related to the proposed project ~~and be a tangible contribution that can be incorporated into the assets and liabilities, income or deductions from expenses of the development in accordance with generally accepted accounting principles~~. Eligible evidence of support and points will be established in the annual AP.

(6~~3~~) **Development Characteristics.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of resident appropriate supportive amenities and services, including but not limited to: supportive services, day care, formalized resident involvement in the Development's on-going operations and management, and special on-site facilities. Services and amenities must be on-site if a Large Development; Small Developments may provide off-site or contractual services. ~~A maximum of 20 points is~~ Points available under this criterion for the resident appropriate supportive amenities and/or services will be established in the annual AP. Only services and amenities which exceed the minimum required by applicable laws, such as the ADA, will be eligible for points.

(7~~4~~) **Applicant/Owner ~~Management~~ Experience.** Each Application will be analyzed and evaluated as to the experience of the owner in owning and successfully operating ~~and managing or providing management for~~ Developments in the LIHTC ~~OAHTC~~ Program ~~and/or~~

~~for other types of affordable housing Developments~~. ~~A maximum of 20 p~~Points ~~is~~ available under this criterion will be established in the annual AP. ~~for Owner/Applicants that have placed into service three (3) or more developments which are being successfully operated in compliance with the Code and federal regulations, and the Regulatory Agreement and the rules of OHFA;10 points may be awarded for Owner/Applicants that have placed into service one (1) or two (2) developments that are being successfully operated in compliance with the Code and federal regulations, and the Regulatory Agreement and the rules of OHFA.~~ This evaluation will be based on the experience of the Owner/Applicant ~~and professional development team members~~.

(8) **Management Experience.** Each Application will be analyzed and evaluated as to the experience of the owner in managing or providing management for Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP. This evaluation will be based on the experience of the management team members.

(9~~5~~) **Tenant/Special Needs Populations.** Each Application will be analyzed and evaluated as to the extent to which commitments are made therein to serve Special Needs populations. ~~A maximum of 10 points is available under this criterion. To be eligible for the maximum number of points, the project must be 100% dedicated to tenants with special needs. A development with 15% of total residential units with rents set at 50% of the allowable tax credit rent will be eligible for 5 points.~~ Points available under this criterion will be established in the annual AP and will be based upon a percentage of units dedicated to special needs.

~~(6) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local public housing authority documents the presence of a client waiting list for affordable housing units. A maximum of 5 points is available under this criteria.~~

(10~~7~~) **Tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the development will provide amenities and a unit mix conducive to families/individuals with children. ~~A maximum of 5 p~~Points ~~is~~ available under this criteria~~a~~on will be established in the annual AP. To be eligible, the market study must indicate a need for family units.

(11~~8~~) **Tenant ownership.** ~~A maximum of 5 p~~Points ~~is~~ available to applicants proposing for single family home ownership after the Compliance Period will be established in the annual AP. Applicants must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc. which ~~plans~~ will be evaluated for feasibility.

(12~~9~~) **Cost per unit.** Each Application will be analyzed and evaluated as to the ability demonstrated therein to cost-efficiently produce the highest number of quality housing units for the TCAs requested in the Application ~~together with all other benefits provided by OHFA~~ or applied for with OHFA by the Applicant or any Affiliate of the Applicant for the same Development. Projects with the lowest Tax Credit eligible basis per unit will be given priority in the case of a tie in the final total rating scores.

(d~~e~~) **OHFA discretion.** Not withstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2(c), OHFA reserves the right and shall have the power to allocate Credits to a project irrespective of its point ranking, if such intended allocation is:

(1) in compliance with Code Section 42;

(2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted resolution of the Trustees; and

(3) ~~is~~ determined by the Trustees to be in the interests of the citizens of the State.

330:36-4-2.1. General program requirements and limitations

(a) **General. [Reserved]**

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be limited to:

(1) **Small developments.** Developer Fees may not exceed eighteen percent (18%) of the Eligible Basis, excluding the Developer Fees.

(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the Eligible Basis, excluding the Developer Fees.

(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.

(c) **Contractor Fee limitation.** Allowable Contractor Fees shall be limited to:

(1) **Small Developments.** Total allowable Contractor fees may not exceed sixteen percent (16%) of the hard construction costs, excluding the Contractor~~s~~ Fees. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs, excluding the Contractor~~s~~ Fees;

(B) General Overhead may not exceed two percent (2%) of the hard construction costs, excluding the Contractor~~s~~ Fees; and

(C) Builders Profit may not exceed eight percent (8%) of the hard construction costs, excluding the Contractor~~s~~ Fees.

(2) **Large Developments.** Total allowable Contractor fees may not exceed fourteen percent (14%) of the hard construction costs, excluding the Contractor~~s~~ Fees. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs, excluding the Contractor~~s~~ Fees.

(B) General Overhead may not exceed two percent (2%) of the hard construction costs, excluding the Contractor~~s~~ Fees; and

(C) Builders Profit may not exceed six percent (6%) of the hard construction costs, excluding the Contractor~~s~~ Fees.

(d) **Underwriting standards.**

(1) **Operating and replacement reserves.**

(A) Minimum operating reserves must equal six months of projected operating expenses plus:

(i) debt service payments and

(ii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal $200 per unit annually for new construction and $300 for rehabilitation developments.

(C) Developer guarantees or letters of credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The developer must demonstrate~~d~~ financial capacity and liquidity. OHFA will also consider the developer's track record and the number of other guarantees outstanding.

(D) Notwithstanding the foregoing, these underwriting standards shall not apply if the project is being constructed in accordance with another federal program, such as Rural Housing 515, and such program provides for budgeting for operating and replacement reserves.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

(B) The minimum acceptable debt service coverage ratio of 1.15 (1.05 in RHS properties) is required.

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic and consistent with prevailing market rates. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

~~(5) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a capital needs assessment performed by a qualified independent third party (architect, engineer, contractor, Rural Housing Services) which considers the proposed rehabilitation activities to ensure that the proposed improvements have a useful life that meets the full term of affordability based on extended use agreements.~~

(5~~6~~) **Minimum of $7,500 hard construction costs per unit for rehabilitations.** No allocations for rehabilitation will be made unless a minimum of $7,500 in hard construction costs per unit will be expended.

(e) **Progress reports.** Progress reports must be filed by the Applicant/Owner beginning with the calendar quarter following the approval of a reservation of Credits until the Form 8609 is issued for a building. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each building. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement. Within thirty (30) calendar days after the Certificate of Occupancy is issued for the last building in the project, the Owner must notify OHFA and submit a copy of the Permanent Certificate of Occupancy for each building in the Project. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax credits.

(f) **Construction time period.** Construction, not including site prep work, must begin within one hundred eighty (180) calendar days of credit reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Owner or Project. Said requirements or limitations may be set forth in a Resolution of the Trustees or in any contract between the Applicant or Owner and OHFA.

(h) **Bond financed developments.** Taxable or tax-exempt bond developments financed at least fifty percent (50%) with the proceeds of tax-exempt bonds subject to the private activity bond volume cap are required to comply with all requirements of these Rules except the competitive selection process. Evidence of the bond financing must be submitted at least seven (7) business days before the board meeting wherein the 4% tax credits are to be awarded.

(i) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

(1) **Application fees.**

(A) for single site or contiguous site Developments consisting of one to four Units, the application fee shall be $350.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the application fee shall be $700.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the application fee shall be $1,400.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the application fee shall be $2,800.00;

(E) for scattered sites, the application fee shall be $350.00 per site, up to a maximum of $2,800.00.

(F) For non-profit sponsored Developments the application fee shall be $350.00.

(2) **Amendment fee.** Any amendments to an Application, exhibits thereto or other information on file with

OHFA must be accompanied by a $75.00 processing fee along with $15.00 per each supplemental page and/or each page amended. No amendments to an Application will be accepted prior to approval of a reservation unless the amendment is requested, in writing, by OHFA.

(3) **Reservation fees.** A non-refundable Reservation fee of two percent (2%) of the reservation amount is due within fourteen (14) calendar days of notification from OHFA of the approval of a Reservation.

(4) **Allocation fee.** An Allocation fee shall be paid in an amount equal to eight ~~(8)~~ percent (8%) of the total Allocation, but in any event not less than $1,000.00. The Allocation fee must accompany the Allocation or Carryover Allocation request. The Allocation request will not be submitted to the Trustees for approval, nor will a Carryover Allocation Agreement be executed, nor will Form 8609 be issued unless this fee has been received by OHFA.

(5) **Processing fee.** A processing fee of three quarters of one percent ~~(~~(.75%) of the TCA must accompany the request for a final Allocation. A service fee of $100.00 must accompany the Request for Final Allocation of Credit.

(6) **Regulatory Agreement filing fee.** Upon approval of a final Allocation, an executed Regulatory Agreement must be submitted to OHFA and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of that county(ies). OHFA will provide a schedule of said fees.

(7) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the compliance period and extended use period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the Compliance fee is not paid within thirty (30) calendar days of the due date, then a Late Fee will be assessed. The Late Fee is equal to ten percent (10%) of the Compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 or by taxable or tax-exempt bonds (and otherwise qualify under the Code) where an agreement has been entered into between OHFA and RHS or the bond issuer wherein the RHS or bond issuer agrees to provide OHFA with the required information respecting the income and rent of the tenants in the Development, the fee shall be $210.00 per Development per year, plus $3.50 per OAHTC unit per year within any building within the Development;

(B) For developments where no agreement has been entered into between OHFA and RHS or the bond issuer wherein RHS or the bond issuer agrees to provide OHFA with the required information respecting the income and rent of tenants-the fee shall be $350.00 per Development per year, plus $15.00 per OAHTC unit per year within any building within the Development.

(C) For single site or contiguous site Developments of four units or less-the fee shall be $275.00 per Development per year.

(D) For all other Developments the fee shall be $350.00 per Development, plus $15.00 per OAHTC unit per year within any building within the Development.

(8) **Additional monitoring fees.** In the event of noncompliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the owner, any building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed $30.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(9) **Ownership/General Partner transfer fee.** In the event that the owner submits a request for approval of a transfer of ownership/general partner of the Development or any of the Buildings therein, a fee of three percent (3%) of the amount of annual tax credit allocation, but no less than $2,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(10) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at ~~330:36-3-2~~ 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, (such as Resolutions and Regulatory Agreements) must be reimbursed by the Owner within ten (10) calendar days of OHFA's statement of same. Failure to do so may result in the rejection or deferral of consideration of the Application.

(11) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of $10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(12) **Copies of Credit listing.** Copies will be provided at a cost of $10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(13) **Compliance Workshops.** A $30 fee for attendance at Compliance Workshops.

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-1. Program violations and revocation ~~recapture~~

(a) The following are violations of OAHTC Program policies and procedures and these OAHTC Program Rules:

(1) The filing of false information in an Application and/or a Development report;
(2) Failure of an Applicant or owner, as the case may be, to satisfy any of the requirements of the Code, applicable state or federal statutes, rules or regulations, these OAHTC Program Rules, or any requirements contained in the applicable AP, or any commitments made in the Application upon which the award of a TCA was based;
(3) Breach of any of the terms, conditions, obligations, covenants, warranties, or representations of the owner or Applicant contained in the Regulatory Agreement and/or the Carryover Allocation Agreement or the breach of any terms conditions, obligations or requirements set forth in any Resolution of the Trustees pertaining to the Applicant/Owner or the Development;
(4) Notice by OHFA to the owner that significant corrective actions are necessary to protect the integrity of the Development and that such corrective actions have not been, or can not be, effected within a reasonable time, in the judgment of OHFA staff;
(5) An administrative or judicial determination that the Applicant or owner has committed fraud, waste, or mismanagement in any current or prior State or federally funded project;
(6) The housing of a convicted felon or person(s) engaged in any illegal or criminal activity, including, but not limited to, prostitution, rape, incest, child abuse, or felonious assault, or engaged in any drug-related criminal activities (illegal manufacture, sale, distribution or use of a Drug, or the possession of a Drug with intent to manufacture, sell, distribute or use the Drug), if the Applicant, owner, or managers of the Development, or any of their Affiliates, have knowledge of or about, or by reasonable inquiry should have know of same. The prohibition on the housing of a convicted felon shall not apply to qualified tenants of Transitional Housing, except that the housing of a person in any Transitional Housing shall be prohibited if said person:
(A) is subject to a lifetime registration requirement under a State sex offender registration program, or
(B) has been convicted of a crime involving moral turpitude committed against women or children;
(7) From and after the date of the filing of the Application, failure to notify OHFA of any material changes effecting the proposed development, including, but not limited to, modifications to any representations contained in the Application, any amendments or modifications of the financing plan, syndicators or equity partners or any other Threshold requirement and/or changes in Development Team Members, contractors, property managers, and the like. Notification must be filed with OHFA not less than sixty (60) ~~business~~ calendar days prior to the proposed change. Approval by the OHFA Board of Trustees is required for any changes or amendments involving the ownership or control of the Development or the Owner after the Application is filed. This would; include, but not be limited to, changes or transfers of the Development, changes or modifications of the ownership or composition of the general partner entity (i.e. addition or removal of members, partners, stockholders, etc.), any addition, substitution, withdrawal or removal of any general partner. Other amendments may be handled administratively by staff, although staff reserves the right to refer any amendments to the OHFA Board of Trustees for their consideration; or
(8) Failure to submit reports including but not limited to the timely filing of progress reports, updates, compliance reports, etc., ~~and fees when due~~ and failure to provide OHFA with any additional information requested by OHFA within the period set forth in any request for information. Failure to pay fees when due. If payment is returned for insufficient funds, it will be deemed nonpayment and the amount to defray bank costs will be due.
(9) Little or no progress has been achieved with previous tax credit reservations approved for the Applicant or Developer or any of the Principals of either. This would include, but not be limited to: failure to meet the minimum carryover allocation requirements resulting in the return of credits; failure to place a development in service within twenty-four (24) months receiving the carryover allocation; involvement of a foreclosure or deed-in-lieu of foreclosure within the past seven (7) years.
(b) Failure to follow all required procedures throughout the allocation process could jeopardize the final allocation or result in housing credit being revoked ~~recaptured~~.

330:36-6-3. Corrective and remedial actions

(a) Upon a determination by OHFA staff that a violation has occurred during the Application stage or Regulatory Agreement period, OHFA may take any one or more of the following actions when the cited violations are not corrected in a timely manner:
(1) Condition regulatory agreements;
(2) Withhold allocations of tax credits;
(3) Reduce the total amount of the tax credit award;
(4) Require the return of unused tax credits;
(5) Deny future program Applications and participation for a specified period of time as determined by OHFA;
(6) Indefinitely suspend from program participation;
(7) File an action for specific performance; and/or
(8) Notify the IRS.
(b) Additionally, OHFA shall have the right, upon discovery of facts or statements indicating possible program violations by an Applicant or owner in regard to a Development, or a proposed Development or a pending Application, or a pending TCA, to request and obtain information regarding:
(1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the cause of the program violation(s);
(2) Any activities by an Applicant and/or owner, or by an Affiliate of either of them that are, or might be in violation or breach of the commitments made in the Application or that are, or might be, in violation of applicable laws, these Rules, the applicable AP, and/or the applicable Carryover ~~Carry Over~~ Agreement and/or the applicable Regulatory Agreement;

(3) The ability of the Applicant and/or owner to fulfill the commitments made to OHFA in the Application and/or the applicable Carryover ~~Carry Over~~ Agreement and/or the applicable Regulatory Agreement, in a timely manner; and

(4) Progress schedules for completing and/or performing the commitments made to OHFA in the Application and/or the applicable Carryover ~~Carry Over~~ Agreement and/or the Regulatory Agreement in a timely manner.

(c) Prior to OHFA taking any corrective and/or remedial actions, OHFA, may, in its sole discretion, issue a notice of a show cause hearing. The Applicant and/or owner shall have ten (10) ~~working~~ business days to appear and show cause as to why corrective and/or remedial actions should not be taken. This language shall not be construed as a limitation on the compliance monitoring and reporting requirements of the Code and these Chapter 36 Rules.

330:36-6-5. Applicant and/or owner responsibilities

(a) An Applicant and/or owner under the OAHTC Program shall be responsible for:

(~~1~~b) Taking all action necessary to enforce the terms of the Regulatory Agreement against any private or public owner that fails to comply with applicable provisions of the Regulatory Agreement or any subcontract or documents resulting from it, and to recover on behalf of OHFA, all costs and expenses incurred by or on behalf of OHFA~~, that may arise as a result of a violation or breach of the commitments made in the Application and/or the Regulatory Agreement by any Applicant or owner or any Affiliate of either~~. Nothing in this subsection shall restrict OHFA's right to independently enforce the terms of the commitments made to OHFA in the Application and/or the Regulatory Agreement or in any subcontracts or documents resulting from either of them, or to recover any sums that may become due to OHFA as the result of a breach of any of the commitments made to OHFA in the Application and/or the Regulatory Agreement, or in any such subcontracts or documents.

(~~2~~c) Complying with all applicable provisions of the Code, state and federal regulations, guidelines, circulars, rulings and notices, these Rules, the applicable AP, the Application, the Regulatory Agreement between the Applicant and/or Owner, and/or in any subcontracts or documents resulting from either of them, and OHFA or other Program requirements that may be released by the Internal Revenue Service or OHFA from time to time.

(~~3~~d) Maintaining records and accounts, including, but not limited to, property, personnel, financial and tenant records that properly document and account for all Development funds and compliance with the tenant income certification requirements of the Code, these Rules, the applicable AP, and the Application and the Regulatory Agreement. All records required by the Code or 26 ~~CRF~~ CFR1.42-5, as presently effective or as may be amended in the future, must be kept and retained by the Owner. Additional requirements of OHFA respecting said records may be included in the Regulatory Agreement. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the tax credits.

(~~4~~e) OHFA may require the Applicant and/or Owner to provide special narrative and financial reports related to the elements of a written agreement in the forms and at such times as may be necessary or required by OHFA.

(~~5~~f) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to the Owner's commitments to OHFA found in the Application and in the Regulatory Agreement, as required by the Code, federal regulations, the AP, the Application and the Regulatory Agreement.

(~~6~~g) OHFA shall have the right to perform as many audits of any Development, from time to time, in the complete discretion of OHFA, as OHFA deems necessary or appropriate to discharge its compliance duties to the IRS in regard to each Development for which TCAs have been awarded, at least through the end of the compliance period and extended use period of the buildings and units in the Development. Audits may include physical inspection of any building in the Development, as well as a review of the records described in this subchapter. The cost of any such audit shall be borne by the Applicant and/or Owner ~~if any material violations are documented as a result of the audit~~. The audit and inspection provisions of this subsection are in addition to any inspection of OAHTC certifications, supporting documentation, or inspection of records performed pursuant to annual compliance review.

330:36-6-7. OHFA monitoring procedures

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing credit agencies monitor all placed in service tax credit projects for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Land Use Restriction Agreement (Regulatory Agreement) provisions which contain additional owner commitments made to secure points in the project selection process, e.g. additional low-income units or an extended low-income use period. OHFA has assembled and will make available to the project owners, a Compliance Manual explaining the OAHTC monitoring process in detail. An owner representative and a management agent representative~~s~~ will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report. OHFA will monitor the documents and certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The owner of a low-income housing project is required to keep records for each qualified low-income building in the project showing:

(A) The total number of residential units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(B) The percentage of residential rental units in the building that are low-income units;

(C) The rents charged on each residential rental unit in the building (including any utility allowances;

(D) The number of occupants in each low-income unit;

(E) The low-income unit vacancies in the building and information that shows when, and to whom the next available units were rented;

(F) The annual income certification of each low-income tenant per unit;

(G) Documentation to support each low-income tenant's income certification;

(H) The eligible basis and qualified basis of the building at the end of the first year of the credit period;

(I) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and

(J) Copies of all correspondence with the IRS.

(2) The owner is required to retain the records described in this section for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(c) **Certification and review provisions.**

(1) Between the placed in service date of a building and the submission of an application for a final allocation of credits, and prior to the issuance of an 8609, OHFA may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7(c)(6) of these Rules.

(2) ~~**Owner Certification**~~

~~(A)~~ In accordance with Section 42(l)(1), following the close of the first taxable year in the credit period, the owner must certify to the Secretary of the Treasury:

(i) the taxable year in which such building was placed in service,

(ii) the adjusted basis and eligible basis as of the close of the first year of the credit period,

(iii) the maximum applicable percentage and qualified basis, and

(iv) the election made for the low-income targeting threshold.

~~(B)~~ This certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA by the end of the first period for which the Housing Credit is claimed for each building.

(3) ~~At the end of the first full calendar quarter following the placed in service date, and for the subsequent three quarters, owners must prepare and submit a Quarterly Status Report accompanied by copies of the Tenant Income Certification for each tenant and new move-ins for the appropriate quarter.~~ Owners must prepare and submit a quarterly report beginning with the first full calendar quarter after the last building is Placed in Service, and for the subsequent three quarters. This report must be accompanied by copies of the Tenant Income Certifications for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

(A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever minimum set-aside is applicable to the project, and, if the applicable to the project, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects;

(B) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B))of any building in the project, or that there was a change and a description of the change;

(C) The owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(D) Each low-income unit in the project was rent-restricted under Section 42(g)(2);

(E) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless);

(F) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

(G) There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of that change;

(H) All tenant facilities included in eligible basis under Section 42(d) of any building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) If a low-income unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having

a qualifying income before any units in the project were, or will be rented to tenants not having a qualifying income;

(J) If the income of the tenant of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;

(K) An extended low-income housing commitment, as described in Section 42 (h)(6), was in effect;

(L) The project meets the additional requirements contained in the Land Use Restriction Agreements;

(M) There was no change in the Owner entity (for example, transfer of general partnership interest);

(N) If the owner received its credit allocation from a portion of the State's ceiling set-aside for projects involving "qualified non-profit organizations" under Section 42(h)(5) of the Code, the non-profit organization has materially participated in the operation if the development (within the meaning of CFR § 1.469 ~~Section 469(h) of the Code~~);

(O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judg~~e~~ment from federal court; and

(P) An extended low-income housing commitment as described in Section 42(h)(6) was in effect, that an owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

(5) OHFA will review the owner certifications submitted pursuant to 330:36-6-7(c)(4), for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service, and for at least twenty (20) percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the extended use period, OHFA must conduct on-site inspections of all buildings in the project and, for at least twenty ~~20~~ percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(8) The certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually until the end of the extended use period, and the certifications are to be made under penalty of perjury.

(9) The owner is required to provide ~~annually~~ to OHFA, for the first credit year, a copy of the completed Part II 8609, 8609 Schedule A and ~~IRS~~ Form 8586 that is submitted to the Internal Revenue Service.

(10) The owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing provisions.** OHFA has the right to perform an audit of any low-income housing project during the term of the Land Use Restriction Agreement. An audit includes physical inspection of any building in the project, as well as a review of the records described in 330:36-6- 7(c)(1) of these Chapter 36 Rules. The auditing provision of this paragraph is in addition to any inspection of low-income certifications and documentation under 330:36-6-7(c)(7)of this Chapter 36 Rules.

(e) **Notification of non-compliance provisions.**

(1) OHFA will provide prompt written notice to the owner of a low-income housing project if OHFA does not receive the certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant income certification supporting documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The owner shall have a period of time, not to exceed thirty (30) calendar days, from the date of such notice (the "Correction Period") to supply any missing certifications and bring the project into compliance. OHFA may extend, in its own discretion, the Correction Period for up to an additional thirty (30) calendar days for good cause.

(2) OHFA must file IRS Form 8823 Report of Noncompliance with the Internal Revenue Service no later than forty-five (45) calendar days after the end of the Correction Period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

[OAR Docket #04-1048; filed 5-25-04]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 40. GUIDELINES FOR HOUSING PILOT PROGRAM

[OAR Docket #04-1050]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
330:40-1-1. [AMENDED]
330:40-1-2. [AMENDED]
330:40-1-3. [AMENDED]

330:40-1-4. [AMENDED]
330:40-1-5. [AMENDED]
Subchapter 3. Application Procedures
330:40-3-1. [AMENDED]
Subchapter 5. Selection Process
330:40-5-1. [AMENDED]
330:40-5-2. [AMENDED]
Subchapter 7. Program Requirements
330:40-7-2. [AMENDED]
Subchapter 9. Selection of Properties
330:40-9-1. [AMENDED]
330:40-9-2. [AMENDED]
330:40-9-3. [REVOKED]
Subchapter 11. Limitations
330:40-11-1. [AMENDED]
330:40-11-2. [AMENDED]
330:40-11-4. [REVOKED]
Subchapter 13. Funding
330:40-13-1. [AMENDED]
330:40-13-2. [AMENDED]
330:40-13-3. [REVOKED]
330:40-13-4. [AMENDED]
Appendix A. Oklahoma Housing Finance Agency House Bill 1566 Pilot Program [REVOKED]

AUTHORITY:
These Chapter 40 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

DATES:
Comment Period:
January 2, 2004 through February 10, 2004
Public Hearing:
February 10, 2004
Adoption:
March 10, 2004
Submitted to Governor:
March 19, 2004
Submitted to House:
March 19, 2004
Submitted to Senate:
March 19, 2004
Gubernatorial approval:
April 28, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2004.
Final Adoption:
May 12, 2004
Effective:
July 12, 2004
Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of these Chapter 40 Rules is to govern the administration of funds received in connection with the Oklahoma Homeless Prevention Act, 74 O.S. Sections 2900, et seq. (the "Act"). Funds received pursuant to the Act are to be utilized in providing housing or housing assistance to homeless persons or families or mentally ill persons in need of housing. The proposed amendments are intended to simplify procedures.

CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

330:40-1-1. Purpose

These Chapter 40 rules have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Sections 250, et seq. The Oklahoma Housing Finance Agency ("OHFA") is authorized under its Amended Trust Indenture and the Bylaws of the Oklahoma Housing Finance Agency and the Oklahoma Homeless Prevention Act, 74 O.S. §2900 et seq., to make available to local government agencies, local housing authorities or nonprofit agencies, certain State funds as same are ~~made available through appropriations of the Oklahoma Legislature~~ mandated by the Stewart B. McKinney Homeless Assistance Act of 1987. These State funds are to be utilized in providing housing or housing assistance to homeless persons or families or mentally ill persons in need of housing. In furtherance thereof, OHFA has adopted this Chapter 40 for the implementation of a Pilot Program respecting utilization of said State funds. As funds are made available, ~~grants~~ Grants will be made to local government agencies, local housing authorities or nonprofit agencies to lease vacant housing units which are subject to government control, ~~or~~ which have been donated by any public or private entity, or which have been purchased by any local government agency, local housing authority or nonprofit agency by for use by homeless individuals or families and mentally ill persons in need of housing.

330:40-1-2. Statutory definitions

(a) The following term is defined in 43A O.S. §1-103: "mentally ill person".
(b) The following terms are defined in 74 O.S., §2900.1:
(1) "Comprehensive Case Management"
(2) "homeless individual or family"
(3) "self-sufficiency program"

330:40-1-3. Additional definitions

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

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

"Applicant" means the Authorized Agencies submitting an Application Packet.

"Application" means the information required and forms to be utilized in applying for assistance under the Pilot Program, which Application is attached to these Guidelines and incorporated herein by reference.

"Authorized Agencies" means local government agencies, local housing authorities or nonprofit agencies of the State providing housing to homeless individuals or families or the mentally ill in need of housing, authorized ~~pursuant to 74 O.S.~~

~~§2900~~ by the Oklahoma Homeless Prevention Act to receive assistance from OHFA ~~under~~ through the Pilot Program.

~~**"Comprehensive case management"** means comprehensive case management as defined by 74 O.S. §2900.1(A)(1).~~

~~**"FmHA"** means the Farmers Home Administration.~~

"Grant" means the monies awarded to a Recipient pursuant to the Homeless Prevention Act.

"Grant Agreement" means the contract between the Recipient and OHFA which sets forth the conditions and terms for administering a Grant.

~~**"Homeless individual or family"** means a homeless individual or family as defined by 74 O.S. §2900.1(A)(2)~~

"Homeless Prevention Act" means 74 O.S., ~~§2900.1~~ §§ 2900, et seq.

"HUD" means the United States Department of Housing and Urban Development.

~~**"Mentally ill person"** means a mentally ill person as defined by 43A O.S. §1-103.~~

"Nonprofit Organization" means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(A) Have a voluntary board;

(B) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(C) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(D) Practice nondiscrimination in the provision of assistance under the Pilot Program.

"OHFA" means Oklahoma Housing Finance Agency.

~~**"$1.00/Year Lease Program"** means the housing initiative of HUD whereby certain HUD owned housing units are made available for lease at One Dollar ($1.00) per year, to units of local government, nonprofit and charitable or religious organizations for housing the homeless. Properties eligible for the Pilot Program are not limited to those included in the $1.00/Year Lease Program.~~

"Pilot Program" means the program authorized by the Homeless Prevention Act and developed and implemented ~~instituted by~~ OHFA ~~as authorized by 74 O.S. §2900.1~~ to provide resources to Authorized Agencies ~~to lease properties~~ for the purpose of providing housing to homeless individuals or families and mentally ill persons who are in need of housing.

"Project" means the proposal submitted by the Applicant and includes all properties for which the Applicant seeks to receive assistance under the Pilot Program.

"Property" means any vacant housing unit which is ~~subject to government control, by way of example HUD or FmHA, and which is~~ available for lease for the purpose of providing housing to homeless individuals or families and mentally ill persons who are in need of housing ~~or property which has been donated by any public or private entity for use by homeless individuals or families and mentally ill persons who are in need of housing. Properties temporarily donated by private entities shall not be eligible for receipt of any funding for repairs~~.

"Recipient" means the Authorized Agency(ies) approved by OHFA for funding under the Pilot Program and which executes a Grant Agreement with OHFA. The Recipient must operate the ~~project~~ Project in accordance with these Chapter 40 rules.

"Rehabilitation" means labor, materials, tools and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

"Resident" means the homeless individual or family or mentally ill person in need of housing who occupies a ~~property~~ Property.

~~**"Self-sufficiency program"** means self-sufficiency programs as defined in 74 O.S. §2900.1(A)(4).~~

"Staff" means the staff of OHFA.

"State" means the State of Oklahoma.

330:40-1-4. ~~No discrimination~~ Compliance with Applicable Laws

~~No Applicant shall be arbitrarily rejected for participation in the Pilot Program because of the race, color, religion, national origin, ethnic background, age, sex, marital or family status or disability of the Applicant(s) or the persons it serves. Further, no homeless individual or family or mentally ill person may be arbitrarily rejected as a Resident in housing, or to receive housing assistance provided through the Pilot Program because of the race, color, religion, national origin, ethnic background, age, sex, marital or family status or disability.~~ Applicants and Recipients must comply with all applicable federal, state and local laws, rules, regulations and ordinances, including but not limited to, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. No Recipient shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability or handicap in the lease, use or occupancy of any Project, or in connection with the employment or application for employment of persons for the operation and/or management of any Project. Applicants must execute an assurance of compliance with Fair Housing Standards in a form to be provided by OHFA.

330:40-1-5. Conflicts of interest

No person ~~(i)~~ who is an employee, agent, consultant, officer, or elected or appointed official of any Recipient, and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or ~~(ii)~~ who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the Pilot Program or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

SUBCHAPTER 3. APPLICATION PROCEDURES

330:40-3-1. Application

Applicants must utilize an Application in a form to be provided by OHFA, in applying for assistance under the Pilot Program. The ~~staff of OHFA~~ Staff will assist Applicants in completing an Application; however, an Application will not be reviewed until a ~~complet~~ complete Application, including all exhibits, is filed with OHFA. Incomplete Applications will be returned to the Applicant. Eligibility to participate in the Pilot Program does not mean an Applicant will automatically receive funding. Each Recipient must still meet the requirements set forth in this Chapter, including demonstrating a proven capacity to operate and supervise the Project.

SUBCHAPTER 5. SELECTION PROCESS

330:40-5-1. General

Due to ~~the~~ limited revenues available for the Pilot Program, applications will be ranked for purposes of selecting ~~recipients~~ Recipients. The ranking criteria for the Pilot Program will address the applicant's relative capacity to carry out Pilot Program activities; the applicant's ability to ensure that the properties are maintained as safe and sanitary housing; the extent to which the applicant will provide Comprehensive Case Management and coordinate the provision of a Self-sufficiency Program and other supportive services; the reasonableness and effectiveness of the ~~applicant's~~ Applicant's proposal; the ~~applicant's~~ Applicant's prior experience in property management; and the ~~applicant's~~ Applicant's ability to monitor the ~~project~~ Project and the ~~property(ies)~~ Property(ies).

330:40-5-2. Ranking criteria

(a) **Threshold criteria.** To be eligible for evaluation under the ranking criteria set forth herein, Applications must meet each of the threshold criteria described below. Applications that fail to meet all threshold criteria will not be eligible for assistance under the Pilot Program. The threshold criteria are:

(1) **Form, time, and adequacy of the Application.** The Application must be filed in the form prescribed by OHFA ~~and appended to these Chapter 40 rules~~ within the time period established by OHFA. ~~and published in the Daily Oklahoman and the Tulsa World.~~

(2) **Applicant eligibility to receive assistance.** The Applicant must demonstrate that it is an Authorized Agency.

(3) **Applicant's financial responsibility.** Applicants must demonstrate the financial ability to carry out the Project. OHFA will, in making its determination of financial responsibility, consider factors such as the past financial history of the Applicant, its current and anticipated financial outlook, the amount of funding that is requested by the Applicant, and Applicant's other financial responsibilities.

(4) **Applicant capacity.** Applicant must demonstrate that it has the ability to carry out activities under the Pilot Program ~~and~~ in a successful manner. In making this determination, OHFA will consider the extent and quality of the Applicant's past experience in establishing and operating housing. OHFA also will consider the ability of the Applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of the Project.

(5) **Applicant legal authority.** Each applicant must:

(A) Demonstrate that it has ~~the~~ legal authority to participate in the Pilot Program and to carry out activities in accordance with Pilot Program requirements and the requirements of other applicable state and federal laws; and

(B) Certify that a resolution, motion or similar action has been duly adopted or passed as an official act by the governing body of the Applicant, authorizing the submission of the Application Packet.

(C) Nonprofit Organizations must provide proof of their nonprofit status.

~~(6) **Proposed housing and housing assistance--need.**~~

~~(A) The Applicant must demonstrate that an unmet need for the proposed housing exists in the area to be served and that this need is likely to continue through the term of the commitment to OHFA. Need may be demonstrated by information such as:~~

~~(i) Estimates, based on past experience in the community, of unmet demand for the proposed housing by the homeless persons to be served;~~

~~(ii) Present need for the proposed housing, based on estimates of the population of homeless persons to be served; or~~

~~(iii) Projections of future need for the proposed housing. Applicants may use relevant information contained in the Report of the Governor's Task Force on the Homeless.~~

~~(B) Each Applicant must provide an assessment of how the proposed Project will meet the needs of homeless persons in its area.~~

(~~7~~6) **Case Management and Supportive services.** Each Applicant should include a description of its Comprehensive Case Management supportive services including Self-sufficiency Programs available for the Residents.

(~~8~~7) **Proposal feasibility.** Each Applicant must demonstrate that its proposal, when viewed as a whole, is operationally feasible and adequately serves the purposes of the Pilot Program.

(8) **Selection of Property(ies).** The Applicant must identify proposed Properties at the time of Application. Properties identified must meet the requirements set forth in subchapter 9 of theses Guidelines.

(b) **Ranking criteria.**

(1) **In general.** Applications that fulfill each of the threshold requirements of 330:40-5-2(a) will be assigned a rating score and ~~will be placed in~~ ranked ~~order~~, based upon the criteria described in paragraph (2) of this sub-section.

(2) **Criteria.** Applications will be assigned a rating and will be ranked based upon the following criteria:

(A) **Applicant's capacity.** OHFA will consider the Applicant's relative ability to successfully carry out activities under the Pilot Program for the year of the commitment ~~in a successful manner~~. OHFA will assign the greatest number of points under this criterion to Applications from Applicants with experience in establishing and operating housing for homeless persons and in providing or coordinating supportive services for its Residents. Applicants who demonstrate, through volunteers or other funding, the ability to maintain the Properties during the lease period, and who demonstrate, on the basis of prior experience, the greatest ability to carry out activities under the Pilot Program expeditiously and successfully, will be assigned the greatest number of points.

(B) **Case Management, Self-sufficiency Programs and Coordination of supportive services.** While the primary focus of the Pilot Program is housing and housing assistance~~.~~, Applicants must demonstrate Comprehensive Case Management and Self-sufficiency Programs. OHFA will review Applications for these services and will consider the supportive services available for the Residents of the Properties in ranking Applicants. Supportive services may include:

(i) assistance in obtaining permanent housing;

(ii) medical and psychological counseling and supervision;

(iii) employment counseling;

(iv) nutritional counseling;

(v) assistance in obtaining other federal, state and local assistance available for Residents of transitional housing facilities, including mental health benefits, employment counseling, medical assistance, veterans' benefits, and income support assistance, such as Supplemental Security Income benefits, ~~Aid to Families with Dependent Children~~, Temporary Assistance for Needy Families, General Assistance, and Food Stamps; and

(vi) other services, such as child care and transportation.

(C) **Cost effectiveness.** OHFA will consider the extent to which the Applicant's proposed Project Budget:

(i) is reasonable in relation to the ~~rehabilitation and the~~ Rehabilitation, utilities and other services to be provided; and

(ii) is effective in accomplishing the purposes of the Project.

(D) **Project quality.** OHFA will consider the extent to which the Project will meet the needs of homeless persons in the State.

(c) **Final selection.** In the final stage of the selection process, the highest-ranked Applications will be considered for final selection in accordance with their rank order. If the top-rated Applications under the ranking criteria described above involve Projects that predominantly serve one geographic area, OHFA may substitute one or more other highly-rated Applications to ensure reasonable variety in the Pilot Program.

(d) In the event two or more Applicants receive the same ranking, funding will be made in the order of receipt of the Applications by OHFA.

SUBCHAPTER 7. PROGRAM REQUIREMENTS

330:40-7-2. Required recipient agreements

Each Recipient of funding under the Pilot Program must agree:

(1) To operate the Project in accordance with this Subchapter.

(2) To conduct an ongoing assessment of the needs of the Residents of the Property(ies), and assure that any supportive services represented as being available in the Application are being provided (Comprehensive Case Management);

(3) To provide such supervision of the Properties to ensure the Residents are being provided safe and sanitary housing, and to comply with all State and local housing codes and licensing requirements, if any;

(4) To ensure that in the operation of the Project:

(A) the use of alcohol or the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use of any illegal drug or controlled substance in or around the Property will be prohibited; and

(B) any Resident, any member of the Resident's household, or a guest or other person under the Resident's control who violates such prohibitions may be expelled from the housing;

~~(5) To return the Property to the lessor in the same condition as when leased;~~

(~~6~~5) To keep records and make reports as provided in the Application; and

(~~7~~6) To allow inspections of the Properties by OHFA as OHFA may request.~~, but not less than quarterly.~~

SUBCHAPTER 9. SELECTION OF PROPERTIES

330:40-9-1. Inspection

Upon approval of an Application, OHFA and the Recipient will inspect all proposed Properties. ~~In the event no specific Property(ies) have been identified by the Recipient, OHFA will assist the Recipients in selecting qualified Properties.~~

330:40-9-2. Final approval

(a) Applicants shall ~~should, where possible,~~ identify proposed Properties for their Project in their Application. Final approval by OHFA of all Project Properties is required before funding. Properties must meet:

(1) the minimum housing quality standards adopted by HUD and set forth at 24 CFR 882.109, which housing

quality standards are specifically adopted herein by reference; and

(2) comply with all state and local zoning requirements.

(b) If, upon inspection, Property(ies) ~~have not been identified, secured and approved by OHFA within one hundred twenty (120) days after execution of the Grant Agreement,~~ fail to pass minimum housing quality standards, OHFA may, upon written notice to the Recipient, deobligate all or a portion of the ~~funding granted thereunder~~ Grant. OHFA may, in its sole discretion, permit the Recipient to substitute another property upon good cause shown.

330:40-9-3. Miscellaneous [REVOKED]

~~OHFA may, upon an Applicant's showing of special need or exigent circumstances, enter into a lease with HUD with respect to a specific Property or Properties and then turn the Property or Properties over to a Recipient to manage in accordance with these Guidelines. In such event, a Lease Agreement between the Recipient and OHFA, as well as the other agreements and certifications provided hereunder, will be required. OHFA will also require casualty insurance and personal liability insurance, naming OHFA as the beneficiary, as OHFA deems necessary.~~

SUBCHAPTER 11. LIMITATIONS

330:40-11-1. Funding

An Application Packet will be rejected if the proposed budget exceeds $ 3,500 per Property per year, absent a waiver by OHFA to be granted only upon showing of extreme circumstances. A written waiver request and the reasons therefore must accompany the Application. Further, no Project may receive assistance for more than five (5) Properties. ~~Fifteen percent (15%) of the total grant will be reserved until the last quarter of the grant period for emergency repairs or emergency housing assistance to the Residents.~~

330:40-11-2. Eligible activities

Funds received by a Recipient shall be used to guarantee coverage of utility costs, repairs, insurance, property taxes and building and yard maintenance of the Properties. The funds ~~made available by appropriations use~~ in the Pilot Program may be used to provide housing assistance in conjunction with the lease of any eligible Property~~, including Properties available through HUD and the FmHA~~. However, no funds received under the Pilot Program may be used for repairs on Properties temporarily donated by a private entity for use hereunder.

330:40-11-4. Term of commitment [REVOKED]

~~This Pilot Program will continue for one (1) year after the last grant is made, unless new funding is appropriations are approved by the State Legislature and received by OHFA.~~

SUBCHAPTER 13. FUNDING

330:40-13-1. Obligation of funds

When OHFA selects an Application for funding and notifies the Recipient, OHFA will obligate funds to cover the amount of the ~~grant~~ Grant and enters into a Grant Agreement with the Recipient.

330:40-13-2. General

A Project will be funded only after the Recipient enters into a Grant Agreement with OHFA. Grant Agreements will have a term of one (1) year. OHFA will then turn over to the Recipient, in accordance with the final approved Budget for each approved Property, a sum equal to any ~~rehabilitation~~ Rehabilitation cost, initial utility deposits, if any, and ~~the projected~~ utility and maintenance costs for the Property for the previous month ~~first three months~~ of occupancy. Subsequent funding will be on a monthly or quarterly basis only, unless OHFA, in its sole discretion, approves additional funding.Due to possible future reductions in State or federal appropriations (or other funding), OHFA cannot guarantee the continued availability of funding. In the events funds obligated to finance the Pilot Program or any Grant Agreement become unavailable, either in total or in part, OHFA may reduce or deobligate all or a portion of any Grant.

330:40-13-3. Increases [REVOKED]

~~OHFA will not make any upward revisions to the amount approved for funding for a Property.~~

330:40-13-4. Deobligation

(a) OHFA may deobligate any or all ~~grant~~ Grant amounts:

(1) If the actual total costs of operating a Property are less than the total cost anticipated in the Application and Budget;

(2) If the Property(ies) identified in the Application fail to meet the minimum housing standards set forth in subchapter 9 of these Guidelines ~~Recipient has not located and secured a Property(ies) acceptable to OHFA within one hundred twenty (120) days after execution of a Grant Agreement~~;

(3) If proposed Project activities are not begun or completed within a reasonable time ~~after selection of the Properties~~ after execution of a Grant Agreement;

(4) If OHFA determines that the Recipient has expended funds for uses that are ineligible under these Chapter 40 rules;

~~(5) If the Recipient is permitted, or at any point during the grant period becomes able, to require the Resident(s) to pay rent in excess of the amounts permitted or required by HUD or any other governmental agency which controls the Property to be paid by the Resident(s); ; or~~

(~~6~~5) If the Recipient fails to supervise the Properties and Residents to ensure that the Properties are drug-free and maintained in a safe and sanitary condition; or

(~~7~~6) If the Recipient fails to provide OHFA with proof of an ongoing Comprehensive Case Management Program; or

~~(8) If the Recipient fails to provide Residents of a Self-sufficiency Program and other supportive services represented in the Application or Grant Agreement.~~

(7) Funding to support the Pilot Program or any Grants made thereunder becomes unavailable to OHFA or is decreased in amount.

(b) The Grant Agreement ~~will~~ may set forth in detail other circumstances under which funds may be deobligated and other sanctions that may be imposed. OHFA shall notify the Recipient in writing of its intent to deobligate ten (10) days prior to taking action to deobligate hereunder. If funds are deobligated, OHFA may:

(1) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability;

(2) Reconsider applications that were submitted in response to the most recently published notice of fund availability, and select applications for funding with deobligated funds. Such selections will be made in accordance with these Chapter 40 Rules ; and/or

(3) Consider allowing Recipients, upon prior approval of OHFA, to reallocate funds previously obligated to additional Projects. In such case, Recipients ~~must~~ may be required to submit revised budgets, evidence of secured and approved Properties, and such other documentation or certifications OHFA may require.

APPENDIX A. OKLAHOMA HOUSING FINANCE AGENCY HOUSE BILL 1566 PILOT PROGRAM [REVOKED]

APPLICATION

_____
Name of Applicant

_____
Applicant's Address

_____

DIRECTIONS: In order to assist the Oklahoma Housing Finance Agency in the determination as to the capability of your organization to participate in the House Bill 1566 Pilot Program for housing, the following information is required. This Application should be returned to OHFA, Attn: Homeless Housing Coordinator, Post Office Box 26720, Oklahoma City, Oklahoma 73126-0720. Please clearly identify each exhibit with tabs or dividers.

APPLICANT INFORMATION

Exhibit Description

1 **Evidence of Applicant's Eligibility.** Submit:

(a) Applicant's Articles of Incorporation, Charter, Constitution or other organizational documents;

(b) Currently effective statement from the Internal Revenue Service providing tax-exempt status;

(c) Applicant's Bylaws;

(d) A list of the names and addresses of officers and directors, or trustees and director of the Applicant; and

(e) Resolution of Board of Directors, Trustees or other governing board approving Applicant's participation in the Pilot Program, and certifying that Applicant is eligible to participate in the Pilot Program.

2 **Narrative Description of Past Experience** (no more than two single-spaced or four double-spaced typed pages). Include, at a minimum, answers to the following questions:

a. Have you developed and/or operated housing? In what capacity? For how long?

b. Have you provided and/or coordinated the provision of supportive services? What kind of services? For what type of population? For how long?

c. How large was your operation?

d. How many people did you serve at one time?

e. What was your source of financing?

f. How do you measure your success?

g. How does your experience relate to your role in the proposed project?

h. Describe the administrative, managerial and operational capabilities of your staff. How many of your staff function in these capacities?

3 **Narrative Response - Answer the Following Questions** (no more than five single-spaced or ten double-spaced typed pages):

a. Describe the purpose of your organization and explain how your organization's objectives fit within the objectives of the Pilot Program.

b. What financial and/or other resources, in addition to funding requested under the Pilot Program, have been allocated by the Applicant to carry out your proposed project?

(1) Staff
(2) Maintenance funds
(3) Miscellaneous costs, such as insurance, taxes, utilities, homeowner's association fees, where applicable, etc.

c. Are funds or other resources available should your program encounter difficulty during the Pilot Program lease period? (If yes, please explain.)

d. Does your organization have other federal, State or local funding (tax support) for housing activities? (Please explain. If the Applicant is receiving such funding, a letter from the funding or monitoring entity should be attached, describing the Applicant's performance)

e. What is the number of units you expect to lease?

f. Describe the homeless population(s) you anticipate that you will house (i.e., male/female, families, ages, disabilities, etc.)

g. Describe your Resident selection process.

h. Describe any supportive services plan for the Residents.

(1) What services will be provided?

(2) Who will provide them?

(3) If service providers other than the Recipient will be providing any or all of the supportive services, how will coordination be ensured?

(4) When will they be provided?

i. What arrangement, if any, will be made for supervision/ management of the Properties? Why is this arrangement appropriate?

j. Are you currently supervising housing? Give the number served.

k. How does your proposal meet the eligibility requirements specified in the Guidelines?

4 **Audited Financial Statements.** Furnish a current audited financial statement, as well as financial statements for the past two (2) years. If the sponsoring group has not been in existence for two (2) years, the financial statement must be submitted from the date of the formation of the group.

5 **Assurance of Compliance with Executive Order 11063 and with Title VIII of the Civil Rights Act of 1968.** Complete attached format identified as Exhibit 5.

6 **Applicant Certifications.** Complete attached format identified as Exhibit 6.

7 **Project Request Form.** Complete attached form identified as Exhibit 7.

8 **Estimated Budget Form.** Complete attached format identified as Exhibit 8.

9 **Anti-Collusion Affidavit.** Complete attached format identified as Exhibit 9.

10 Residents should enter into an enforceable agreement with Recipients in accordance with SectionVII(D) of the Guidelines. Applicants must provide OHFA with such proposed agreement.

11 **Homeless Certification.** Recipients must provide a Homeless Certification to OHFA respecting each individual or family to occupy a Property. A similar form must be provided for any new Residents.

12 **Property Inspection Sheet.** Recipients and OHFA will complete the Inspection Sheet, in the attached format identified as Exhibit 10, during joint inspection of proposed Properties to be conducted prior to funding.

13 **Lease Agreements.** Recipients must provide OHFA with a copy of any lease agreement with the government agency or entity owning the property.

EXHIBIT 1.

EVIDENCE OF APPLICANT'S ELIGIBILITY

Attach only those documents, lists, etc., that have been requested. See Appendix A for contents.

EXHIBIT 2.

NARRATIVE DESCRIPTION OF PAST EXPERIENCE

Attach no more than two single-spaced or four double-spaced typed pages. See Appendix A for contents.

EXHIBIT 3.

NARRATIVE RESPONSE

Attach no more than five single-spaced or ten double-spaced typed pages. See Appendix A for contents.

EXHIBIT 4.

AUDITED FINANCIAL STATEMENTS

Furnish a current audited financial statement, as well as financial statements for the past two (2) years. If the sponsoring group has not been in existence for two (2) years, the financial statement must be submitted from the date of the formation of the group.

EXHIBIT 5.

ASSURANCE OF COMPLIANCE WITH EXECUTIVE ORDER 11063 AND WITH TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

I certify that I and anyone authorized to act for me shall comply with the provisions of Executive Order 11063 on Equal Opportunity in Housing and with Title VIII of the Civil Rights Act of 1968, as amended. Neither I nor anyone authorized to act for me shall, in the selection of families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, marital or family status, national origin, or disability or handicap.

APPLICANT:

_____
(Print or Type Name of Applicant)

By: _____
(Signature)

_____
(Print or Type Name of Applicant)

Subscribed and sworn to before me this ___ day of _____, 19___.

My Commission Expires: _____
Notary Public

_____

EXHIBIT 6.

APPLICANT CERTIFICATIONS

(Other than Certifications which are in Exhibit 5)

The Applicant hereby assures and certifies that it will comply with the following:

1. It will ensure that the housing Project is operated in accordance with the provisions of the Chapter 40. Guidelines for the House Bill 1566 Pilot Program, to provide housing or assistance for housing to homeless individuals and families and mentally ill persons in need of housing (the "Pilot Program").

2. The proposed housing Project is operationally feasible and will provide adequate housing and supportive services to homeless persons.

3. It will ensure that the proposed activities will not have caused and will not result in the temporary or permanent displacement of any person or entity.

4. It will ensure that the Properties are continually assessed and inspected at appropriate intervals, as required by OHFA.

5. It will ensure that the Property, after rehabilitation, will meet applicable State and local requirements regarding a safe and sanitary condition.

6. It will ensure the compliance with any applicable State or local licensing or zoning requirements in the operation of the housing Project.

7. It will ensure that in the operation of the Project (i) the use of alcohol or any illegal drug or controlled substance in or around the Property will be prohibited, and (ii) any Resident who violates this prohibition will be expelled from the housing.

8. It will obtain and maintain in force property casualty insurance acceptable to OHFA in an amount at least equal to the fair market value of the Property, and such other general liability insurance as OHFA may require.

9. The proposed structure and site are appropriate for (a) the provision of housing, and (b) the homeless population to be served.

10. In the acceptance and use of assistance under the Pilot Program, it will comply with the policies, guidelines and requirements of OHFA.

11. It will keep any records that OHFA may require.

12. It will provide to OHFA quarterly reports, statements and proof of the use of the funds received under the Pilot Program.

13. The amounts in the estimated Budget submitted with the Application Package can be supported by documentation which is on file and will be maintained for at least three (3) years after receipt of funding under this Pilot Program.

14. No person (a) who is an employee, agent, consultant, officer or elected or appointed official of the Recipient, that receives assistance under the Pilot Program and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or (b) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, will obtain a personal or financial interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

15. A resolution, motion or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of the Application and the establishment and operation of the proposed housing Project.

APPLICANT:

_____
(Print or Type Name of Applicant)

By: _____
(Signature)

_____
(Print or Type Name and Title)

_____
(Date)

EXHIBIT 7.

PROJECT REQUEST FORM

1. Number of Properties for which funding is requested. _____

2. Dollar Amount Requested: $ _____

Project Limit:

An Applicant may only request assistance for five (5) Properties. OHFA will not approve a budget which proposes to expend more than $4,750/year per Property absent a showing of extreme circumstances.

EXHIBIT 8.

ESTIMATED BUDGET

DIRECTIONS: Submit a separate Estimated Budget for each Property proposed for the Applicant's Project. If Properties have not been identified, submit a general Estimated Budget for the Project.

1. Has the Applicant signed a lease for the Property? Yes__ No__

2. If a lease has been signed:

   a. What is the street address of Property: _____

   _____

   b. Describe the Property (example: two-bedroom single-family with brick exterior, etc.): _____

   _____

   _____

3. Front-End Advance Requested

   a. Estimated Maximum Rehabilitation Costs $ _____

   b. Insurance Costs (attach proposed policy(ies) and proof of eligibility for coverage) _____

   c. Utilities for First Three (3) Months of Operation:

   Deposits _____
   Electricity _____
   Water, Sewer & Trash _____
   Gas _____
   Lawn & Property Maintenance
   (Specify) _____ _____
   Other (specify) _____ _____

   Total Front-End Advance Requested $ _____

4. Estimated Quarterly Advances to be Requested

a. Utilities:

Electricity	_____	
Water, Sewer & Trash	_____	
Gas	_____	
Lawn & Property Maintenance		
(Specify) _____	_____	
Other (specify) _____	_____	$ _____

Funding normally will be limited to no more than $4,750.00 per year per Property. Fifteen percent (15%) of the total grant will be reserved until the last quarter of the grant period for emergency repairs or emergency housing assistance to the Residents.

EXHIBIT 9.

ANTI-COLLUSION AFFIDAVIT

STATE OF OKLAHOMA)
) SS:
COUNTY OF _____)

_____, of lawful age, being first duly sworn on oath, says that:

1. He is the duly authorized agent of _____, the Applicant submitting the Application for participation in the House Bill 1566 Pilot Program (the "Pilot Program"), for the purpose of certifying the facts pertaining to the existence of collusion among Applicants and between Applicants and State officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration as a Recipient of State funds under the Pilot Program.

2. He is fully aware of the facts and circumstances surrounding the submission of the Application, of which this statement is a part, and has been personally and directly involved in the proceedings leading to the submission of such Application.

3. Neither the Applicant nor anyone subject to the Applicant's direction or control has been a party: to any collusion among Applicants to the Pilot Program by agreement to refrain from making Application, in any discussions between Applicants and any State official concerning exchange of money or other thing of value for special consideration in approving or rejecting an Application Package, to paying, giving or donating or agreeing to pay, give or donate to any officer or employee of the State of Oklahoma, any money or other thing of value, either directly or indirectly, in procuring approval or disapproval of an Applicant to receive funding under the Pilot Program.

APPLICANT:

_____
(Print or Type Name of Applicant)

By: _____
(Signature)

_____
(Print or Type Name and Title)

Subcribed and sworn to before me this ____ day of _____, 19__.
My Commission Expires:

_____ _____
Notary Public

EXHIBIT 10.

REQUIRED RESIDENT AGREEMENTS

See Appendix A for contents.

EXHIBIT 11.

HOMELESS CERTIFICATION

I certify that the below-listed Resident(s) of the Property located at _____, Oklahoma _____
(Street Address) (City) (Zip Code)

(check appropriate boxes):

A. [ ] Lack a fixed, regular, and adequate nighttime residence.

B. [ ] Have a primary nighttime residence that is:

1. [ ] A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill)

2. [ ] An institution that provides a temporary residence for individuals intended to be institutionalized

3. [ ] A public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an act of the Congress or a State law.

C. [ ] Are mentally ill as defined at 43 O.S., Sections 1-103, and have a need for housing.

I further certify that the Resident(s) listed below have agreed to participate in the House Bill 1566 Pilot Program, and to agree to abide by all rules and regulations of said Pilot Program, as witnessed by the Resident Agreement attached hereto.

Head of Household _____

Social Security No. _____-____-_____ Date of Birth _____

Spouse's Name _____ Date of Birth _____

Dependants or Others Occupying the Property _____ Date of Birth _____

_____ Date of Birth _____

_____ Date of Birth _____

_____ Date of Birth _____

Elderly _____ Handicapped/Disabled _____

Comments: _____

_____

_____

_____

APPLICANT:

_____
(Print or Type Name of Applicant)

By: _____
(Signature)

_____
(Print or Type Name and Title)

Subscribed and sworn to before me this ____ day of _____, 19__.

My Commission Expires:

_____ _____
Notary Public

Exhibit 12.

PROPERTY INSPECTION SHEET

INITIAL _____ FINAL _____ DATE OF INSPECTION _____

NONPROFIT ORGANIZATION: _____

UNIT ADDRESS: _____

_____

BATHROOM: _____

_____

CONCRETE WORK: _____

_____

PLUMBING: _____

_____

ELECTRICAL: _____

_____

HEATING AND AIR
CONDITIONING: _____

_____

ROOF: _____

_____

KITCHEN: _____

_____

EXTERIOR FINISH: _____

_____

INTERIOR FINISH: _____

_____

OTHER: _____

_____

RESERVE ITEMS: _____

_____

INTERIOR: _____

_____

LIVING ROOM: _____

_____

DINING ROOM: _____

_____

KITCHEN: _____

_____

BEDROOM #1: _____

_____

BEDROOM #2: _____

_____

BEDROOM #3: _____

_____

BEDROOM #4: _____

_____

TOTAL ESTIMATED COST AT INITIAL REVIEW: $_____

DOES THIS UNIT MEET MINIMUM QUALITY STANDARDS AS SPECIFIED BY HUD REGULATIONS? _____

_____
INSPECTOR

EXHIBIT 13.

LEASE AGREEMENTS

Attach copy of any lease agreement with government agency or entity owning property.

[OAR Docket #04-1050; filed 5-25-04]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 60. OKLAHOMA HOUSING TRUST FUND RULES

[OAR Docket #04-1051]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
330:60-1-1. [AMENDED]
330:60-1-2. [AMENDED]
330:60-1-3. [AMENDED]
330:60-1-4. [AMENDED]
330:60-1-5. [REVOKED]
330:60-1-6. [AMENDED]
330:60-1-7. [NEW]
Subchapter 3. Funds
330:60-3-1. [AMENDED]
330:60-3-2. [AMENDED]
330:60-3-3. [AMENDED]
330:60-3-4. [AMENDED]
330:60-3-5. [AMENDED]
330:60-3-6. [AMENDED]
330:60-3-7. [AMENDED]
330:60-3-8. [AMENDED]
Subchapter 5. Applications and Selections
330:60-5-1. [AMENDED]
330:60-5-2. [AMENDED]
330:60-5-3. [AMENDED]
330:60-5-4. [AMENDED]
Subchapter 7. Program Administration
330:60-7-1. [AMENDED]
330:60-7-2. [AMENDED]
330:60-7-3. [AMENDED]
330:60-7-4. [AMENDED]
AUTHORITY:
These Chapter 60 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
DATES:
Comment Period:
January 2, 2004 through February 10, 2004
Public Hearing:
February 10, 2004
Adoption:
March 10, 2004
Submitted to Governor:
March 19, 2004
Submitted to House:
March 19, 2004
Submitted to Senate:
March 19, 2004
Gubernatorial approval:
April 28, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2004.
Final Adoption:
May 12, 2004
Effective:
August 1, 2004
Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These Chapter 60 Rules are intended to expand the supply of decent, safe, sanitary and affordable housing to the citizens of the State of Oklahoma.

Senate Bill 786 provided for and created the Oklahoma Housing Trust Fund (OHTF). House Bill 3065 initially capitalized the OHTF with $1 million in State appropriated funds. Through Senate Bill 786, OHFA was designated as the administrator of the OHTF for purposes of placing project funding with eligible recipients such as, for-profit and nonprofit developers, builders, units of local government, and political subdivisions.

The purpose of these Chapter 60 Rules is to comply with Senate Bill 786, House Bill 3065, the Oklahoma Administrative Procedures Act (OAPA), and to provide guidelines for administering funds available through the OHTF.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

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 AUGUST 1, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

330:60-1-1. Purpose

The purpose of the Oklahoma Housing Trust Fund ("OHTF") is to address declining affordable housing resources at the federal, state, and local levels, which act as an impediment to economic development and business expansion within the state. The intent of the ~~Trust Fund~~ OHTF is to assist moderate and low-income citizens in obtaining safe, decent and affordable housing with priority for such housing being given to low-income citizens by the addition of new affordable housing units in accordance with local market- based demands.

330:60-1-2. Authority

The ~~Housing Trust Fund~~ OHTF is authorized by Senate Bill number 786/74 OS Supp 1997, Sections 2901.1 and 2901.2 as amended. Oklahoma Housing Finance Agency ("OHFA") has been designated as the State's administrative agency for purposes of administering the State's Housing Trust Fund.

330:60-1-3. Scope

During each year, financial assistance will be made available to eligible persons and entities presenting project proposals to the Housing Development Team at Oklahoma Housing Finance Agency. ~~Trust~~ These eligible persons and entities include, but are not limited to for-profit and nonprofit developers, ~~and~~ builders~~;~~, Native American Tribes, units of local government~~;~~, and political subdivisions.

330:60-1-4. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 60 Rules are defined in Senate Bill number 786/74 O.S. Supp 1997, Sections 2901.1 and 2901.2, as amended. When a conflict exists between the following definitions and the State Statutes, the State Statutes shall control.

"Contractor" means any eligible entity or person receiving ~~Housing Trust Fund~~ OHTF financial assistance through OHFA.

"For-profit Developer or Builder" means a legal entity or an individual in the business of residential housing construction or land preparation for such construction.

"Low-income" means a family or household whose total annual income from all sources does not exceed 80% of the area median income as set forth by the most recent ~~U.S. HUD~~ U.S. Department of Housing and Urban Development ("HUD") published income limits.

"Moderate-income" means a family or household whose total annual income from all sources does not exceed 100% of the area median income as set forth by the most recent ~~U.S.~~ HUD published income limits.

"Non-profit Developer or Builder" means an incorporated IRS recognized not-for-profit entity engaged in residential housing construction or land preparation for such construction.

~~**"OHFA"** means Oklahoma Housing Finance Agency.~~

"State Statute" means 74 O.S. Supp 1997, Sections 2901.1 and 2901.2, as amended.

"Target Populations" means moderate and low-income families or households that are end-users of ~~Trust Fund~~ assisted housing units. For rental projects, assisted units must serve target populations at or below eighty percent (80%) of the ~~U.S.~~ HUD published area median family income for the county in which the project is located. For home ownership projects, assisted units must serve target populations at or below one hundred percent (100%) of the area median family income for the county in which the project is located.

"Term of Affordability" means the length of time ~~Housing Trust Fund~~ assisted housing must remain in service to meet the needs of target populations.

~~**"Trust Fund"** means the Oklahoma Housing Trust Fund at 74 O.S. Supp 1997k Sections 2901.1 and 2901.2, as amended.~~

"Unit of Local Government" means an incorporated town, city, or county.

~~**"U.S. HUD Published Income Limits"**~~ **"U.S. Department of Housing and Urban Development Published Income Limits"** means the family income limits derived from the U.S. Census and published annually by ~~the U.S. Department of Housing and Urban Development.~~ HUD.

330:60-1-5. Housing Trust Fund Contractors Implementation Manual [REVOKED]

~~Requirements, procedures, and processes provided in the HTF Contractors Implementation Manual, and amendments to same shall apply to all funded projects and are incorporated by reference to these rules.~~

330:60-1-6. Technical assistance

OHFA will designate staff members who shall be available to provide general ~~Trust Fund Program~~ technical assistance regarding proposed project concepts and ~~Trust Fund~~ OHTF Program implementation. The names of staff members designated to provide technical assistance may be obtained by contacting OHFA's ~~Administration Agency~~ Housing Development Team.

330:60-1-7. Compliance

The Applicant, the owners of the development, the Development Team, and the affiliate of each must comply with all federal, state, and local laws, rules, regulations and ordinances, including but not limited to, State Statute, regulations promulgated there under, the Oklahoma Landlord Tenant Act, Titles VI and VII of the Civil Rights Act of 1964 as amended, and Title VIII of the Civil Rights Act of 1968 as amended. OHFA will verify that the owner of the affordable housing project is maintaining records for each qualified affordable housing unit in the project. OHFA will inspect 100% of the OHTF projects according to HUD standards and will inspect the Copy of the HUD income limits used for selection of the occupant/buyer, copy of the deed restrictions, covenant running with land or other forms approved by an OHFA trustee signifying the five (5) year affordability period, documentation recognizing occupant/buyer income at time of selection, and copy of certificate of occupancy. For rental projects only, the owner must allow OHFA to perform an on-site inspection of any low-income building in the project through the end of the compliance period. OHFA will promptly notify the owner in writing if OHFA is not permitted to inspect and review, or if staff discovers that the project does not comply with the OHTF Rules. In such event, the owner will be allowed a correction period to supply missing documentation or to correct noncompliance.

SUBCHAPTER 3. FUNDS

330:60-3-1. Funds distribution

(a) ~~Trust funds~~ Allocation by OHFA shall be awarded to eligible applicants through a formal application process. Submission requirements for project applications will be developed annually by OHFA and described in the ~~Program Application materials~~ published OHTF application packet.

(b) ~~HTF Housing Trust Fund~~ OHTF Financial assistance will be awarded according to the State Statute, Program Rules, and ~~application guidelines~~ application packet.

(c) Application materials and guidelines shall be made available to eligible applicants and interested parties upon request. Requests for application materials and guidelines should be directed to OHFA.

330:60-3-2. Funding activities

~~(a)~~ Funds made available ~~through the Trust Fund~~ shall be divided into four broad activities:

(1) New construction of rental and home ownership units;

(2) Conversion of non-residential buildings or structures into rental or home ownership units;

(3) Acquisition and/or rehabilitation~~, and,~~

(4) Infrastructure development, when it is part of a total affordable housing development project.

~~(b) Administrative funds will be used to support overall Trust Fund Program delivery and operation activities. Up to 5% of each investor participation, on a project by project basis, shall be used for operational costs of the Trust Fund.~~

330:60-3-3. Allocation of funds

OHFA will make awards of ~~Trust Fund~~ OHTF Program funds throughout the State. A minimum of sixty-five percent (65%), but not more than seventy-five percent (75%) of all financial assistance awards ~~made by the Housing Trust Fund~~ shall be made to projects located in counties with populations of less than four hundred ninety thousand (490,0000) according to the most recent U.S. Census.

330:60-3-4. Application fees

All eligible applicants seeking financial assistance ~~through the Trust Fund~~ shall be charged a non-refundable fee of $250.00. All application fees will be used by OHFA to pay for overall ~~Trust Fund~~ program delivery and operation activities.

330:60-3-5. Forms of assistance

Financial assistance ~~provided by the Trust Fund Program~~ shall be in the form of collaterized loans, intended to provide construction financing. ~~Projects financed, in part, by tax credits shall be eligible to receive non-recourse Trust Fund loans.~~ The maximum loan amount provided to any one multi-family application and/or project proposal shall not exceed twenty five percent (25%) of the total development costs, or five hundred thousand dollars ($500,000), whichever is less. In a home ownership project, OHTF ~~the Trust Fund~~ may provide up to one hundred percent (100%) of the total development costs of the project. OHFA staff ~~The Trust Fund further~~ reserves the right to adjust loan maximums and terms based on the availability of funds and the most efficient ~~equitable~~ and practical~~ble~~ utilization of available resources.

330:60-3-6. Maximum loan terms and interest rates

The maximum term for all loans made ~~by the Trust Fund Program~~ shall be subject to the specific requirements of any given project proposal. ~~Any requests for exceptions to the terms and conditions of Trust Fund loans shall be reviewed on a case by case basis. However, generally,~~ For rental projects, ~~T~~the ~~maximum~~ term of any loan shall ~~not exceed~~ be fifteen (15) years ~~for rental projects~~, for housing infrastructure, seven (7) years ~~for housing infrastructure~~, and for home ownership, three (3) years ~~for home ownership~~. ~~However, under no circumstances shall a loan term exceed thirty (30) years.~~ Interest rates shall be set at below-market rates for a comparable period. Any requests for exceptions to the terms and conditions shall be reviewed on a case by case basis.

330:60-3-7. Conditions of financial assistance

Any housing unit receiving financial assistance ~~from the Trust Fund Program~~ must remain affordable to target populations for a period of not less than five (5) years. Affordability periods must be assured by deed restrictions, covenants running with the land, or other forms approved by the ~~Trust Fund~~ OHTF Program.

330:60-3-8. Reallocation of Trust Program Funds

(a) From time to time ~~Trust Fund Program~~ funds may become available as the result of:

(1) Project cancellations;

(2) Projects completed under original cost estimates;

(3) ~~Early~~ loan pay-off;

~~(4) Loans made but not utilized; or,~~

(5) Other circumstances.

(b) In keeping with the State Statute, ~~Trust Fund~~ Program rules, and ~~a~~Application ~~guidelines~~ Packet, OHFA shall reallocate these funds to eligible project proposals.

SUBCHAPTER 5. APPLICATIONS AND SELECTION

330:60-5-1. Project application cycle

Applications for financial assistance ~~available from the Trust Fund~~ shall be accepted on a continuous basis subject to funds availability, the time of financial needs, and fully satisfying all key ~~threshold~~ evaluation criteria. The OHTF Program ~~however,~~ reserves the right to suspend acceptance of applications at any time.

330:60-5-2. Project applications

Eligible applicants seeking ~~Trust Fund Program~~ financial assistance must submit a written application in the form prescribed in the A~~a~~pplication P~~p~~acket~~s~~. All applications will be required to contain sufficient information to permit OHFA to conduct a review, assessment, and selection as described in the application packet.

330:60-5-3. Application packets

(a) Continually OHFA will make available upon request, application packets, which shall comply with the current State Statutes and these Chapter 60. Rules.

(b) The application packets shall provide information to assist applicants in the preparation of ~~Trust Fund Program project~~ submissions ~~and~~ for loan requests.

(c) Application packets shall include, but not be limited to information such as eligible project descriptions, required time frames, project ~~threshold~~ evaluation criteria, and project budgets.

(d) Application packets shall be required for all financial assistance requests.

330:60-5-4. Applicant selection

For the purpose of selecting applicants for ~~Trust Fund Program~~ financial assistance, OHFA shall use ~~threshold selection~~ evaluation criteria. These ~~threshold~~ evaluation criteria include, but are not limited to the following:

(1) ~~Project readiness: Projects ready to begin construction within 180 days of loan closing.~~ Project description: Clear and concise description of the project and its characteristics.

(2) Organizational Structure/Capacity: Loan applicants for OHTF assistance are required to demonstrate expertise related to the type of proposed housing activity. ~~Market analysis/study. Projects of 20 units or more must provide an independent third party market analysis that supports demand for the multi family project being proposed that is dated no later than six (6) months prior to the date of the application for assistance. Home ownership or multi family projects of less than twenty (20) units, must provide locally produced market studies that support demand for the single family or multi family project and that are dated no later than six (6) months prior to the date of application for assistance. Such studies must fully describe the methodology used and sources of all data and information.~~

(3) Financial Management: Detailed explanation of the overall financial management policies and procedures as they relate to any given project's financial management.~~Applicant capacity in developing the type of housing being proposed.~~

(4) Market Analysis/Study: Projects consisting of twenty-one (21) units or more must provide an independent third party market analysis that supports demand for the multi-family project being proposed that is dated no later than twelve (12) months prior to the date of the application for assistance. Home ownership or multi-family projects of less than twenty-one (21) units, should provide a locally produced market study that supports demand for the single-family or multi-family project and must be dated no later than twelve (12) months prior to the date of application for assistance. Such studies must fully describe the methodology used and sources of all data and information.~~The economic viability and financial feasibility of the proposed project.~~

(5) Project Management Control: Applicants are expected to provide production oversight that will ensure project completion.~~The financial strength of the developer.~~

(6) Financial Feasibility and Viability: Applicants must detail the exact activities and cost associated with each activity using OHTF funds. Applicant must provide a detail explanation regarding the method of repayment of the loan.~~Audit results from prior financed Trust Fund projects.~~

(7) Partnerships: Loan applicants are expected to describe all partners both financial
and non-financial. Documentation should clearly identify the partners and the role(s) they will be assuming. ~~Project-based leverage which may be composed of any or all of the following:~~

~~(A) cash from any source;~~

~~(B) foregone fees and/or taxes;~~

~~(C) donated property;~~

~~(D) below-market interest rate loans;~~

~~(E) project-based infrastructure;~~

~~(F) Community support;~~

~~(G) other forms of leverage considered on a project-by-project basis.~~

(8) Project Readiness: Projects must be ready to begin construction within one hundred and eighty (180) days of loan closing.

(9) Prior Contract Performance: Applicant's history and prior performance with public and private funding will be assessed over a period of twenty-four (24) months.

SUBCHAPTER 7. PROGRAM ADMINISTRATION

330:60-7-1. Program violations

The following are violations of the Housing Trust Fund Program policies and procedures:

(1) The filing of false information in an application and/or project report;

(2) Failure of a contractor to meet requirements of the State Statute, ~~Housing Trust Fund Contractors Implementation Manual,~~ and/or these Chapter 60 Rules;

(3) Deviation from written agreement, loan agreement, and/or promissory note;

(4) Notice by OHFA that significant corrective actions are necessary to protect the integrity of the project funds, and that those corrective actions are not or cannot be effected within a reasonable time, in the judgement of OHFA staff;

(5) An administrative or judicial determination that the contractor has committed fraud, waste, or mismanagement in any current or prior activity.~~Trust funded project~~.

330:60-7-2. Corrective and remedial actions

(a) Under any of the circumstances previously described as violations during the application stage or contract execution OHFA may take the following actions:

(1) Condition written agreements and/or loan agreements;

(2) Withhold funds;

(3) Reduce the total amount of the financial award;

(4) Require immediate return of unexpended funds;

(5) Require immediate repayment of all financial assistance provided by the OHTF ~~Trust Fund~~ Program;

(6) Cancel a contract and recover all funds expended in an ineligible manner prior to the date of notice of cancellation;

(7) Deny future program applications and participation for a specified period of time as determined by OHFA;

(8) Debarment from program;

(b) Additionally, OHFA reserves the right under circumstances of possible program violations to request information regarding:

(1) The administrative, planning, budgeting, management, and evaluation function actions being taken to correct or remove the cause of the program violation(s);

(2) Any activities undertaken that were not in conformance with the approved program or application process, or that are in non-compliance with applicable laws or rules;

(3) The contractor's capacity to carry out the approved or proposed program in a timely manner; and,

(4) Progress schedules for completing approved or proposed activities.

(c) Prior to taking any corrective and/or remedial actions, a notice of show cause hearing shall be issued by OHFA. The contractor shall have ten (10) working days to appear and show cause as to why the corrective and/or remedial actions should not be taken.

330:60-7-3. Contractor responsibilities

A contractor under the OHTF ~~Housing Trust Fund~~ Program shall be responsible for:

(1) Taking all action necessary to enforce the terms of the written agreement, loan agreement, and promissory note against any private or public participant that fails to comply with applicable provisions of the written agreement, loan agreement, or promissory note, or any subcontract or documents resulting from it, and to recover on behalf of OHFA, any liabilities that may arise as a result of a breach of the written agreement, loan agreement, or promissory note by any participant. Nothing in this sub section shall restrict OHFA's right to independently enforce the terms of any contract agreement or any subcontracts or documents resulting from it, or to recover any sums that may become due as the result of a breach of such contract.

(2) Complying with all State Statutes, these ~~Housing Trust Fund~~ OHTF rules, the written agreement, loan agreement, and promissory note between the contractor ~~and OHFA and/or the Implementation Manual or which~~ may be released by OHFA from time to time.

(3) Maintaining records and accounts, including, but not limited to property, personnel, and financial records that properly document and account for all project funds. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the funds.

(4) OHFA may require the contractor to provide special narrative and financial reports related to the elements of a written agreement in the forms and at such times as may be necessary or required by OHFA.

(5) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to its contract for at lease three (3) years from the date of the final expenditure report, or until any audit findings have been resolved, whichever is later. Contractor shall, as often as deemed necessary by OHFA, permit authorized representatives to have full access to and the right to fully examine all such materials.

(6) Promptly returning to OHFA, any funds received under its written agreement that are not obligated as of the final date of the contract period. Funds shall be obligated only if goods and services have been received as of the final date of the written agreement period.

(7) Complying with OHFA's audit policy including the single audit Act of 1984 (P.L.98-502, 31 U.S.C., 7501 et seq.), as applicable to the contractor. Providing OHFA timely copies of reports on any audits that include funds received from OHFA.

(A) A public accountant or public accounting firm licensed no later than December 31, 1970, or a certified public accountant or certified public accounting firm shall perform audits.

(B) The audit shall be performed in accordance with Government Auditing Standards; Compliance Supplement for Single Audits or State and Local Governments; generally accepted auditing standards established by the American Institute of Certified Public Accountants; and OHFA.

(8) Complying with all applicable State requirements.

330:60-7-4. Review and appeals process

(a) Applicants for ~~Housing Trust Fund~~ OHTF financial assistance may review their applications and OHFA's application review documents any time after OHFA has publicly released funding decisions.

(b) Appeals cannot introduce new documentation that would change the basis on which a funding decision was made. Additionally, requests for appeals shall be made within thirty (30)

days after the applicant has been notified that the application was not funded.

~~(c) Citizen appeals of local project decisions must be made at the local level. The Agency will consider appeals for its Housing Trust Fund applications only when the applications of project selection criteria are at issue. Only the applicant may file an appeal.~~

[OAR Docket #04-1051; filed 5-25-04]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 70. PERFORMANCE BASED CONTRACT ADMINISTRATION PROGRAM RULES

[OAR Docket #04-1049]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
330:70-1-1. [NEW]
330:70-1-2. [RESERVED]
330:70-1-3. [NEW]
330:70-1-4. [RESERVED]
330:70-1-5. [NEW]
330:70-1-6. [RESERVED]
330:70-1-7. [NEW]
330:70-1-8. [RESERVED]
330:70-1-9. [NEW]
Subchapter 3. Funds
330:70-3-1. [NEW]
330:70-3-2. [RESERVED]
330:70-3-3. [NEW]
330:70-3-4. [RESERVED]
330:70-3-5. [NEW]
Subchapter 5. General Program Requirements
330:70-5-1. [NEW]
330:70-5-2. [RESERVED]
330:70-5-3. [NEW]
330:70-5-4. [RESERVED]
330:70-5-5. [NEW]
330:70-5-6. [RESERVED]
330:70-5-7. [NEW]
Subchapter 7. Criminal Background Searches
330:70-7-1. [NEW]
330:70-7-2. [RESERVED]
330:70-7-3. [NEW]
330:70-7-4. [RESERVED]
330:70-7-5. [NEW]
330:70-7-6. [RESERVED]
330:70-7-7. [NEW]
Subchapter 9. Fees
330:70-9-1. [NEW]
AUTHORITY:
These Chapter 70 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
DATES:
Comment Period:
January 2, 2004 through February 10, 2004
Public Hearing:
February 10, 2004
Adoption:
March 10, 2004
Submitted to Governor:
March 19, 2004
Submitted to House:
March 19, 2004
Submitted to Senate:
March 19, 2004
Gubernatorial approval:
April 28, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2004.
Final Adoption:
May 12, 2004
Effective:
July 12, 2004
Availability:
All OHFA Rules can be accessed via the internet at ohfa.org. In addition, these Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Housing Finance Agency (OHFA) conducts transactions and activities relating to the Performance Based Contract Administration Program. The Rules are intended to provide covered Project Based Property Owners with information regarding OHFA's compliance monitoring and payment services of assisted units in accordance with the United States Department of Housing and Urban Development in the State of Oklahoma. The Rules establish certain minimum criteria for the compliance monitoring and payment services of assisted units for the Performance Based Contract Administration Program. The Trustees of OHFA reserve the right, by their Resolution (s), from time-to-time, to adopt priorities to be accomplished for OHFA's implementation of the Performance Based Contract Administration Program.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, (405) 419-8275.

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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

330:70-1-1. Purpose

OHFA, pursuant to an ACC between HUD and OHFA, administers HUD's Contract Administration Program within the State. The purpose of these Contract Administration Program Rules is to provide guidelines OHFA will utilize in administering the Contract Administration Program and monitoring assisted units and Owners participating in the Contract Administration Program.

330:70-1-2. [RESERVED]

330:70-1-3. Authority

OHFA is authorized by HUD to administer the Contract Administration Program in accordance with the ACC and any renewals thereof. Pursuant to the ACC, HUD has assigned to OHFA, HUD's contractual rights and responsibilities under individual HAP Contracts with Owners participating in the Contract Administration Program.

330:70-1-4. [RESERVED]

330:70-1-5. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in the Contract Administration Program are defined in the Federal Register, Volume 64, Number 96, 27357 (5/19/99), amendment no. 1 (8/2/99) and amendment no. 2 (11/15/99). When a conflict exists between the following definitions and the Federal Register, the Federal Register shall control.

"ACC" means the Annual Contributions Contract awarded to OHFA by HUD.

"Administrative Fees" refer to the fees paid to OHFA by HUD under the ACC.

"Contract Administration Program" means the federal (HUD) Performance Based Contract Administration Program administered by OHFA pursuant to the ACC.

"Covered individual or entity" means an individual or entity that is a member of any of the following classes:

(A) a member, officer or director of OHFA, or other OHFA official with administrative functions or responsibility concerning contract administration under the ACC.

(B) an employee of OHFA.

(C) an OHFA contractor, subcontractor or agent with administrative functions or responsibility concerning contract administration under the ACC, or any principal or other interested party of such contractor, subcontractor or agent.

(D) an individual who has administrative functions or responsibility concerning contract administration under the ACC, including an employee of an OHFA contractor, subcontractor or agent.

(E) a public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities concerning contract administration under the ACC.

"Covered Units" means the Section 8 assisted units under HAP contracts assigned to OHFA for contract administration under the ACC during the ACC term.

"Guidebook" refers to the current and published HUD manual for the Contract Administration Program, as may be amended from time to time.

"HAP" means Housing Assistance Payment.

"HUD" means the United States Department of Housing and Urban Development.

"Immediate family member" means the spouse, parent, child, grandparent, grandchild, sister, or brother of any covered individual.

"OHFA" means Oklahoma Housing Finance Agency.

"Owner(s)" means the property owner(s) of covered units receiving project-based Section 8 assistance payments.

"Performance Based Contract Administrator" means a PHA administering the Contract Administration Program pursuant to an ACC. OHFA is the Performance Based Contract Administrator for the State.

"PHA" means **"public housing agency"** as defined in Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

"Program Center" means the HUD Office of Oklahoma City.

"Section 8" means Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

"Service Area" means the area where OHFA provides contract administration services under the ACC.

"State" means the State of Oklahoma.

"Voucher" means a request submitted to OHFA from a project-based Section 8 owner for payment of eligible covered units. The format of the owner's submission must be an electronic file followed by a mailed copy with the owner's original signature.

330:70-1-6. [RESERVED]

330:70-1-7. Standards incorporated by reference

(a) The Guidebook provides requirements, procedures, regulations, and processes for the Performance Based Contract Administrator. The Guidebook and all revisions or amendments to the Guidebook shall apply to all Covered Units and are incorporated by reference to these rules.

(b) Final Rule [24 CFR Part 5 et al, *Screening and Eviction for Drug Abuse and Other Criminal Activity*, Docket No. FR-4495-F-02, Federal Register Vol. 66, No. 101, beginning on page 28776] released on May 23, 2001, or as may be amended.

330:70-1-8. [RESERVED]

330:70-1-9. Technical assistance

OHFA will designate staff members to provide general technical assistance regarding project-based Section 8 guidelines, procedures, and implementation of the Contract Administration Program. The names of staff members designated to provide technical assistance may be obtained by contacting the OHFA Contract Administration Program. General technical assistance will also be provided by the Program Center regarding Contract Administration guidelines and procedures.

SUBCHAPTER 3. FUNDS

330:70-3-1. Fund distribution

Contract Administration Program funds shall be distributed by HUD and OHFA in accordance with the ACC.

330:70-3-2. [RESERVED]

330:70-3-3. Fund activities

(a) The Contract Administration Program funds shall consist of program receipts and administrative fees.

(b) Program receipts will be paid monthly by OHFA to owners after review, verification, and certification of Voucher accuracy.
(c) Administrative fees will be used by OHFA to support the overall Contract Administration Program delivery and operation activities.

330:70-3-4. [RESERVED]

330:70-3-5. Geographic distribution of program receipts

OHFA will distribute the Contract Administration Program receipts to Owners throughout the State.

SUBCHAPTER 5. GENERAL PROGRAM REQUIREMENTS

330:70-5-1. Exclusion of third party rights

(a) A family that is eligible for housing assistance under the ACC is not a party to or a third party beneficiary of the ACC.
(b) Nothing in the ACC shall be construed as creating any right of any third party to enforce any provision of the ACC, or to assert any claim against HUD or OHFA.

330:70-5-2. [RESERVED]

330:70-5-3. Program records

OHFA shall maintain complete and accurate accounts and other records related to operations under the ACC. The records shall be maintained in the form and manner required by HUD, including requirements governing computerized or electronic forms of record-keeping. The accounts and records shall be maintained in a form and manner that permits a speedy and effective audit.

330:70-5-4. [RESERVED]

330:70-5-5. Conflict of Interest

(a) Neither OHFA, nor any OHFA contractor, subcontractor or agent for operations under the ACC, nor any other entity or individual with administrative functions or responsibility concerning the Contract Administration Program, may enter into any contract, subcontract, or other arrangement in connection with the Contract Administration Program in which any Covered Individual or Entity has any direct or indirect interest (including the interest of any Immediate Family Member), while such person is a covered individual or entity or during one year thereafter.
(b) OHFA shall require any Covered Individual Or Entity to disclose his, her or its interest or prospective interest in any contract, subcontract or other arrangement in connection with the Contract Administration Program to OHFA and HUD.
(c) During the term of the ACC, OHFA shall not own or otherwise possess any direct or indirect interest in any covered unit (including a unit owned or possessed, in whole or in part, by an entity substantially controlled by OHFA), and shall not claim or receive any administrative fee for contract administration of a unit in which OHFA has any such interest.
(d) Notwithstanding paragraph (c), if OHFA provides or has provided financing for development, repair or improvement of covered units, and holds a mortgage of the real property to secure such financing, the existence of such mortgage or interest shall not be considered a conflict of interest under paragraph (c), (provided that OHFA has not obtained any other ownership interest in the property, by exercise of its remedies as mortgagee or otherwise), and in such case, paragraph (c) shall not bar OHFA from claiming or receiving an administrative fee for contract administration of such covered units.

330:70-5-6. [RESERVED]

330:70-5-7. Compliance with applicable laws

(a) Owner shall comply with all equal opportunity requirements imposed by federal law, including applicable requirements under:
(1) The Fair Housing Act, 42 U.S.C. 3601-3619 (implementing regulations at 24 CFR parts 100 et seq.).
(2) Title VI of the Civil rights Act of 1964, 42 U.S.C. 2000d (implementing regulations at 24 CFR part 1).
(3) The Age Discrimination Act of 1975, 42 U.S.C. 6101-6107 (implementing regulations at 24 CFR part 146).
(4) Executive Order 11063, Equal Opportunity in Housing (1962), as amended, Executive Order 12259, 46 FR 1253 (1980), as amended, Executive Order 12892, 59 FR 2939 (1994) (implementing regulations at 24 CFR part 107).
(5) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (implementing regulations at 24 CFR part 8).
(6) Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.
(b) Owner shall comply with all applicable State and local laws.
(c) Owner shall cooperate with OHFA and HUD in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and related rules and regulations.

SUBCHAPTER 7. CRIMINAL BACKGROUND SEARCHES

330:70-7-1. Request for criminal background search

At the request of an Owner, OHFA will conduct a criminal background search on any tenant in a Covered Unit or any applicant for housing in a Covered Unit, to the extent permitted under applicable State and federal laws and regulations.

330:70-7-2. [RESERVED]

330:70-7-3. Consent and fee

The Owner must file a written request for a criminal background search. The request must be accompanied by a consent form executed by the tenant or applicant and the fee set forth in 330:70-9-1 of these Rules. A written request must be submitted for each tenant or applicant.

330:70-7-4. [RESERVED]

330:70-7-5. Procedures to be followed by OHFA

(a) OHFA will conduct the criminal background research following the procedures set forth in the Final Rule.
(b) OHFA will disclose information obtained pursuant to criminal background research to an Owner only upon a showing by said Owner that the information will be used to screen applicants or is being requested in connection with lease enforcement or judicial eviction proceedings.
(c) The Owner must certify in writing that the Owner will use the records disclosed only for the purpose of screening applicants or for the purpose of lease enforcement or eviction.
(d) The request for criminal background research must also include the Owner's standards for prohibiting admission of criminals, the Owner's standards for evicting criminals, or the Owner's standard for lease enforcement, as applicable.
(e) OHFA will, upon receipt of any criminal records, review the records to determine that whether the records received may a basis for eviction from a Covered Unit. Prior to the release of any information to an Owner, the Owner must also certify, in writing, that the information requested will be kept confidential and only used in the manner, and to the extent permitted, in the Final Rule.
(f) OHFA will rely upon the Owner's certifications.

330:70-7-6. [RESERVED]

330:70-7-7. Opportunity to dispute

In the event a criminal record search indicates that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, the Owner must notify the household of any proposed action based on such information and provide a copy of the criminal report to the subject household member. OHFA will ensure compliance to 330:70-7-7 through the monitoring process.

SUBCHAPTER 9. FEES

330:70-9-1. Criminal Background Search Fee

A $25.00 (twenty-five dollar) fee must accompany each request for a Criminal Background Search for each individual for whom a request is made.

[OAR Docket #04-1049; filed 5-25-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #04-953]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Office Of Client Advocacy
Part 1. Administration
340:2-3-1 through 340:2-3-2 [AMENDED]
340:2-3-12 [AMENDED]
Part 3. Investigations
340:2-3-32 through 340:2-3-34 [AMENDED]
340:2-3-36 through 340:2-3-38 [AMENDED]
Part 5. Grievances
340:2-3-45 through 340:2-3-47 [AMENDED]
340:2-3-49 through 340:2-3-55 [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-61 through 340:2-3-65 [AMENDED]
Part 9. Ombudsman Programs
340:2-3-73 [AMENDED]
(Reference APA-WF# 04-05)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 175.20, 1406, 1414.1, 1415.1, 1430.01 et seq., 1430.11, 1430.20, 7004-3.4, 7204.1, 7213, and 7306-2.11 of Title 10 of the Oklahoma Statutes; Sections 10-101 *et seq.* of Title 43A of the Oklahoma Statutes; Section 1025.1 *et seq.* of Title 56 of the Oklahoma Statutes; and Homeward Bound, et al., vs. The Hissom Memorial Center, United States District Court for the Northern District of Oklahoma, Case No. 85-C-437-E.
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ANALYSIS:
Office of Client Advocacy (OCA) rules are revised to: (1) add new definitions and amend existing definitions to conform to recent amendments to the Vulnerable Adults Act, Section 10-101 of Title 10 of the Oklahoma

Statutes; (2) eliminate unnecessary language; (3) correct and update contact information; (4) correct spelling and grammar errors; (5) designate time frames in terms of business days rather than working days; (6) indicate when a designee can be used; (7) add references to forms; (8) clarify to whom OCA investigation reports can be distributed; (9) specify time frames for certain activities; (10) repeal references to the Client Resolution Process that is no longer used; (11) clarify that the local grievance coordinator (LGC) can communicate with grievants by means other than in-person meetings; (12) provide for State Office administrators to request review by the Oklahoma Department of Human Services (OKDHS) Director when a grievant has accepted the proposed resolution of the Grievance and Abuse Review Committee; (13) clarify that Ombudsman services to former residents of the Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer) are provided only when staffing resources are available; and (14) make non-substantive changes to improve the clarity of these rules.

CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-1. Purpose

The purpose of this Subchapter is to outline the rules governing the operation of the Office of Client Advocacy (OCA). Policies relating to:

(1) administrative investigations conducted by OCA are in OAC 340:2-3-32 through ~~340:2-3-37 and 340:2-3-39~~ 340:2-3-38;

(2) investigations of alleged retaliation or discrimination against a foster parent are in OAC 340:2-3-38;

(3) disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees in response to OCA investigation findings are in OAC 340:2-3-12;

(4) grievance systems maintained by OCA are in OAC 340:2-3-45 through 340:2-3-55;

(5) the Grievance and Abuse Review Committee (GARC) are in OAC 340:2-3-61 through 340:2-3-65; and

(6) OCA Ombudsman Programs are in OAC ~~340:2-3-72~~ 340:2-3-71 through 340:2-3-75.

340:2-3-2. Definitions

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

"Abuse" means, with regard to:

(A) minors and youth, the causing or permitting of harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or

(B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes.

"Administrator," including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

(A) minors in Oklahoma Department of Human Services (OKDHS) custody who live in a private residential facility, the chief administrative officer of the facility;

(B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;

(C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;

(D) foster parents, the applicable OKDHS county director or area director, whichever is appropriate;

(E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs, the person charged with responsibility for administering the program;

(G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;

(H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and

(J) residents of group homes for persons with developmental disabilities, the director of the group home.

"Adult Protective Services" ~~or~~ or **"APS"** means the Adult Protective Services Unit of OKDHS.

"Advocate," also known as "ombudsman" or "ombuds," means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

"Advocate general" means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is *OCA.advocategeneral@okdhs.org.

"Authorized use of physical force" by a ~~caregiver~~ caretaker with regard to minors and youths residing outside their homes, other than minors and youth in foster care:

(A) means the use of physical contact to control or contain a person when the ~~caregiver~~ caretaker reasonably considers that person to:

(i) pose a risk of inflicting harm to self or others; or

(ii) be in the process of leaving a facility without authorization.

(B) When the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:

(i) the grounds for belief that force was necessary;

(ii) the age, gender, and strength of the parties involved;

(iii) the nature of the force employed;

(iv) the availability of alternative means of force or control; and

(v) the extent of the harm inflicted.

"Caretaker" means, with regard to:

(A) minors and youth, an agent or employee of:

(i) a public or private residential home, institution, or facility above the level of foster family care; or

(ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and

(B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes.

"Caretaker misconduct":

(A) means an act or omission that:

(i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(ii) is not found to be abuse or neglect; and

(iii) results in or creates the risk of injury to a minor or vulnerable adult.

(B) includes, but is not limited to:

(i) acts or omissions that contribute to the delinquency of a minor;

(ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;

(iii) unintentionally causing mental anguish;

(iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; and

(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"Case manager" means the person assigned by DDSD who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child placing agency" means an agency ~~which~~ that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"Client" means, with regard to:

(A) OCA's investigation services, those individuals listed in OAC 340:2-3-32(a)(2);

(B) OCA's grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) OCA's ombudsman program, those individuals listed in OAC 340:2-3-71(b).

"Community services worker" or **"CSW"** means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

"Community Services Worker Registry" or **"CSW Registry"** means the Community Services Worker Registry established by OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

"Day treatment program" means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive services, psychiatric, or psychological treatment.

"DDSD" means the Developmental Disabilities Services Division of OKDHS.

"DHS" or **"Department"** or **"OKDHS"** means the Oklahoma Department of Human Services.

"Disposition," with regard to OCA's intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

"DMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"DRS" means the Oklahoma Department of Rehabilitation Services.

"E-mail" means:

(A) with regard to the advocate general, an e-mail sent to *oca.advocategeneral@okdhs.org;

(B) with regard to OCA grievance matters, an e-mail sent to ~~*sto.oca.grievances@okdhs.org~~ *oca.grievances@okdhs.org;

(C) with regard to OCA investigation matters, an e-mail sent to ~~*sto.oca.investigations@okdhs.org.~~ *oca.investigations@okdhs.org; and

(D) with regard to OCA intake matters, *oca.intake@okdhs.org.

"Emergency" means a ~~significant risk of~~ situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

"Excessive use of force" by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

(A) the grounds for belief that force was necessary;

(B) the age, gender, and strength of the parties involved;

(C) the nature of the force employed;

(D) the availability of alternative means of force or control;

(E) the extent of the harm inflicted; and

(F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

"Exploitation" or **"exploit"** with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes.

"Facility" means:

(A) a public or private agency, corporation, partnership, or other entity which:

(i) operates a residential child care center; or

(ii) contracts with or is licensed or funded by OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;

(B) an OKDHS operated shelter;

(C) an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;

(D) a community-based youth services shelter or community intervention center;

(E) the J.D. McCarty Center;

(F) a day treatment program;

(G) a private psychiatric facility for minors;

(H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or

(I) SORC, NORCE, and Greer.

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for a child in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means an individual maintaining a foster family home, who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to a foster child.

"GARC" means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

"Guardian" means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, 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. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or **"GAL"** means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" includes but is not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) failure to provide protection from harm or threatened harm;

(E) the unauthorized use of force; or

(F) the use of excessive force.

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, et al. v. vs. The Hissom Memorial Center, et al., Case No. 85-C-437-E.

"Hotline" means the statewide, toll free hotline, (1-800-522-3511), maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

"ICF/MR" or **"Intermediate Care Facility for the Mentally Retarded,"** also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means:

(A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conversatorship Conservatorship Act, Title 30 of the Oklahoma Statutes.

"Indecent exposure" means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes.

"In-home supports" and **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS, DDSD, which are provided in the service recipient's home and are not residential services

as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430 of the Oklahoma Statutes.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section.

"Medicaid personal care assistant" or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

"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.

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, burn, or fracture), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

"Neglect" means, with regard to:

(A) minors and youth, the failure of a caretaker to provide:

(i) adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or

(ii) special care made necessary by the physical or mental condition of the minor or youth; or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

"OCA" means the Office of Client Advocacy of OKDHS.

"OCA intake" means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" and **"ombuds,"** means "advocate" as defined in this ~~Subsection~~ subsection.

"Personal support team" or **"team,"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

"Preponderance of the evidence" means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

"Problem resolution" means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

"**Residential child care center"** means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

"Self-neglect" means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that are unlikely to be the result of normal daily living activities.

"Sexual abuse" means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes.

"Sexual exploitation" means, with regard to:

(A) minors and youth:

(i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

(B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes.

"Specialized foster care" means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDSD, is monitored by DDSD, and is funded through the Home and Community-Based Waiver Services Program administered by DDSD.

"State office" means the administrative offices of OKDHS in Oklahoma City.

"State office administrator," including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);

(B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the ~~associate~~ director of the OKDHS Field Operations Division;

(C) DDSD clients, the director of DDSD; and

(D) other OKDHS clients, the appropriate ~~associate director~~ chief officer or division director.

"Subpoena" means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

"Suspicious injury" means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes but is not limited to an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior ~~(for example, bruising on the buttocks, or well-defined bruising),~~ or normal activities of daily living ~~activities~~;

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, which are unlikely to be the result of normal daily living activities.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

"Unauthorized use of force" means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this ~~Subsection~~ subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

"Unexplained injury" means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

"Verbal abuse" means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes.

"Vulnerable adult" means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.

"Ward" means a person over whom a guardianship has been given by the court.

"Youth" means, with regard to:

(A) OCA's investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or

(B) OCA's grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees

(a) **Application.** This Section applies to a final finding in an administrative investigation conducted by the Office of Client Advocacy (OCA) in accordance with OAC 340:2-3-32 through 340:2-3-37 that an OKDHS employee has engaged in abuse, sexual abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. A finding is final when:

(1) OCA has disseminated its final report and the time for requesting review by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62(b) has expired without a timely request having been received by OCA; or

(2) a timely request for GARC review has been received and has been processed to conclusion in accordance with OAC 340:2-3-62.

(b) **Supplemental investigations.**

(1) Upon receipt of an OCA investigation report, if the applicable state office administrator or designee determines a need for specific additional information necessary to make a determination whether to request review by GARC or what personnel action to initiate, the state office administrator or designee may request OCA to conduct a supplemental investigation. A request for a supplemental investigation is made within 30 calendar days of receipt of the OCA report and it sets out the specific information needed. No more than one such request may be made in an individual case. OCA conducts a prompt supplemental investigation, commencing it within 30 calendar days and completing it within 60 calendar days of receipt of a request for a supplemental investigation, unless these time

periods are extended for good cause as determined by the advocate general or the OKDHS Director.

(2) Within 30 calendar days of receipt of the OCA supplemental investigation, the state office administrator or designee ~~can~~ may request the case be submitted to GARC in accordance with OAC 340:2-3-62.

(c) **Disciplinary guidelines.** These guidelines are used by state office administrators and their designees to determine appropriate personnel action, based on the nature of the abuse, sexual abuse, neglect, caretaker misconduct, or exploitation and consistent with OKDHS corrective discipline policies.

(1) **Abuse, sexual abuse, or neglect.**

(A) **First offense.** The first offense can result in discharge, demotion, suspension without pay, or such other discipline deemed reasonable, depending on the severity of the incident.

(B) **Second offense.** Unless the OKDHS Director approves a less severe disciplinary action, the second offense results in discharge.

(2) **Caretaker misconduct resulting in physical injury or mental anguish.**

(A) **First offense.** The first offense can result in discharge, demotion, suspension without pay, or written reprimand, depending on the severity of the incident.

(B) **Second offense.** The second offense can result in discharge, demotion, or suspension without pay.

(3) **Caretaker misconduct not resulting in physical injury or mental anguish.**

(A) **First offense.** The first offense can result in suspension without pay, written reprimand, verbal reprimand, or corrective action plan, depending on the severity of the incident.

(B) **Second offense.** The second offense can result in discharge, demotion, suspension without pay, or written reprimand and corrective action plan.

(4) **Second offense.** The term second offense as used in this Section means an offense occurring after any other act of abuse, neglect, or caretaker misconduct. Nothing in this Section limits disciplinary actions based in part on acts of abuse, neglect, or caretaker misconduct and based in part on other cause. The imposition of any demotion, suspension without pay, or reprimand must be accompanied by a corrective action plan.

~~(d) **State office administrator's report.** OAC 340:2-3-36(q) requires a state office administrator to report personnel actions resulting from an OCA investigation. When an OKDHS operated facility has conducted a caretaker conduct review pursuant to OAC 340:2-3-37, within 60 calendar days of the finding becoming final the state office administrator informs the advocate general in writing of: any personnel action taken or to be taken, any corrective action taken or to be taken, and for each worker found to have engaged in caretaker misconduct whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker, the basis for each finding, and the personnel action taken in response. If a personnel action is involved, the state office administrator also notifies the state office administrator of OKDHS Human Resources Management Division. If a caretaker conduct review has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the employee's personnel file.~~

PART 3. INVESTIGATIONS

340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section ~~7004-3.4(B)(2)~~ 7004-3.4(A)(2)(d) of Title 10 of the Oklahoma Statutes gives OCA the responsibility to investigate allegations of caretaker abuse and neglect of minors in the State of Oklahoma:

(i) residing outside their own homes regardless of custody, other than minors in foster care; ~~and~~

(ii) minors who are Developmental Disabilities Services Division (DDSD) service recipients receiving in-home supports, as defined in OAC 340:2-3-2; and

(iii) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes.

(B) Section 7306-2.11 of Title 10 of the Oklahoma Statutes accords youthful offenders in the Office of Juvenile Affairs (OJA) custody the same rights and services available to minors in OJA custody. This includes maltreatment investigations conducted by OCA in facilities operated by or contracting with OJA. OCA also conducts maltreatment investigations involving youths in those facilities when the juvenile court has extended its jurisdiction and OJA custody until the youth reaches age 19.

(C) Section 10-105 of Title 43A of the Oklahoma Statutes gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve Hissom class members and residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), OKDHS operated facilities for persons with developmental disabilities.

(D) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of caretaker maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers which provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and

OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of minors, and caretaker misconduct with regard to minors, in residential care above the level of foster care regardless of custody, including but not limited to:

(i) minors in OKDHS operated or licensed shelters and group homes;

(ii) minors and youth in facilities operated by, licensed by, or contracting with OJA;

(iii) minors in community-based youth services shelters and community intervention centers which contract with OJA pursuant to Section 7302-3.5 of Title 10 of the Oklahoma Statutes;

(iv) minors in facilities operated by or contracting with Department of Mental Health and Substance Abuse Services (DMHSAS);

(v) minors in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) minors residing in facilities operated by the Department of Rehabilitation Services (DRS): the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) minors receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes;

(B) abuse and neglect of, and caretaker misconduct with regard to, minors in day treatment programs as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, including sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker or a Medicaid personal care assistant, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, on request of the Adult Protective Services ~~unit~~ Unit of OKDHS.

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

(A) protect clients from further maltreatment;

(B) deter and prevent maltreatment;

(C) provide relevant evidence in administrative and judicial proceedings;

(D) rule out unfounded allegations; and

(E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to, Section 7005-1.1 et seq. of Title 10 of the Oklahoma Statutes, Section 183 of Title 56 of the Oklahoma Statutes, and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records.

(1) **OCA investigations involving minors and youth.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving minors and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) Sections 7307-1.2 through 1.5 of Title 10 of the Oklahoma Statutes apply to OCA investigations involving minors and youth in OJA custody and in facilities that contract with OJA.

(B) Sections 7005-1.2 et seq., 7107, 7108, and 7109 of Title 10 of the Oklahoma Statutes apply to investigations involving minors, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 46 apply to OCA investigations involving minors in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

(i) a district attorney or employees of the district attorney's office;

(ii) the attorney representing an alleged victim in the matter under investigation;

(iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;

(iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;

(v) the guardian of the vulnerable adult;

(vi) the provider for a vulnerable adult; and

(vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific

purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under Section 10-110(A) of Title 43A of the Oklahoma Statutes and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs manager for investigations, or the OKDHS Office of Communications for a detailed explanation of ~~OKDHS'~~ OKDHS confidentiality rules.

340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation

(a) **Reporting requirements and reportable incidents.**

(1) Persons having reason to believe that a minor is a victim of abuse or neglect are required by Section 7103 of Title 10 of the Oklahoma Statutes to promptly report it to the Oklahoma Department of Human Services (OKDHS).

(2) Persons having reason to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation are required by Section 10-104 of Title 43A of the Oklahoma Statutes to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.

(3) In addition, employees of OKDHS, Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), Office of Juvenile Affairs (OJA), and the J.D. McCarty Center who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, with regard to a client has occurred promptly report it to OCA intake. This reporting requirement also extends to employees of private facilities ~~which~~ that contract with OKDHS, DRS, DMHSAS, and OJA to provide residential services to these clients.

(4) A person can have reason to believe that maltreatment has occurred based on information they have learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is reported to OCA intake. Persons unsure of what to report call OCA intake, ~~(~~1-800-522-8014~~)~~, during business hours, and after hours call the Abuse Hotline, ~~(~~1-800-522-3511~~)~~.

(5) Knowledge of circumstances which may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.

(6) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, employees and agents of OKDHS, DRS, DMHSAS, OJA, the J.D. McCarty Center, facilities, and providers report to OCA events listed in (A) through (G) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2) ~~are~~:

(A) a violent death, whether apparently homicidal, suicidal, or accidental;

(B) a death under suspicious, unusual, or unnatural circumstances;

(C) the death of a resident of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer);

(D) the death of a Hissom class member;

(E) a serious physical injury, as defined in OAC 340:2-3-2, of a resident of NORCE, SORC, or Greer;

(F) a serious physical injury, as defined in OAC 340:2-3-2, if it is:

(i) unexplained; or

(ii) suspicious; and

(G) ~~a~~ rape, sodomy, or other sexual activity prohibited by state law.

(7) "Promptly" reporting as used in this Subchapter means the same day or the next working day.

(8) The reporting obligations under this ~~section~~ Section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person.

(b) **Reporting responsibilities.**

(1) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.

(2) **Minors and youth.** An OKDHS employee with knowledge of a reportable incident involving a minor or youth who is an OCA client, as defined in OAC 340:2-3-32(a)(2), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident involving an OCA client is required by law to make a prompt report to OCA intake, ~~or the~~ Child Welfare in an OKDHS local county office, ~~in the county where the alleged incident took place~~ or the statewide, toll free hotline (the "hotline"), 1-800-522-3511. Referrals to OCA intake are made in accordance with subsection (e) of this Section.

(3) **Vulnerable adults.** An OKDHS employee who has knowledge of a reportable incident involving a vulnerable adult who is an OCA client, as defined in OAC 340:2-3-32(a), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident is required by law to make a report as soon as possible to OCA intake, the office of the district attorney in the county in which the alleged incident happened, or the local municipal police or sheriff's department.

(4) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.

(5) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA

intake, ~~(~~1-800-522-8014~~)~~, during business hours, and after hours call the Abuse Hotline, ~~(~~1-800-522-3511~~)~~.

(c) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. Section 10-104(C) of Title 43A and Section 7103(C) of Title 10 of the Oklahoma Statutes makes failure to report a misdemeanor, upon conviction. In addition, failure to report by an OKDHS employee ~~can~~ may result in disciplinary action.

(d) **False reporting.**

(1) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a minor, or a report that the person knows lacks factual foundation, may be reported by OKDHS to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.

(2) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.

(e) **Method of reporting.**

(1) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, or exploitation of an OCA client, or caretaker misconduct towards an OCA client, contacts OCA intake in Oklahoma City by telephone at ~~(1-405-522-4850~~ 1-405-525-4850 or 1-800-522-8014~~)~~, between 8:00 a.m. and 5:00 p.m. on normal business days. At all other times, the Statewide Abuse Hotline, ~~(~~1-800-522-3511~~)~~ accepts referrals on behalf of OCA. Referrals also are made by completing Form OCA-1, Office of Client Advocacy Intake Referral, and transmitting it by fax ~~(~~1-405-525-4855~~)~~, to OCA, Attn: OCA intake, or sending the same information in an e-mail addressed to *OCA.intake@okdhs.org.

(2) Allegations of exploitation of residents of SORC, NORCE, and Greer are reported to the person designated by the facility administrator to receive and investigate reports of those allegations.

(3) In lieu of contacting OCA intake, employees of SORC, NORCE, and Greer also have the option of contacting OCA's ombuds staff assigned to those facilities or the quality assurance staff at those facilities. OCA employees and facility staff who receive information about a reportable incident promptly contact ~~OCA's~~ OCA intake to transmit that information.

(f) **Confidentiality of reporting party's identity.** OCA keeps confidential the identity of a person who reports an incident involving a vulnerable adult in accordance with Section 10-105(2) of Title 43A of the Oklahoma Statutes, and of a person who reports an incident involving a minor or youth in accordance with Section 7005-1.2(G)(7) of Title 10 of the Oklahoma Statutes. OCA accepts anonymous referrals.

(g) **Retaliation prohibited.** Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(h) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting responsibilities detailed in this Section. Except for employees of a Developmental Disabilities Services Division (DDSD) provider, employees receive this training within 30 calendar days of initial employment and subsequent training annually. The training for employees of ~~Developmental Disabilities Services Division (~~DDSD~~)~~ providers is in accordance with OAC 340:100-3-38.

340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)

(a) **Immediate protection for safety, health, and welfare.** If OCA intake receives an allegation of caretaker maltreatment involving an OCA client from anyone other than the administrator, or the administrator's designee, of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged, other than caretaker abuse or neglect unless it involves a serious physical injury, the administrator immediately notifies the appropriate local law enforcement authority. The types of criminal activity which are reported to law enforcement ~~involve~~ include, but are not limited to, the use of illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money or property, and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. OCA does not determine or approve personnel actions taken by an administrator in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hissom class member by a provider's employee or subcontractor, the administrator ensures the protection and medical attention for any class member named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the class member's case manager to ensure protection, medical attention, or both for the class member. OCA intake notifies the ~~case manager assigned to the class member and the~~ applicable Developmental Disabilities Services Division (DDSD) area manager by e-mail within one working day of ~~accepting for investigation, in accordance with OAC 340:2-3-34,~~ receipt of a referral of abuse or neglect by an individual serving as provider for the class member.

(b) **Preliminary assessment.** Upon learning of an incident reportable to OCA, the administrator:

(1) immediately ensures the safety of any client named in the referral and of other clients;

(2) secures any physical evidence and gathers documents within ~~their~~ the possession of the facility or provider, custody, or control ~~which~~ that may be relevant to the allegation;

(3) immediately takes photographs of any ~~potentially relevant~~ injuries. Photographs are taken by someone who was not involved in the incident that is the subject of the allegation relating to the injuries; and

(4) coordinates activities with OCA and any other agency or law enforcement authority involved in investigating the referral.

(c) **Collecting pertinent reports and documents.** The administrator determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator collects medical records, other documents and reports which pertain to the alleged incident, written statements, and other documentary evidence within ~~their~~ the possession of the facility or provider, custody, or control and places them in a holding file for investigative use by OCA and any other investigative authority. The administrator securely maintains any documents collected during the preliminary assessment.

(d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original of written statements, incident reports, relevant documents and records, and other reports, photos, and other evidence collected during the preliminary assessment.

(e) **Prohibition from interviewing during preliminary assessment.** Employees of the facility or provider do not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries about who was involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment and is avoided until the OCA disposition is determined. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. OCA coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.

(f) **Facility and provider contact person.** Each administrator of a facility or provider responsible for the care of any of the individuals listed in OAC 340:2-3-32(a)(2) designates a contact person to receive the notice described in ~~Subsection~~ subsection (a) of this ~~section~~ Section. The administrator informs the advocate general of the name, phone number, and e-mail address of the designated contact person, and immediately notifies the advocate general in writing, by mail or e-mail, of any changes in this information. The designated contact person is reasonably available by telephone, pager, or e-mail between 8:00 a.m. and 5:00 p.m. weekdays, except holidays. Form OCA-INV-2, Designation of Contact Person for Client Maltreatment Investigations, may be used for this purpose.

(g) **Documentation provided by SORC, NORCE, and Greer.** Within one business day of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer) submitting to the Oklahoma State Department of Health (OSDH) an incident report, a five-day report or a final report regarding an allegation reported to OCA intake, the facility sends to OCA intake a copy by fax or e-mail attachment.

(h) **Ensuring confidentiality.** Administrators maintain information, files, and documents regarding referrals made to OCA intake, including OCA investigation reports distributed pursuant to OAC 340:2-3-36, in a manner that protects the confidentiality of information contained in them.

340:2-3-36. Investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator to arrange for document production, site visits, and interviews.

(1) The administrator for the facility or provider who employed an accused caretaker at the time of the alleged incident informs that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section, using Form OCA-4, Rights and Responsibilities of Accused OKDHS Employees, Form OCA-4-A, Rights and Responsibilities of Accused Caretakers, or a substantially similar form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving ~~Hissom class members and minors receiving in-home supports~~ caretakers subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The administrator or designee promptly completes Form DDS-59, Rights and Responsibilities of Accused Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, in accordance with OAC 340:100-3-39(d)(2)(C). The administrator or designee mails Form DDS-59 to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Access.** The applicable administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(c) **Interference prohibition.**

(1) Section 7103 of Title 10 of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding, provided the person did not perpetrate or inflict the abuse or neglect at issue.

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(d) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection. The rights and responsibilities of a community services worker are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

(A) be advised by the administrator of the nature of the allegation(s) made against him or her in the referral;

(B) be advised by OCA of the investigative process involving caretaker maltreatment;

(C) be interviewed by the investigator and allowed to give his or her position regarding the referral;

(D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:

(A) prepare written statements and reports relevant to the investigation upon request;

(B) be available for interviews and accommodate the investigator in scheduling of interviews;

(C) refrain from any action ~~which~~ that interferes with the investigation, including any action ~~which~~ that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(e) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(f) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The administrator of the provider agency or facility where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's

appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The administrator of the provider agency or facility where the alleged incident took place is responsible for protection of clients.

(g) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

(A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(B) medical records;

(C) photos; and

(D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(h) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator and the person being interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person being interviewed attends an interview only as a silent observer with prior permission of the advocate general.

(i) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Tape recording of interviews.** OCA investigators tape record every interview. To maintain confidentiality of the information provided in an interview, no tape recording by the person being interviewed or by anyone else in attendance is permitted. Tape recordings of interviews remain with the OCA investigative file. OCA files and tape recordings are not public documents.

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s) and evidence learned during the investigative process. In general, the investigator discloses only the nature and substance of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information to which the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** ~~If~~ When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency who employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided in accordance with OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the administrator of the facility or provider that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the administrator of the facility or provider to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(j) **Exit conference.** Within 30 calendar days of ~~assignment~~ disposition of a referral to ~~an investigator~~ be investigated, the assigned OCA investigator contacts in person, by e-mail, or by telephone, the applicable administrator, or the administrator's

designee, when the information gathering portion of the investigative process is completed.

(1) Except in cases involving Hissom class members or caretakers subject to the Community Services Worker (CSW) Registry, the investigator informs the administrator of the preliminary investigative finding and any areas of concern identified, and that a written report will be prepared with the final finding.

(2) In cases involving Hissom class members or caretakers subject to the CSW Registry, the investigator informs the administrator or the OKDHS long-term care nurse, whichever is applicable, that the investigation process has concluded in accordance with OAC 340:2-3-36. When the investigation report has been approved in accordance with subsection (k) of this Section, the investigator notifies in writing the administrator or the OKDHS long-term care nurse, whichever is applicable, of areas of concern identified during the investigation.

(k) **The written investigative report.** After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

(1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney whether to consider further investigation;

(5) the applicable definition(s) of the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) in accordance with subsection (l) of this Section;

(7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;

(8) the name, address, and telephone numbers of any interpreter used during the investigation;

(9) an explanation of the basis for the finding(s);

(10) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect;

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report; and

(14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section.

(l) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a preponderance of the evidence. The finding options are:

(1) **"confirmed"** means that the available evidence establishes that it is more likely than not that the alleged maltreatment occurred;

(2) **"not confirmed"** means there was insufficient evidence to find that it is more likely than not that the alleged maltreatment occurred; or

(3) **"not confirmed/ruled out"** means the available evidence established that it is unlikely that the alleged maltreatment occurred.

(m) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.

(n) **Dissemination of the OCA investigative ~~report~~ reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the ~~assignment~~ disposition of a referral to be investigated, the OCA written investigative report is completed.

(1) Except ~~in cases involving Hissom class members~~ as provided in subsection (o) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, neglect, or exploitation, a copy also is sent to the applicable district attorney. ~~A copy is sent to the Office of the Attorney General if the report involves a minor as the alleged victim.~~

(3) A copy also is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of DRS, the director of DMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.

(4) When an administrator is named as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable. ~~The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.~~

(~~2~~5) A copy of OCA's report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(~~3~~6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter which summarizes the allegation and states the OCA finding.

~~(4) If an accused caretaker is a certified nurse aide (CNA) and the OCA report includes a confirmed finding, the facility which employed the CNA at the time of the incident at issue sends a copy of the report to the Oklahoma State Department of Health.~~

(~~5~~7) If client maltreatment by a licensed nurse is confirmed, a copy of OCA's report is submitted to the Oklahoma State Board of Nursing.

(~~6~~8) When appropriate in cases involving a vulnerable adult, a copy of OCA's report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending OSDH a copy of any report in which at least one of the accused caretakers is a certified nurse aide (CNA).

(9) OCA distributes its investigation reports by United States mail, fax, or e-mail, whichever is appropriate.

(o) **Dissemination of reports involving Hissom class members and caretakers subject to the Community Services Worker (CSW) Registry.**

(1) Section 1025.2 of Title 56 of the Oklahoma Statutes requires OKDHS to establish a community services workers registry notating the final OKDHS investigative finding of abuse, neglect, verbal abuse, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, by a community services worker or a Medicaid personal care assistant. All OCA investigations involving a confirmed finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid Personal Care Services Provider are processed in accordance with OAC 340:100-3-39 and OAC 317:35-15.

(2) After the OCA investigation report has been finalized, an e-mail notice of the areas of concern in the report is sent to the administrator, the Developmental Disabilities Services Division (DDSD) director, the applicable DDSD area manager, and the OKDHS long-term care nurse, whichever are applicable.

(3) When the OCA finding does not confirm an allegation, OCA sends a copy of the report pursuant to ~~section~~ Section 10-110(B) of Title 43A of the Oklahoma Statutes, to the administrator, the DDSD director or the APS programs manager, whichever is applicable, the assigned OKDHS long-term care nurse when applicable, and the applicable district attorney.

(4) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the administrator, the DDSD director, and the applicable district attorney.

(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a Medicaid personal care assistant, OCA submits a copy of the report to the applicable district attorney and processes the report in accordance with OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable administrator, and the DDSD director or the APS programs manager, whichever is applicable, and the assigned OKDHS long-term care nurse if applicable.

(6) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final.

(7) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(p) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 through ~~1.4~~ 7005-1.4 and 7107 et seq. of Title 10, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

(q) **Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDSD receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days ~~of the receipt of the report~~, the applicable division director notifies the advocate general in writing of:

(A) any personnel action taken or to be taken with regard to each accused caretaker named in the report,

(B) any corrective action taken or to be taken regarding areas of concern noted in the report, and

(C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(r) **Findings involving a Hissom class member.** This ~~Subsection~~ subsection applies to the administrator of ~~the residential~~ a provider ~~who~~ that employed, or contracted with a contractor ~~who~~ that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 ~~working~~ calendar days of receipt of a final OCA investigation report, the administrator or designee notifies the advocate general in writing:

(A) if any personnel action has or will be taken with regard to each accused caretaker named in the report~~,~~; and

(B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session.

(s) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and ~~pertinent~~ applicable recorded tapes in locked file cabinets in accordance with the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general on a need to know basis.

340:2-3-37. Caretaker conduct ~~reviews~~ review (CCR)

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) which OCA refers to a facility for an internal ~~caretaker conduct review~~ CCR in accordance with OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving maltreatment of a Hissom class member or person receiving Developmental Disabilities Services Division (DDSD) waiver services.

(b) **Assignment to a facility to conduct a ~~caretaker conduct review~~ CCR.**

(1) When OCA receives a referral ~~which~~ that indicates possible caretaker misconduct, in lieu of an investigation OCA intake may refer it to the facility where it allegedly occurred for handling as a ~~caretaker conduct review~~ CCR if:

(A) there is no injury or evidence that the client might have been exposed to a significant risk of harm;

(B) there is a minor physical injury and it is not a suspicious injury;

(C) there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; or

(D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1), at Oklahoma Department of Human Services (OKDHS) operated facilities, a referral indicating possible maltreatment may be referred to the facility for handling as a ~~caretaker conduct review~~ CCR if the allegation involves a serious physical injury ~~which~~ that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a ~~caretaker conduct review~~ CCR.** When OCA intake assigns a facility the responsibility to conduct a ~~caretaker conduct review~~ CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a ~~caretaker conduct review~~ CCR follows the investigative procedures described in OAC 340:2-3-36, with the exception of tape recording the interviews in OAC 340:2-3-36(i)(1), including:

(1) reviewing pertinent documentation, records, and evidence collected;

(2) viewing any injuries and photos of injuries, and obtaining photos of injuries;

(3) obtaining written statements and conducting interviews with:

(A) each alleged victim;

(B) each eyewitness;

(C) other persons with knowledge relevant to the allegation; and

(D) each accused caretaker;

(4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;

(5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and

(6) determining the appropriate finding(s) in accordance with OAC 340:2-3-36(l).

(d) **Returning the investigation responsibility to OCA.** If at any time during the ~~caretaker conduct review~~ CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the ~~caretaker conduct review~~ CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation in accordance with OAC 340:2-3-35(c).

(e) **Written report of ~~caretaker conduct review~~ CCR.** After completion of the ~~caretaker conduct review~~ CCR process and determination of the appropriate finding, the person conducting ~~caretaker conduct review~~ CCR prepares a written report. Facilities are encouraged, but not required, to use the OCA format for CCR reports, Form OCA-7, Caretaker Conduct Review Report. The written report contains:

(1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number; (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;

(3) the finding(s), whether caretaker misconduct did or did not occur, in accordance with OAC 340:2-3-36(m);

(4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;

(5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;

(6) an explanation of the basis for the finding(s);

(7) a summary of pertinent information obtained in interviews conducted during the review;

(8) a list of relevant documents and records reviewed;

(9) a list of attachments to the report;

(10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect; and

(11) either on a cover memo or at the end of the report, the signature and date signed by the person who conducted the ~~caretaker conduct review~~ CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for ~~caretaker conduct review~~ CCR.

(g) **OCA processing of ~~caretaker conduct review~~ CCR reports.** The administrator transmits the completed ~~caretaker conduct review~~ CCR to the advocate general. The advocate general or designee reviews the ~~caretaker conduct review~~ CCR report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Review by Developmental Disabilities Services Division (DDSD) director.** Within five working days of completion of a ~~caretaker conduct review~~ CCR report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the ~~caretaker conduct review~~ CCR. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies the advocate general in writing by e-mail or letter. The advocate general refers the matter to OCA's grievance coordinator ~~for processing~~ to process for review by the DDSD director as a contested grievance in accordance with OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of that review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62 and 340:2-3-64.

(i) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to the paragraph (h) of this Section has expired and review has not been requested, or that review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

(A) any personnel action taken or to be taken;

(B) any corrective action taken or to be taken; and

(C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination

(a) **Application.** This Section describes processes relating to allegations of retaliation and discrimination against a foster parent by an employee of the Oklahoma Department of Human Services (OKDHS) or a child placing agency. The Office of Client Advocacy (OCA) is designated by Sections 7003-3.4(D) and 7204.1 of Title 10 of the Oklahoma Statutes to conduct administrative investigations into these allegations.

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

(1) **"Administrator,"** with regard to a child placing agency, means the chief administrative officer of the agency.

(2) **"Child placing agency"** means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements, and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 through 415]

(3) **"Child Welfare division"** means the OKDHS Field Operations Division (FOD) and the Children and Family Services Division (CFSD).

(4) **"Discrimination"** means knowing and willful application of a different standard to a particular foster parent which negatively affects the foster parent.

(5) **"Harassment"** means a knowing and willful course of conduct, statements, or behaviors serving no legitimate purpose directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.

(6) **"Retaliation"** means threatening a foster parent with removal of a child in the foster parent's care, harassing a foster parent, refusing or failing to place a child in a licensed or certified foster home, or disrupting a child placement in reprisal for the foster parent engaging in protected activity listed in (b)(2) of this Section.

(7) **"State office administrator"** means the FOD director, CFSD director, or both, or their designees.

(c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the providing of foster care services. OCA initiates investigations of allegations that:

(1) an employee of OKDHS or a child placing agency has:

(A) threatened a foster parent with removal of a child in the foster parent's care;

(B) harassed a foster parent;

(C) refused or failed to place a child in a licensed or ~~certified~~ approved foster home; or

(D) disrupted a child placement; and

(2) for the purpose of retaliation or discrimination against a foster parent who has:

(A) filed or attempted to file a grievance with OKDHS ~~Child Welfare division~~ (see OAC

340:2-3-45) or with a child placing agency, whichever is applicable;

(B) provided information regarding foster care services to any state official or OKDHS employee; or

(C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against OKDHS or a child placing agency.

(d) **Exclusions.** The provisions of this Section do not apply to a complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by OKDHS or a child placing agency in conformity with the result of any such proceeding.

(e) **What is reportable.** Section 7204.1 of Title 10 of the Oklahoma Statutes provides that any foster parent who has reasonable cause to believe he or she has been improperly treated by an employee of OKDHS or a child placing agency, as outlined in subsection (b) of this Section, may file a complaint with OCA. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis ~~for~~ of having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation may be subject to loss of foster parent approval or licensure status.

(f) **Reporting procedure.** Foster parents may file complaints by contacting:

(1) the Foster Parent Hotline, 1-800-376-9729; or

(2) OCA's offices in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(g) **Confidentiality.** At the request of the reporter, OCA maintains confidential the identity of the reporter until the advocate general reports the results of the investigation to the Commission for Human Services (Commission) in accordance with subsection (m) of this Section. OCA maintains written records regarding the reporting source to provide information to the extent known at the time the report is received, including:

(1) the names and addresses of the foster child and the person(s) responsible for the child's welfare;

(2) the nature of the complaint; and

(3) the names of the persons and agencies responsible for the allegations contained in the complaint.

(h) **Interference prohibition.**

(1) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action for misconduct under OKDHS personnel policy relating to cause for disciplinary action if the employee attempts to intimidate a witness, foster parent, or other OKDHS employee, or threatens any of them with physical or mental harm.

(2) Interference includes, but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for cooperating during an OCA investigation;

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and

(D) causing or influencing another person to provide false information during the investigation.

(i) **Initiation of OCA investigation.** Upon acceptance of a report of retaliation or discrimination against a foster parent, OCA assigns an investigator to investigate the allegations in accordance with this Section. OCA's investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of OKDHS employees in an OCA foster parent investigation are listed in (1) through (7) of this subsection.

(1) Employees make themselves available for interviews and accommodate the investigator in scheduling ~~of~~ interviews.

(2) Employees provide pertinent information and respond fully and truthfully to questions asked.

(3) In addition to being interviewed, employees may submit written statements relating to the events in question.

(4) Employees may seek advice concerning their rights and responsibilities from other parties within or outside OKDHS.

(5) Employees prepare written statements or reports relevant to the investigation upon request.

(6) Employees, who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions.

(7) Employees interviewed do not discuss their interviews with anyone outside of OCA.

(k) **Access.** OCA at all times is granted access to any foster home which is approved, authorized, or funded by OKDHS or a child placing agency.

(l) **Investigation procedures.** Investigations are conducted in accordance with OAC 340:2-3-36 unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned investigator notifies the applicable administrator or state office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or state office administrator who employed any accused employee at the time of an alleged incident promptly informs the accused employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in ~~OAC 340:2-3-36(d)(1) and (2),~~ subsection (j) of this Section, using Form OCA-4-B, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, a copy of which is provided to the OCA investigator; and

(D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and state office administrators facilitate and cooperate with the OCA investigation by:

(A) providing access to requested information;

(B) producing relevant documents, files, and records, accompanying the investigator on foster home visits when requested by OCA; and

(C) providing access to accused employees and others who have knowledge of relevant information.

(3) **Document review and interviews.** The OCA investigator conducts a prompt investigation in accordance with OAC 340:2-3-36(g)~~, (h), and~~ through (i) unless otherwise provided in this Section.

(4) **Exit conference.** The OCA investigator conducts an exit conference, either in person or by telephone, with the applicable administrator or state office administrator when the information gathering portion of the investigative process is completed. The investigator informs the administrator or state office administrator of the preliminary investigative finding and that a written report is forthcoming.

(5) **The written investigation report.** After completing the information gathering portion of the investigative process, the OCA investigator prepares a written report containing:

(A) the allegations investigated, including the date, time, and location of the alleged incidents, the date the allegation was reported to OCA, and the assigned OCA case number;

(B) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when and where;

(C) the applicable definition of the type of misconduct at issue, such as discrimination, retaliation, or both;

(D) whether the foster parent engaged in an activity listed in (b)(2) in this Section and, if so, a description of the activity;

(E) the findings in accordance with OAC 340:2-3-36(l);

(F) an explanation of the basis for the finding;

(G) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(H) any areas of concern relating to the allegations that were identified during the investigation regarding practices or procedures of OKDHS or the child placing agency;

(I) a list of relevant documents and records reviewed during the investigation; and

(J) a list of attachments to the report.

(6) **Dissemination of the OCA investigative report.**

(A) In cases involving allegations against an OKDHS employee, the advocate general submits a copy of the final OCA investigation report to the OKDHS Director and the state office administrators.

(B) In cases involving an employee of a child placing agency, the advocate general sends a copy of the OCA report to the administrator of the agency and the appropriate state office administrator. If the administrator of the child placing agency is the subject of the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused OKDHS employee a letter that summarizes the allegation and states OCA's finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 and 7107 of Title 10 ~~of the Oklahoma Statutes~~ and Section 10-110 of Title 43A of the Oklahoma Statutes.

(m) **OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20 calendar days of receipt of a final OCA investigative report, the OKDHS Director ~~can~~ may request GARC to review the allegations and submit a report of its findings in accordance with OAC 340:2-3-63.

(n) **State office administrator's response to a confirmed finding.**

(1) When a state office administrator receives a copy of an OCA investigation report containing a finding that an OKDHS employee has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the OCA report the state office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, and any corrective action taken or to be taken regarding areas of concern noted in the OCA report.

(2) If the OKDHS Director has referred the matter for review by GARC in accordance with subsection (l) of this Section, the state office administrator's response is due within 45 calendar days of GARC's written report to the OKDHS Director.

(3) When an administrator of a child placing agency receives a copy of an OCA investigation report containing a finding that an employee of the child placing agency has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the report the administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to each employee named in the report as having engaged in misconduct, and the status of any areas of concerns noted in the report.

(4) The advocate general reports to the Commission confirmed allegations and corrective action taken ~~to the Commission~~.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of OKDHS regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDSD.

(3) **"CFSD"** means the Children and Family Services Division of OKDHS.

(4) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(5) **"Contested grievance"** means a grievance that has not been resolved at the local level (levels one and two) and, at the request of the grievant or decisionmaker, is submitted to a higher authority for response.

(6) **"Decisionmaker"** means the person who has authority to decide whether to accept any resolution proposed at each level of the grievance process. It typically is the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves (for example, young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, it might be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDSD clients who are adults, it might be a guardian or the individual support team for the client.

(7) **"Due date"** means the date by which some response or action is required, for example, the date by when a respondent must respond to a grievance. In calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(~~5~~8) **"E-mail"** communication with OCA or with the advocate general means an e-mail sent to the e-mail

address: ~~*STO.OCA.grievances@okdhs.org.~~ *oca.grievances@okdhs.org.

(9) **"Facility grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of a facility as defined in OAC 340:2-3-2; or

(B) a decision, act, or omission of an employee, agent, or contractor of a facility.

(~~6~~10) **"FOD"** means the Field Operations Division of OKDHS.

(~~7~~11) **"Grievance"** is defined in subsection (c) of this Section.

(~~8~~12) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(~~9~~13) **"Local grievance coordinator"** or **"LGC"** means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

(C) DDSD clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by OKDHS, the county director in the OKDHS county office where the grievant resides;

(E) DDSD clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDSD clients, the applicable DDSD area manager or designee.

(~~10~~14) **"OCA grievance coordinator"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances.

(15) **"OKDHS grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS (other than policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or

(B) a decision, act, or omission of an employee of OKDHS, including but not limited to a Child Welfare (CW) specialist, a case manager, and OKDHS county directors, but not including an employee of an OKDHS operated facility.

(~~11~~16) **"Placement grievance"** means a complaint about a present or proposed placement of ~~an OKDHS custody~~ a minor in OKDHS custody.

(17) **"Respondent"** means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern ~~which~~ that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance is:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which contracts with OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance is:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee of OKDHS other than an employee in an OKDHS operated facility; this includes a case manager, a ~~child welfare~~ CW specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, the LGC meets with the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using Form OCA-GR-8, Notice of Summary Disposition of Grievance, OCA-GR-8-A, Notice of Summary Disposition of Grievance - DDSD Clients, OCA-GR-8-B, Notice of Summary Disposition of Facility Grievance, or OCA-GR-8-C, Notice of

Summary Disposition of DDSD Provider Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form ~~OAC~~OCA-GR-1, Grievance Form, and then dates and signs the form. The grievance is logged on the grievance tracking log. The form used to notify the grievant along with a copy of the grievance ~~a copy of the~~ form is sent within two ~~working~~ business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within five working days of receipt, the ~~advocate general~~ OCA grievance coordinator reviews the grievance. If the ~~advocate general~~ OCA grievance coordinator determines the grievance was improperly given a summary disposition, the ~~advocate general~~ OCA grievance coordinator informs the LGC who immediately processes the grievance. If the ~~advocate general~~ OCA grievance coordinator concurs with the summary disposition, the ~~advocate general~~ OCA grievance coordinator informs the LGC ~~who within two working days informs the grievant and documents it~~.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem which is moot.** A moot problem is one that already has been decided or settled or one that has no practical resolution. For example, a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action ~~which~~ that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. ~~However, in~~ In these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved pursuant to OAC 340:2-5-50.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

~~(L) **Client resolution process.** If the subject of the proposed grievance is appropriate for handling by means of the Child Welfare client resolution process, OAC 340:75-1-12.1, the LGC forwards it to the appropriate county director.~~

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form OCA-GR-1 as received, and notes on the form the reason the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees~~,~~ and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including

but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to this Part, OKDHS county office, and DDSD area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and e-mail address of their LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change. OCA's advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

(i) implements grievance policies and procedures;

(ii) has experience with the programs and functions of the facility, provider, county office, or DDSD area office;

(iii) functions impartially and independently in the processing of grievances;

(iv) reports directly to the administrator with regard to the LGC's grievance duties and functions; and

(v) within 60 calendar days of being designated LGC, receives OCA or substantially equivalent training that provides the LGC with a working knowledge of applicable grievance policies, forms, procedures, time frames, and the LGC's responsibilities under this ~~subchapter~~ Subchapter, and yearly training thereafter from the OCA.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDSD area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form OCA-GR-9, Grievance ~~Poster-Child~~ Poster - Child Welfare Contracted Facilities, Form OCA-GR-9-A, Grievance Poster-OKDHS County Offices, or Form OCA-GR-9-B, Grievance ~~Poster-DDSD~~ Poster - DDSD Providers, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to this Part is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies and procedures, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution procedures using Form OCA-GR-2, Notice of Grievance Rights~~:~~ - Minors in OKDHS Custody, OCA-GR-2-A, Notice of Grievance Rights~~:~~ - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form OCA-GR-3, Notice of Grievance Rights~~:~~ - DDSD Clients (General), Form OCA-GR-3-A, Notice of Grievance Rights~~:~~ - Hissom Class Members, or Form OCA-GR-4, Notice of Grievance Rights~~:~~ - Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at ~~(~~1-405-525-4850 or 1-800-522-8014~~)~~, fax at ~~(~~1-405-525-4855~~)~~, or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

(i) any aspect of the care of a client ~~which~~ that affects the quality of the client's life;

(ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of OKDHS operated shelter or residential

facility, or a facility or agency ~~which~~ that contracts with OKDHS, or a placement provider; or

(iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(~~B~~C) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form OCA-GR-1, filling it out, and turning it in to the LGC or to any facility or OKDHS staff, ~~for the purposes of the staff~~ who immediately ~~transmitting~~ transmits it to the LGC.

(1) LGCs obtain copies of this form from the OCA in Oklahoma City, ~~(~~1-405-525-4850 or 1-800-522-8014~~)~~.

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC coordinator or any other staff member.

(3) A grievance received on paper other than Form OCA-GR-1 is attached to a Form OCA-GR-1 filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDSD clients, in order to be processed for action and resolution, a grievance must be filed within 15 ~~working~~ business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 ~~working~~ business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC.

(1) The filing time and all other time periods contained in this Section are counted in ~~working~~ business days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period is extended to the next business day.

(2) If the LGC or any ~~decisionmaker~~ respondent fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within two ~~working~~ business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDSD clients are retained in accordance with OAC 340:100-3-40. OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form OCA-GR-5, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form OCA-GR-6, Quarterly Grievance Report. The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. ~~In the event~~ When no grievance activity occurred or was pending during a particular calendar quarter, the LGC can inform the advocate general of this by e-mail in lieu of submitting Form OCA-GR-6. The e-mail address is: ~~*sto.oca.grievances@okdhs.org.~~ *oca.grievances@okdhs.org.

(3) If a grievance becomes moot at any point during the processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form OCA-GR-1 and the tracking log, and sends a copy of Form OCA-GR-1 to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form OCA-GR-1, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form OCA-GR-1 is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within ~~24 hours~~ one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form OCA-GR-1, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within ~~two working~~ three business days of receipt of Form OCA-GR-1, if the grievance has not been resolved to the grievant's satisfaction, the LGC fills out Form OCA-GR-1-A, Local Grievance Coordinator Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the ~~decisionmaker~~ respondent is the supervisor of the grievant's ~~child welfare~~ Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the ~~decisionmaker~~ respondent is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the ~~decisionmaker~~ respondent is the applicable county director.

(D) If the minor also is a DDSD client, this may be the DDSD case manager supervisor.

(2) The LGC completes the first box in the first level section on Form OCA-GR-1-A, attaches the corresponding Form OCA-GR-1 and other relevant documentation and information, and submits it to the first level ~~decisionmaker~~ respondent, by the most efficient means practicable, within ~~two working~~ three business days of receipt of the grievance from the grievant.

(3) The first level ~~decisionmaker~~ respondent responds to the grievance within five ~~working~~ business days of receipt of Form OCA-GR-1-A by completing the second box in the first level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant ~~may~~ can contest the target date by taking the grievance to the next level of problem resolution.

(4) The LGC monitors the timely response by the first level ~~decisionmaker~~ respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately proceeds to the second level of problem resolution.

(5) Within two ~~working~~ business days of receipt of the first level response, the LGC or designee ~~meets with~~ contacts the grievant to inform the grievant of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the grievant is satisfied with the proposed resolution. The first level ~~decisionmaker may~~ respondent might meet with the grievant along with the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two ~~working~~ business days within which to make a decision. If no decision is communicated to the LGC within two ~~working~~ business days, the grievant ~~will be~~ is deemed to have accepted the proposed resolution.

(6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level of problem resolution.

(8) If the grievant does not accept the proposed resolution and desires to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level of problem resolution in accordance with subsection (l) of this Section.

(l) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within ~~two working~~ three business days of the grievant requesting the second level of problem resolution pursuant to subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form OCA-GR-1-A, ensures the corresponding Form OCA-GR-1 and other relevant documents are attached, and submits it immediately to the second level ~~decisionmaker~~ respondent. For facilities and providers subject to these rules, the administrator or designee is the second level ~~decisionmaker~~ respondent. For OKDHS grievances, the OKDHS county director or the DDSD area manager, whichever is applicable, is the second level ~~decisionmaker~~ respondent. If the administrator, county director, or DDSD area manager was the first level ~~decisionmaker~~ respondent, then the second level of problem resolution is skipped and the grievance is processed as a contested grievance pursuant to subsection (m) of this Section.

(3) The administrator or designee responds to the grievance within seven ~~working~~ business days of receipt of Form OCA-GR-1-A by completing the applicable box in the second level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level ~~decisionmaker~~ respondent for a placement grievance regarding a specific foster child is the applicable area director.

(5) The LGC monitors the timely response by the ~~administrator~~ respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within two ~~working~~ business days of receipt of the second level response, the LGC ~~meets with~~ contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant is satisfied with the proposed resolution. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two ~~working~~ business days within which to make a decision. If no decision is communicated to the LGC within two ~~working~~ business days, the grievant ~~will be~~ is deemed to have accepted the proposed resolution.

(7) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the grievant does not accept the proposed resolution and indicates a desire to contest the response, a contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the grievant does not accept the proposed resolution, the target date of the second level decision-making, or both, a facility or provider grievance, with the exception of grievances of Hissom class members, is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. ~~However, grievances~~ Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within ~~one working day~~ three business days of learning that the grievant does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to hold a hearing to hear evidence or arguments. In the event the board determines that hearing evidence would assist it in resolving the grievance, the board has the option of holding a hearing. If it does so, the hearing does not require the formalities of a fair hearing.

(3) Within ten ~~working~~ business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds to the grievant by submitting a written decision to the LGC.

(4) Within two ~~working~~ business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant of that decision and provides the grievant with a copy of the board's written decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to ~~the facility director or to~~ the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by ~~means of~~ e-mail, using the e-mail address ~~*sto.oca.grievances@okdhs.org~~ *oca.grievances@okdhs.org.

340:2-3-46. Contested grievances appealed to the state office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hissom class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant asks to appeal a grievance to the state office administrator, within ~~one working day~~ two business days of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance coordinator, Form OCA-GR-1-A, Local Grievance Coordinator Worksheet, ~~which has attached~~ attaching the corresponding Form OCA-GR-1, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form OCA-GR-1-A is submitted to OCA, it has attached:

(1) the corresponding Form OCA-GR-1;

(2) supporting facts relating to the proposed resolution by the second level ~~decisionmaker~~ respondent, including documentation relating to the first level and second level of problem resolution processes; and

(3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

(e) **OCA processing of grievance.** Within ~~two working~~ three business days of OCA's receipt of a contested grievance, OCA reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, OCA contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing ~~of~~ the contested grievance.

(f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC

340:2-3-45(b)(2), OCA returns the grievance to the LGC with a cover letter indicating the reason the grievance ~~has~~ was not ~~been~~ accepted for processing as a contested grievance. Within two ~~working~~ business days of receipt of OCA's letter, the LGC ~~meets with~~ contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to state office administrator.** Within three ~~working~~ business days of OCA's receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form OCA-GR-7, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten ~~working~~ business days. The advocate general may grant an extension when good cause is shown, such as the complexity of the issues. The state office administrator sends his or her response directly to the LGC after completing the middle portion of ~~the~~ Form OCA-GR-7. A copy is sent to the advocate general. The state office administrator attaches his or her response to Form OCA-GR-7 and includes:

(1) the proposed resolution and how it is to be implemented;

(2) the person(s) responsible for implementing the proposed resolution;

(3) the target date for the proposed resolution;

(4) facts which support the appropriateness of the proposed resolution by the facility, including relevant documentation; and

(5) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance and the proposed resolution.

(i) **Timely response required.** The OCA grievance coordinator monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance coordinator and an extension has not been granted, the OCA grievance coordinator immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event, OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee ~~meets with~~ contacts the grievant within two ~~working~~ business days of receipt by the LGC of the state office administrator's response. If the grievant accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and ~~then~~ files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form – OCA-GR-7 and returns it to the OCA grievance coordinator within two ~~working~~ business days. Upon receipt by OCA of Form –OCA-GR-7, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

340:2-3-47. Grievances of minors in ~~DHS~~ OKDHS custody living in private residential facilities

(a) **Application.** This Section describes processes relating to grievances of minors in ~~DHS~~ the Oklahoma Department of Human Services (OKDHS) custody who are residing in a private residential child care center which contracts with ~~DHS~~ OKDHS.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The applicable ~~child welfare~~ Child Welfare liaison gives Form OCA-GR-2, Notice of Grievance Rights~~:~~ - Minors in ~~DHS~~ OKDHS Custody, to the client within 24 hours of placement of the client in a private residential placement, and annually thereafter. This form is used to identify the local grievance coordinator (LGC) and to explain the client's right to grieve. After the client signs the form, a copy is made for the client and the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance at the facility.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested ~~Department~~ OKDHS grievances of residents are processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with this subsection. When a grievant in a private residential facility asks to appeal a grievance, within ~~24 hours~~ three business days of that request the LGC transmits to the chair of the facility's board of directors, or an appeals committee designated by the board, Form OCA-GR-1A, Local Grievance Coordinator Worksheet, which has attached to it the corresponding Form OCA-GR-1 and other documents and information relevant to the subject matter of the grievance. The chair of the board of directors or appeals committee responds within ten business days by sending a written response to the LGC. A copy is attached to the applicable quarterly grievance report sent to the OCA grievance coordinator in accordance with OAC 340:2-3-45(h)(2). Within two calendar days of receipt of the response, the LGC communicates the response to the grievant. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

340:2-3-49. Grievances of minors in ~~DHS~~ OKDHS custody and youth in voluntary care living in other residential settings

(a) **Application.** This Section describes processes relating to grievances of minors in ~~DHS~~ Oklahoma Department of Human Services (OKDHS) custody who are residing in their own home, ~~DHS custody~~ minors in OKDHS custody and ~~voluntary care~~ youth in voluntary care in any type of foster care, and ~~DHS custody~~ minors in OKDHS custody or youth in independent living who want to file ~~a Department~~ an OKDHS grievance.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of Grievance Rights.** The assigned ~~child welfare~~ Child Welfare worker gives Form OCA-GR-2, Notice of Grievance Rights~~:~~ - Minors in ~~DHS~~ OKDHS Custody, to the placement provider and to the client upon placement of the client, and annually thereafter. This form is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client signs the form, a copy is given to the client and the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** If the grievant files ~~a Department~~ an OKDHS grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested grievances of residents are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. When a grievant asks to appeal ~~a Department~~ an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents with whom state agencies or child placing agencies contract.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-4, Notice of Grievance Rights~~:~~ - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two ~~working~~ business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or

(B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** In addition to the categories in Section OAC~~:~~ 340:2-3-45(c)(2), situations ~~which~~ that are not grievable by foster parents under this grievance system are:

(A) a decision of a court;

(B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;

(C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC ~~340:75-7-92~~ 340:75-7-94;

(D) disputes with other foster parents;

(E) written plans of compliance. The foster parents provide their written input on the compliance documentation; and

(F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC ~~340:75-7-87(c)~~ 340:75-1-12.6.

(3) **Grievances alleging retaliation.** Grievances alleging retaliation or discrimination, as those terms are defined in OAC 340:2-3-46(c), are processed in accordance with that Section.

(4) **Grievances alleging discrimination.** If a grievance alleges discrimination based on sex, age, national origin, religion, color or disability, the grievant is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator, and so informs the grievant.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services (OKDHS) operated facilities listed in Sections 1406 and 1414.1 of Title 10 of the Oklahoma Statutes, the "residents," who want to file a grievance. Section 1415.1 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility for establishing an ombudsman program which includes a grievance system at each OKDHS operated facility for persons with developmental disabilities.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-3, Notice of Grievance Rights~~:~~ - DDSD Clients (General), is given by the Developmental Disabilities Services Division (DDSD) facility to a resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. This form is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs the form, a copy is given to the resident or to the resident's guardian, or close family member if the resident does not have a guardian, or both, and the original is maintained in the permanent record for the resident.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed in accordance with OAC ~~340:2-3-10(g)~~ 340:2-3-45(g) unless otherwise provided in this Section.

(1) The Office of Client Advocacy (OCA) maintains an ombuds office on campus at SORC and NORCE. OCA assigns advocates to its ombuds offices at the facilities who serve as the LGC at those facilities and Greer and provides assistance to residents, their guardians, and persons interested in their welfare who want to file a grievance. [OAC 340:2-3-71(h)(4)]

(2) The OCA advocates at a facility send a copy of a grievance to the guardian or guardian ad litem of the resident and to the parent, unless contraindicated.

(3) If a grievance involves a decision of a resident's team, the first level ~~decisionmaker~~ respondent is the applicable unit coordinator.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of residents.

(f) **Second level problem resolution.** The facility director is the second level ~~decisionmaker~~ respondent.

(g) **Contested grievances.** When a resident asks to contest the administrator's response to a grievance, the contested grievance is processed in accordance with OAC 340:2-3-46. The DDSD director or designee is the state office administrator responsible for responding to contested grievances of residents.

(h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests review by GARC of the DDSD director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using a format prescribed by OCA which includes the information listed in subsection (i) of this Section.

(i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to: the treatment of one or more residents; the substance, application, or interpretation of any policy, rule or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior, or action of an OKDHS employee, agent, or contractor, or of another resident.

(1) An advocate formal inquiry is submitted directly to the facility director or any other OKDHS employee believed to have the knowledge to respond to the inquiry. The person to whom the inquiry is submitted has seven ~~working~~ business days from receipt of the inquiry to respond in writing. The advocate general can grant an extension.

(2) If the response does not resolve the concern which prompted the formal inquiry, or if a response is not timely received, the matter may be treated as a formal grievance and ~~be~~ processed as a contested grievance pursuant to OAC 340:2-3-46.

(3) The advocate general issues a report ~~which~~ that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(j) **Advocate grievance.** An OCA advocate can file a grievance on behalf of a resident even when a grievance has not been filed by or on behalf of a resident.

(1) At the discretion of the advocate general or designee, an advocate grievance is filed directly with the facility director. The facility director has seven ~~working~~ business days to respond in writing. The advocate general can grant an extension for the facility director's response.

(2) If the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(k) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the facility director or to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

340:2-3-52. Grievances of Hissom class members

(a) **Application.** This Section describes processes relating to grievances of Hissom class members. The Oklahoma Department of Human Services~~'~~ (OKDHS) legal basis and authority for grievance policies and procedures for Hissom class members includes orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, et al., vs. The Hissom Memorial Center, Case No. 85-C-437-E.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-46(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The Office of Client Advocacy (OCA) advocate assigned to a Hissom class member gives Form OCA-GR-3-A, Notice of Grievance Rights~~:~~ - Hissom Class Members, at least yearly to each class member or his or her guardian(s), close family members, and volunteer advocates. This form is used to identify the OCA advocate assigned to the class member and to explain the class member's right to grieve. After the class member, guardian(s), or both, sign the form, the advocate documents this in a contact sheet and provides copies to the client or the client's guardian, the assigned Developmental Disabilities Services Division (DDSD) case manager, and the program coordinator of the applicable

provider for placement in the client's home record. The original is maintained in OCA's record for the class member.

(d) **Filing and processing of grievances.** Grievances of class members are processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) OCA assigns an advocate to represent each class member. The assigned advocate serves as the grievance advisor for the class member and provides assistance to class members and persons interested in their welfare who want to file a provider or OKDHS grievance. [OAC 340:2-3-71(h)(4)] When an advocate files a provider or OKDHS grievance on behalf of a class member, the advocate contemporaneously provides a copy of the grievance to the DDSD case manager assigned to the class member and to the DDSD programs administrator for community services.

(2) Class members, their guardians, volunteer advocates and other advocates, case managers, personal support team members, and persons interested in their welfare also can file an OKDHS grievance by submitting Form OCA-GR-1, Grievance Form, to the local grievance coordinator (LGC) in the appropriate DDSD area office. When the LGC receives a grievance ~~which~~ that has not been submitted by the OCA advocate representing the class member, the LGC promptly informs the advocate of the grievance by e-mail, fax, or telephone.

(3) If a grievance involves a decision of a class member's team, the first level ~~decisionmaker~~ respondent is the supervisor of the client's DDSD case manager.

(e) **Provider grievances.**

(1) Each residential and vocational provider that contracts with DDSD to provide services to Hissom class members has a grievance system for resolution of grievances. ~~Their~~ The provider's written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances are initiated by the class member, the assigned OCA advocate, or a person interested in the welfare of the class member by using Form OCA-GR-1 or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of a provider grievance by or on behalf of a Hissom class member by anyone other than the OCA advocate or the DDSD case manager for the class member, the LGC promptly informs the DDSD case manager and the advocate assigned to the class member by e-mail, fax, or phone. If an OKDHS employee initiates a grievance on behalf of a class member, at the time the grievance is filed the employee sends a copy to the DDSD case manager and the OCA advocate assigned to the class member.

(3) If the subject matter of a grievance can be submitted for resolution as a provider grievance or an OKDHS grievance, the class member has the option to file it as a provider grievance, an OKDHS grievance, or both.

(f) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of Hissom class members.

(g) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(h) **Second level problem resolution.** The area manager of the appropriate DDSD area office is the individual responsible for responding to an OKDHS grievance at the second level of problem resolution.

(i) **Contested grievances.** When the response to an OKDHS or provider grievance is contested by a class member or a grievant on behalf of a class member, the contested grievance is processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. The director of DDSD is the state office administrator responsible for responding to contested grievances of class members.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a Hissom class member requests review by GARC of the DDSD director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using the format prescribed by OCA ~~which~~ that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information relating to: the treatment of a client; the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior or action of an OKDHS employee, agent or contractor, or of another client.

(1) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate DDSD area manager. An advocate general formal inquiry is submitted to the director of DDSD. The person to whom it is submitted has seven ~~working~~ business days to respond in writing. The advocate general can grant an extension.

(2) If the response to the formal inquiry does not resolve the concern ~~which~~ that prompted the formal inquiry, the matter may be treated as a formal grievance and ~~be~~ processed as a contested grievance.

(3) The advocate general issues a report ~~which~~ that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(l) **Advocate grievances.** An OCA advocate may file a grievance on behalf of a class member even though a grievance has not been filed by or on behalf of the class member.

(1) At the discretion of the advocate general or designee, an advocate grievance is submitted directly to the administrator of a provider or the appropriate DDSD area manager.

(2) An advocate general grievance is submitted directly to the director of DDSD or the administrator of the provider agency, whichever is applicable.

(3) The person to whom it is submitted has seven ~~working~~ business days to respond in writing. The advocate general can grant an extension.

(4) If the response to a grievance is not acceptable, or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(m) **Monitoring of grievance programs.** Providers submit their policies for review and approval by the advocate general. OCA provides training and technical assistance to providers, at their request, in the development of grievance forms and procedures. OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (h).

340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services Division (DDSD)

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from the Developmental Disabilities Services Division (DDSD) who are not residing in an Oklahoma Department of Human Services (OKDHS) operated facility and are not ~~a~~ Hissom class ~~member~~ members. This Section includes minors and adults in specialized foster care.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The DDSD case manager gives Form OCA-GR-3, Notice of Grievance Rights~~:~~ - DDSD Clients (General), to the service recipient, or guardian if applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. If the service recipient does not have a DDSD case manager, the provider gives Form OCA-GR-3 to the service recipient within 30 calendar days of service initiation and annually thereafter. Form OCA-GR-3 is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** Provider and OKDHS grievances are filed and processed in accordance with OAC 340:2-3-45. If a grievance involves a decision of a resident's team, the first level ~~decisionmaker~~ respondent is the supervisor of the client's case manager.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of these clients.

(f) **Contested grievances.** When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(g) **Monitoring grievance programs.** OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (m).

340:2-3-54. Grievances of residents of private group homes for individuals with developmental disabilities

(a) **Application.** This Section describes processes relating to grievances of residents of private group homes subject to Section 1430.01, et seq., of Title 10 of the Oklahoma Statutes. The ~~Department's~~ Oklahoma Department of Human Services (OKDHS) legal authority includes Sections 1430.11 and 1430.20 of Title 10 of the Oklahoma Statutes.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Upon admission, each individual and, if appropriate, the resident's family or designated representative is given a copy of the group home's grievance procedure and a written notice which identifies the group home's grievance coordinator and explains the resident's right to file grievances. After the resident or the resident's guardian signs the notice form, a copy is made for the resident or the resident's guardian. A copy also is sent to the resident's DDSD case manager if one is assigned. The original is maintained in the resident's permanent record. The grievance procedure is reviewed with the resident or the resident's guardian at least one time a year.

(d) **Grievance policies required.** Every private group home to which this Section applies is required to operate a system for resolution of grievances by residents using policies and procedures in compliance with OAC 340:2-3-45. If a grievance involves a decision of a resident's team and the resident has a DDSD case manager, the ~~first level decisionmaker~~ first level respondent is the supervisor of the client's case manager.

(e) **Contested grievances appealed to the state office.** When a grievant asks to appeal ~~a Department~~ an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(f) **Monitoring grievance programs.** The Office for Client Advocacy, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors group home grievance programs in accordance with OAC 340:2-3-45(d) through (h).

340:2-3-55. Grievances of OKDHS clients not covered by another grievance system

(a) **Application.** This Section describes the grievance policy for persons receiving Oklahoma Department of Human Services (OKDHS) services not covered by another grievance system or issues not specifically addressed by OKDHS fair hearing process. A grievance or complaint is not processed under this Section if OKDHS has a formal administrative appeal or review process in place which addresses the grievance or complaint.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of client bill of rights.** The OKDHS Client Bill of Rights poster, OKDHS Pub. No. 92-06, is posted in ~~predominate~~ conspicuous view of the public in all OKDHS

offices and facilities. Applicants and recipients of benefits and services administered by OKDHS have the right to:

(1) be treated with courtesy and dignity;

(2) receive prompt service;

(3) receive clear explanations of the laws and rules which determine eligibility for benefits and services;

(4) have benefits and services explained in native language, if not able to understand English;

(5) have benefits and services explained by an interpreter for the deaf, if unable to hear well;

(6) ~~to~~ have forms read and explained, if unable to read forms because of limited eyesight, or other inability to read;

(7) receive fair and consistent ~~considerations~~ consideration of any application for benefits or services;

(8) have the opportunity for an appeal and a fair hearing in case of denial or reduction of benefits or services;

(9) discuss with a local OKDHS supervisor any complaint regarding OKDHS benefits or services or treatment by OKDHS staff;

(10) contact the OKDHS Office of Client Advocacy (OCA) at ~~(~~1-800-522-8014,~~) on~~ regarding any complaint ~~which~~ that has been discussed with, but not resolved by, the local office supervisory staff; and

(11) receive, upon request, a further explanation of applicant or client rights.

(d) **Filing a grievance.** Recipients of benefits and services administered by OKDHS, and persons acting on behalf of recipients, have the right to talk with a local OKDHS supervisor if they have a complaint about the way they were treated by OKDHS staff. Supervisory staff promptly seek to resolve the matter with the client. Clients have the right to contact OCA, Attn. Grievance Coordinator, P.O. Box 25352, Oklahoma City, OK 73125 (1-405-525-4850 or 1-800-522-8014, fax 1-405-525-4855) regarding any complaint which has been discussed with, but not resolved by, the local office supervisory staff.

(e) **Allegations of discrimination.** If a grievance or complaint alleges discrimination based on sex, age, national origin, religion, color or disability, the client is referred to the OKDHS Office for Civil Rights for appropriate handling and resolution of the complaint. The local grievance coordinator immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(f) **Processing a grievance.** When a client contacts OCA for assistance in resolving a complaint, OCA contacts OKDHS supervisory staff who have the authority to resolve the grievance to request a response to the grievance within seven ~~working~~ business days.

(1) The advocate general may grant an extension for good cause, such as an unusually complex matter.

(2) If a complete response is not timely received by OCA, the grievance may be considered unresolved and processed as a contested grievance.

(3) After receiving a response to the grievance, OCA contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance. If the grievant is not satisfied with the outcome and requests to appeal the decision, the grievance is processed as a contested grievance. If OCA does not obtain a reply from the grievant within ten ~~working~~ business days of actual notice to the grievant of the proposed response, the grievance may be deemed resolved.

(g) **Contested grievances.** Contested grievances of clients are processed in accordance with OAC 340:2-3-46.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-61. Grievance and Abuse Review Committee (GARC)

(a) **Legal basis and authority.** The legal basis and authority for the rules in this Part are found in Section 7004-3.4 of Title 10 of the Oklahoma Statutes.

(b) **Definitions.** The definitions in OAC 340:2-3-2, 340:2-3-32, and 340:2-3-38 apply to this Part.

(c) **Purpose.** This Section establishes an administrative review committee to review:

(1) findings regarding allegations of abuse, neglect, verbal abuse, caretaker misconduct, and exploitation investigated by the Office of Client Advocacy (OCA) in accordance with OAC 340:2-3-32 through 340:2-3-37;

(2) findings regarding allegations of discrimination and retaliation brought by foster parents pursuant to Section 7204.1 of Title 10 of the Oklahoma Statutes and investigated by OCA in accordance with OAC 340:2-3-38;

(3) unresolved contested grievances of Oklahoma Department of Human Services (OKDHS) clients listed in OAC 340:2-3-45(a)(2) and processed in accordance with OAC 340:2-3-46 through 340:2-3-49 and 340:2-3-51 through 340:2-3-55;

(4) unresolved grievances of foster parents filed pursuant to Sections 7213 of Title 10 of the Oklahoma Statutes and processed in accordance with OAC 340:2-3-50; and

(5) an issue affecting the care and treatment of:

(A) a client in an OKDHS operated facility; or

(B) ~~an OKDHS custody~~ a minor in OKDHS custody placed in a private facility, a public facility not operated by OKDHS, or in a foster home.

(d) **GARC composition.**

(1) GARC is composed of at least three voting members appointed by the OKDHS Director. The OKDHS Director designates one member to serve as chair and appoints substitute members as needed.

(2) The advocate general is an ex officio member of GARC. The advocate general designates a member of his or her staff to attend GARC meetings in the advocate general's absence.

(e) **GARC responsibilities.** GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. At least three ~~working~~ business days before a meeting, the advocate general provides each GARC member

with materials relevant to matters to be considered at the meeting. GARC members review the agenda material prior to the GARC meeting.

(f) **GARC meetings.**

(1) The advocate general or designee coordinates GARC meetings. This includes:

(A) arranging the dates for GARC meetings;

(B) establishing the agenda for GARC meetings;

(C) ~~ten~~ eight calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the date of the GARC meeting;

(D) transmitting agenda material to GARC members three ~~working~~ business days prior to a meeting;

(E) recording the findings and recommendations of GARC;

(F) preparing GARC reports in consultation with GARC members;

(G) granting extensions of time for good cause shown; and

(H) distributing GARC reports.

(2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the purposes of the meeting.

(3) At the conclusion of the GARC meeting, the matter is taken under advisement and the GARC chair informs interested parties of the results by means of ~~its~~ GARC's written report.

340:2-3-62. Grievance and Abuse Review Committee(GARC) review of Office of Client Advocacy (OCA) investigation reports

(a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation with the exception of cases involving a community services worker ~~which~~ that are processed in accordance with OAC 340:100-3-39.

(b) **Requests for GARC review.** Requests for GARC review are ~~made~~ submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the reasons review is requested.

(1) With regard to investigations involving a facility operated by OJA or under contract with the Office of Juvenile Affairs (OJA), a request for GARC review may be made by the facility administrator, the OJA advocate general, or the executive director of OJA. If a request is made by a facility administrator, he or she sends a copy of the request to the executive director of OJA.

(2) With regard to investigations involving ~~DHS~~ Oklahoma Department of Human Services (OKDHS) operated facilities and facilities which contract with ~~DHS~~ OKDHS, a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the ~~DHS~~ OKDHS Director. If a request is made by a facility administrator, he or she sends a copy of the request to the applicable state office administrator.

(3) With regard to investigations involving a Hissom class member ~~which~~ that result in a not confirmed finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider ~~who~~ agency that employed the accused caretaker at the time of the incident(s) investigated, or by the ~~director of~~ Developmental Disabilities Services Division (DDSD) director or designee.

(4) With regard to investigations involving a facility operated by the Department of Rehabilitation Services (DRS), a request for GARC review can be made by the facility administrator or the DRS ~~Director~~ director.

(5) With regard to all other investigations conducted pursuant to OAC 340:2-3-32, a request is made by the facility administrator.

(6) The advocate general also can request GARC review.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.

(1) GARC does not consider prior unsubstantiated allegations.

(2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and their designees may attend ~~and participate in~~ the GARC meeting. The OCA investigator involved in a case being reviewed, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the chair of GARC.

(3) If an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five ~~working~~ business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general, or a state office administrator.

(d) **GARC report contents.** Within 15 ~~working~~ business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.

(2) If in GARC's opinion the evidence is sufficient to confirm maltreatment, the report specifies the maltreatment found to have occurred, the specific acts constituting the maltreatment, the dates and places the conduct occurred, the rules, policies, and statutes violated, and the nature of any injury to the alleged victim(s).

(3) GARC's recommendation as to any action needed to protect the victim and other clients.

(4) Areas of concern identified during GARC's review of the case regarding facility or ~~Department~~ OKDHS practices or procedures.

(e) **~~DHS~~ OKDHS Director's review.** The advocate general submits to the ~~DHS~~ OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 ~~working~~ business days of receipt of the GARC report, the ~~DHS~~ OKDHS Director decides whether to:

(A) adopt GARC's findings;

(B) adopt GARC's findings with modifications;

(C) return the matter to GARC for further consideration; or

(D) reverse GARC's finding.

(2) If the ~~DHS~~ OKDHS Director does not respond within 15 ~~working~~ business days of receipt of the GARC report, the GARC finding becomes final.

(3) OCA notifies in writing all interested parties of the result of the ~~DHS~~ OKDHS Director's review.

(f) **Routing ~~of~~ the results of the OKDHS Director's review.**

(1) In cases involving ~~DHS~~ OKDHS operated facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator of the facility and the appropriate state office administrator. Within two ~~working~~ business days of receipt of the OKDHS Director's decision, the administrator informs each accused employee of the result of the OKDHS Director's review.

(2) In cases involving private or ~~non-DHS~~ non-OKDHS operated public facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. ~~In the event~~ When the administrator ~~was~~ is named as an accused employee in the allegation, the GARC report and results of the OKDHS Director's review are sent to the chair of the facility's board of directors.

(g) **Response to results of the OKDHS Director's review.** After receipt of the results of the OKDHS Director's review of an OCA investigation involving ~~a Department~~ an OKDHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action in accordance with OAC 340:2-3-12. Within 30 calendar days of receipt of the results of the OKDHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.

340:2-3-63. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports regarding foster parent complaints

(a) **Application.** At the request of the Oklahoma Department of Human Services (OKDHS) Director, GARC reviews an OCA investigation report involving allegations of discrimination and retaliation investigated by OCA in accordance with OAC 340:2-3-38.

(b) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) investigated by OCA.

(1) Within three business days of receiving a request for GARC review from the OKDHS Director, the advocate general or designee informs the foster parent(s), the applicable state office administrators and the administrator of any affected child placing agency.

(2) GARC does not consider prior unsubstantiated allegations.

(~~2~~3) The foster parent, the applicable administrator, affected state office administrators, or their designees, may attend the GARC meeting. The level of participation of attendees is within the discretion of the chair of GARC.

(~~3~~4) If a foster parent or an administrator wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, additional evidence can be submitted to the advocate general no later than ~~seven working~~ eight business days before the GARC meeting.

(~~4~~5) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(c) **GARC report contents.** Within 15 ~~working~~ business days of a GARC meeting to review a case, GARC prepares a report ~~which~~ that includes:

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm retaliation or discrimination occurred and the basis for GARC's opinion;

(2) GARC's opinion whether the evidence is sufficient to confirm retaliation or discrimination, the report specifies whether retaliation, discrimination, or both occurred and the specific acts constituting the retaliation or discrimination; and

(3) areas of concern identified by GARC during its review of the case regarding practices or procedures of the child placing agency or OKDHS.

(d) **OKDHS Director's response.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 ~~working~~ business days of receipt of GARC's report, the OKDHS Director decides whether to:

(A) adopt GARC's findings;

(B) adopt GARC's findings with modifications;

(C) return the matter to GARC for further consideration; or

(D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 ~~working~~ business days of receipt of a GARC report, GARC's opinion with regard to the finding(s) becomes final.

(e) **Notification of final result.**

(1) The advocate general provides notice of the final result of the OKDHS Director's request for GARC review to affected state office administrators and the applicable foster parent(s).

(2) Within two ~~working~~ business days of receipt of this notification, a state office administrator responsible for an employee named in the allegation informs each such employee of the final result of GARC's review.

(3) Within 20 ~~working~~ business days of receipt of this notification in a report which confirms retaliation or discrimination, the state office administrator informs the advocate general in writing if any personnel action has or will be taken with regard to an employee, and of any corrective action taken or to be taken with regard to areas of concern noted in the GARC report.

340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances

(a) **Application.** GARC reviews unresolved contested grievances when the advocate general receives a proper request for GARC review in accordance with OAC 340:2-3-46(k).

(b) **The GARC worksheet.** If the grievance was filed by or on behalf of a Developmental Disabilities Services Division (DDSD) client who receives Office of Client Advocacy (OCA) ombuds services, including residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate prepares a GARC worksheet using a format prescribed by OCA which includes:

(1) the grievance number~~,~~ and the names of the resident, ~~the~~ grievant, ~~the~~ guardian, ~~the~~ parent(s), ~~the~~ case manager, and ~~the~~ OCA advocate;

(2) what efforts were made to resolve the problem by means of informal problem resolution;

(3) the applicable statutes, policies, and other authorities;

(4) the resolution sought by the grievant;

(5) relevant documentation;

(6) the OCA advocacy position with regard to the subject of the grievance; and

(7) a copy of Form OCA-GR-1, Grievance Form, and Form OCA-GR-1-A, Local Grievance Coordinator's Worksheet ~~are attached~~.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the grievance.

(1) Within three ~~working~~ business days of receiving a proper request for GARC review pursuant to OAC 340:2-3-46(k), the advocate general or designee informs the affected state office administrator and administrator of the date of the GARC meeting.

(2) The grievant, administrators, state office administrators, and their designees may attend the GARC meeting to answer questions. If a grievance involves a Hissom class member, the OCA programs administrator for the community ombuds program also attends.

(3) If the grievant wants to submit additional evidence not considered during the processing of the grievance, it is submitted to the advocate general contemporaneously with the request for GARC review. If the administrator or affected state office administrator wants to submit additional evidence not considered during the processing of the grievance, or when GARC review is the result of an untimely response in accordance with OAC 340:2-3-46(I), or for good cause shown, evidence can be submitted to the advocate general seven ~~working~~ business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a grievance until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(d) **GARC report contents.** Within 15 ~~working~~ business days of a GARC meeting to review an unresolved grievance, GARC prepares a report ~~to the Oklahoma Department of Human Services (OKDHS) Director which~~ that includes:

(1) the subject matter of the grievance and identifying information about the grievant, the administrator, and the state office administrator;

(2) the procedural history of the grievance, identifying proposed resolutions and responses at each step in the grievance process prior to the GARC review;

(3) the resolution sought by the grievant and the resolution proposed by the state office administrator;

(4) GARC's recommended resolution of the grievance;

(5) the facts on which GARC bases its recommendation;

(6) the information GARC considered in making its recommendation; and

(7) areas of concern identified by GARC during its review of the case regarding facility or OKDHS practices or procedures.

(e) **Distribution of GARC report.** The advocate general forwards GARC's report to the applicable local grievance coordinator (LGC). Within two ~~working~~ business days of receipt of GARC's report, the LGC contacts the grievant to inform the grievant of GARC's recommended resolution, and determines if the grievant is satisfied with it.

(1) If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two ~~working~~ business days within which to make a decision. If no decision is communicated to the LGC within two ~~working~~ business days, the grievant is deemed to have accepted the proposed resolution.

(2) If the grievant is satisfied, the LGC notifies the advocate general, and the advocate general then notifies interested parties. An affected state office administrator has three business days from receipt of this notification to submit to the advocate general a written request for review by the Oklahoma Department of Human Services (OKDHS) Director.

(3) If the grievant is not satisfied with GARC's recommended resolution and desires to contest it, the LGC notifies the advocate general within four ~~working~~ business

days of receipt of the GARC report. The advocate general ~~processes~~ transmits the request and GARC's report for review by the OKDHS Director.

(f) **OKDHS Director's review of a GARC recommendation.** Upon receipt by the advocate general of a proper and timely written request for review by the OKDHS Director, pursuant subsection (e) of this Section, the advocate general or designee transmits the request and the GARC report to the OKDHS Director.

(1) Within 15 ~~working~~ business days of receipt of GARC's report, the OKDHS Director decides whether to:

(A) adopt GARC's recommended resolution;

(B) adopt GARC's recommendation with modifications;

(C) return the matter to GARC for further consideration; or

(D) direct another resolution of the grievance.

(2) If the OKDHS Director does not respond within 15 ~~working~~ business days, the grievance is deemed resolved in accordance with GARC's recommended resolution.

(3) The advocate general notifies the grievant and other interested parties of the result of the OKDHS Director's review. The grievant is informed that this concludes the grievant's administrative remedies. If the grievant is a minor, a copy of the grievance and related materials are forwarded to the Office of Juvenile Systems Oversight in the Oklahoma Commission for Children and Youth.

(g) **Monitoring of resolution.** If the final resolution of the grievance involves an action to be taken by an OKDHS employee at a future date, the advocate general or designee identifies the target date and monitors compliance with that deadline. In the event of non-compliance, the advocate general notifies the OKDHS Director in writing.

340:2-3-65. Grievance and Abuse Review Committee (GARC) review of care and treatment of clients

(a) The advocate general convenes a meeting of GARC at the request of the ~~DHS~~ Oklahoma Department of Human Services (OKDHS) Director, ~~a DHS~~ an OKDHS ~~associate director~~ chief, or ~~a DHS~~ an OKDHS division director to review and make recommendations with respect to any issue affecting the care and treatment of:

(1) a client in ~~a Department~~ an OKDHS operated facility; or

(2) a ~~DHS custody~~ minor in OKDHS custody placed in a private facility, a public facility not operated by ~~the Department~~ OKDHS, or in a foster home.

(b) Issues affecting the care and treatment of clients and ~~DHS custody~~ minors in OKDHS custody include:

(1) ~~Department~~ OKDHS policy, programs, or practices; and

(2) employee actions which may affect care and treatment.

(c) At least seven ~~working~~ business days prior to the GARC meeting, the person requesting the meeting and any interested party submit to the advocate general documentary information to be considered during GARC's review.

(d) At least seven ~~working~~ business days before the GARC meeting, the person requesting the meeting and any interested party informs the advocate general who will attend the meeting to provide information.

(e) The advocate general or the GARC chair can request the attendance of any ~~Department~~ OKDHS employee considered to have knowledge pertinent to the subject matter of the review.

(f) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a grievance until its next meeting. GARC may request additional information from the Office of Client Advocacy, an administrator, or a state office administrator.

(g) Within 15 ~~working~~ business days of a GARC meeting, GARC issues a report summarizing the issue(s) presented for review and ~~its~~ GARC's recommendations. The advocate general submits the report to the person requesting the review and copies the ~~DHS~~ OKDHS Director.

PART 9. OMBUDSMAN PROGRAMS

340:2-3-73. Advocacy services for former residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes advocacy services the Office of Client Advocacy (OCA) provides to former residents of SORC, NORCE, and Greer ("the facilities") for whom the facility director is the guardian ad litem (GAL). Oklahoma Department of Human Services (OKDHS) has conferred on OCA responsibilities for each of these individuals until the court relieves the facility director of GAL responsibilities. Ombudsman and advocacy services are provided to former residents of the facilities consistent with Section 71 of this Subchapter.

(b) **Representation.** ~~Each~~ A person eligible for OCA services pursuant to this Section is assigned to an OCA advocate to represent the client's interests when OCA has adequate staff resources to provide such services. An advocate is assigned 30 calendar days prior to the date identified to transition the client. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee.

(c) **Team membership.** As a representative of a Developmental Disabilities Services Division (DDSD) client living in a community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's DDSD case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures a client has a current guardianship assessment and attends

guardianship assessment meetings. If a client has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment or limit it, as the case may be. If the current guardianship assessment for the client recommends a guardian, volunteer advocate, or both, the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. An advocate encourages the development of friends in the community who might become a guardian or advocate for the client. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment and to appoint a guardian.

(e) **Advocacy and monitoring.** OCA advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of clients. In addition to the services described in Section 71(h) of this Subchapter, advocacy and monitoring activities on behalf of each client include:

(1) verifying ~~a~~ Form DDS-34, Residential ~~Pre-service~~ Pre-Service Checklist, has been completed and everything on the ~~list~~ checklist is in place prior to the resident moving out of the facility;

(2) a home visit with the client within 30 calendar days of the client's discharge from the facility;

(3) verifying ~~a~~ Form DDS-34 has been completed prior to any subsequent changes in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;

(4) a face-to-face visit with the client at least quarterly and more frequently as indicated, which includes:

(A) site visits to a client's residence at least twice a year, every five to seven months, at a time when the client is present in the home; and

(B) visits with the client outside the home setting at least twice a year, every five to seven months;

(5) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;

(6) completion of a service review twice a year, every five to seven months;

(7) in connection with each service review, verifying that direct contact staff have completed required training;

(8) participating as a member of a resident's personal support team;

(9) attending annual individual plan (IP) meetings, interim meetings, and follow-up planning meetings;

(10) attending emergency team meetings;

(11) attending other team meetings when significant issues are being addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or to be recommended;

(12) attending guardianship assessment meetings of the client's team;

(13) attending other team meetings at the request of the client, guardian, or involved family or friend;

(14) requesting DDSD Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;

(15) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;

(16) review of documents, including but not limited to: assessments, IP and interim IP documents; incident reports; Adult Protective Services (APS) and OCA investigation findings; and behavior data collection forms;

(17) attending Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;

(18) attending Death Review meetings held pursuant to OAC 340:100-3-35;

(19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;

(20) monitoring semi-annually the hot water in homes where anti-scald devices have been installed, using a thermometer to ensure the water at the faucet where the device is located does not exceed 114 degrees and does not exceed 120 degrees when a tank device is used; and

(21) at least twice a year, every five to seven months, verifying that appropriate records are kept with regard to an individual's personal finances.

[OAR Docket #04-953; filed 5-18-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #04-952]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Finance
Part 8. General Provisions
340:2-11-98 through 340:2-11-99 [AMENDED]
(Reference APA WF # 04-04)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 250 et seq. of Title 75 of the Oklahoma Statutes.
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n/a
ANALYSIS:
Finance Division rules are revised to clarify the current responsibilities of the Finance Information Systems Unit (FISU) and remove language that is obsolete.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004:

SUBCHAPTER 11. FINANCE

PART 8. GENERAL PROVISIONS

340:2-11-98. ~~Data processing~~ Information systems

(a) The Finance Information Systems Unit (FISU) is responsible for providing ~~data processing support to~~ information technology services for the Finance Division and fiscal information for the Oklahoma Department of Human Services (OKDHS) ~~Office of Finance~~. ~~This includes all financial activities and related systems.~~ These responsibilities include the:

(1) development and support of:
- (A) claims processing;
- (B) fiscal accounting;
- (C) revenue tracking;
- (D) cost allocating;
- (E) budget controlling; and
- (F) time and leave accounting; and

(2) support of information technology needs associated with:
- (A) OKDHS purchases;
- (B) consumable supply inventory;
- (C) fixed asset management; and
- (D) construction project tracking.

(b) All data residing on the Finance Division AS400 computer system, with the exception of client specific records, is public information. [51 O.S. § 24A.1 et seq. and OAC 340:25-5-66] All OKDHS employees are responsible for protecting the integrity and security of data.

~~(1) **Data Center.** The Data Center has five primary sections and functions.~~

~~(A) **Operations.** Operations is responsible for providing computer support to users 24 hours per day - seven days per week. This includes scheduling jobs and shift personnel, establishment of job priorities, coordination with users, monitoring equipment condition and scheduling preventive maintenance.~~

~~(B) **Network Support.** The Network Support Section is responsible for providing work station and printer support to local and remote users. This includes coordinating hours of operation, providing technical assistance to users with problems, installing communication equipment (lines, controllers, terminals and printers), security and system authorizations.~~

~~(C) **Training.** The Training Unit is responsible for training users on the various types of equipment and how it is used with the various systems.~~

~~(D) **Systems Programming.** The Systems Programming Section provides system software support. This includes coordination with hardware/software vendors, capacity planning, installing system software, applying software patches to the system, monitoring computer performance, and making parameter adjustments to the system to ensure a balanced system between hardware, software and user activity.~~

~~(E) **PC Support.** PC Support provides personal computer support to users. This includes the following:~~

~~(i) Determining the needs of users;~~

~~(ii) Procuring the proper PC hardware and software for each user;~~

~~(iii) Installing the PC and its software;~~

~~(iv) Installing communication software and connecting it to communication network(s); and~~

~~(v) Trouble shooting problems and repairing broken equipment.~~

~~(2) **Application Development and Programming.** The Application Development and Programming Unit is responsible for all system design and computer programming.~~

~~(A) **Major components.**~~

~~(i) **Applications programming.** The Applications Programming Unit is responsible for the development and maintenance of all on-going systems. This includes following the activities of all systems after implementation to keep them current with user needs.~~

~~(ii) **Special projects.** The Special Projects Unit is responsible for the development and implementation of all special "one time" projects.~~

~~(B) **Major functions.**~~

~~(i) Coordinating with Office of Finance personnel and data processing personnel of other divisions and agencies to determine state and federal requirements;~~

~~(ii) Developing plans to meet those requirements;~~

~~(iii) Designing systems that are compatible with other data processing functions; and~~

~~(iv) Over seeing and monitoring system activities to ensure continuity.~~

~~(3) **Major systems supported by Finance Information Systems Unit.** The following major systems are supported by the Finance Information Systems Unit.~~

~~(A) **Administrative Claims Processing.**~~

~~(i) Travel claims.~~

~~(ii) Administrative claims.~~

~~(iii) Standard payments (monthly contract payments).~~

~~(B) **Client Services Claims Processing.**~~

~~(i) Day Care.~~

~~(ii) Foster Care~~

~~(iii) Home Maintenance Aide.~~

~~(iv) AFDC Training Expense (CWEP).~~

~~(v) Remedial Education.~~

~~(vi) Area-wide Aging Agencies.~~

~~(C) **Trust Accounts.**~~

~~(i) Client Banking.~~

~~(ii) Direct Deposit.~~

~~(iii) Demand Statements.~~

~~(iv) Interest Payments.~~

~~(D) **Revenue Systems.**~~

~~(i) Overpayment Accounting.~~

~~(ii) Donation System.~~

~~(iii) Revenue Processing System.~~

~~(E) **Rates and Standards.**~~

~~(i) Hospitals.~~

~~(ii) Nursing Homes.~~

~~(F) **Cost Allocation Systems.**~~

~~(i) County Sampling.~~

~~(ii) Federal Reporting.~~

~~(G) **Budget (non-personnel).**~~

~~(i) Budget Requests.~~

~~(ii) Purchase Authorizations.~~

~~(iii) Budget Monitoring.~~

~~(H) **Consumable Supply Inventory.**~~

~~(i) Automated Requisition/Receiving/Issuing documents.~~

~~(ii) Minimum Stock Reports.~~

~~(iii) Cost Reports by location.~~

~~(I) **Purchasing System.**~~

~~(i) Purchase Order/Contract System.~~

~~(ii) Automated Purchase Requisitions.~~

~~(iii) Commodity Code System.~~

~~(iv) Tracking of Purchases.~~

~~(4) **Obtaining data processing services.** Requests for data processing services are obtained by completing a "FISU Request Form". Completion of the form is a prerequisite to the initiation of all data processing services. The form may be obtained from the FISU Operations Unit. Upon receipt of the form, the request is evaluated and assigned a priority. The user is then informed as to the expected completion date.~~

~~(5) **User authorizations.**~~

~~(A) **FISU computer.** Authorization to have access to the systems available on the FISU computer are obtained by completing a User Request Form. This form is available in the FISU Operations Unit. Upon completion, the form is signed by the user and supervisor. It is then forwarded to the Operations Unit, FISU, Office of Finance, Sequoyah Building, Room 412. Upon receipt of the completed form, Operations Unit personnel will prepare a menu tailored to the user's needs. A "User ID" will be provided with instructions on the usage of the system.~~

~~(B) **DSD Computer.** Users needing access to the FISU computer via Host Command Facility (HCF) must also obtain a "User ID" from the Data Services Division (DSD). This is necessary as both computers share the same communication lines and a "pass through" authorization is required. Forms for DSD mainframe computer authorization are obtained from DSD. The procedure for passing through the DSD computer is:~~

~~(i) Sign on the DSD computer and a menu will be provided. One of the menu options is "HCF Finance".~~

~~(ii) Select the "HCF Finance" menu option to receive the FISU "sign on" logo. Access to the FISU computer is now complete.~~

340:2-11-99. Finance Information Systems Unit Disaster Recovery Plan

(a) **Purpose.** The purpose of the Finance Information Systems Unit (FISU) Disaster Recovery Plan is to ensure an orderly plan for continuing ~~operations~~ operation of the Finance Division AS400 computer system in the event of a major disaster. Emphasis is placed on ~~three phases of recovery~~:

(1) ~~System~~ system backup and recovery of data;

(2) ~~The~~ establishment of a temporary data processing center for emergency operation; ~~and~~

(3) ~~Repair/procurement~~ repair or procurement of new equipment; and

(4) re-establishment of a permanent data processing site.

(b) **Scope.** For planning purposes, ~~the worst situation (~~complete destruction of ~~everything on site) will be~~ the Finance Division AS400 computer system is considered. Anything less than complete destruction ~~will require~~ requires implementation of only that portion of the ~~plan~~ Disaster Recovery Plan that is necessary to return to operation.

(c) ~~**Assumptions**~~ **Disaster Recovery Plan.** The Disaster Recovery Plan manual is maintained in FISU and a copy is kept in a secured site away from the Sequoyah Building.

~~(1) Data processing functions on the Department of Human Services Office of Finance computer are administrative in nature and do not present a life threatening situation. Therefore, it is not necessary to provide a duplicate on-going site for daily operation.~~

~~(2) Data stored on the computer is extremely important and it is essential that all data be restored to its original state within a reasonable time frame.~~

~~(3) There is an abundant supply of new/used equipment that can be acquired and on-site within five working days.~~

~~(4) A functional data processing site can be rebuilt or relocated within ten working days as the AS400 does not require a special environment.~~

~~(5) The operating system, database, and the application programs can be restored from off-site back-up tapes within four working days. This final step would restore the complete system to operational status within 14 working days.~~

~~(6) Emergency functions, such as processing of warrants, that can not wait for restoration of the complete system will be processed on the computer located in the Data Services Division. Limited processing could be established in four working days.~~

~~(d) **Recall procedure.** In the event of a disaster the first thing to be implemented will be the recall procedure to ensure that all possible resources are available to assess the damage. The sequence for telephone recall and persons affected is maintained and coordinated by the Finance Information Systems Unit Manager. Each person is responsible for calling specified personnel. Should someone fail to answer, the caller completes the calls for the person not responding. All personnel will be instructed to report to respective work locations within one hour.~~

~~(e) **System backup.** The most important step toward recovery from a disaster is to maintain a current backup of the system.~~

~~(1) **Old history records.** Files maintained in old history records are normally stored on tape and filed by the fiscal year. It is essential that these records be maintained in storage for a number of years.~~

~~(A) Normally it is not necessary to ever destroy this data because it requires very little storage space. Care is taken to ensure they are stored in a proper environment for longevity of tapes. The tapes are copied to new tapes every two years to insure readability.~~

~~(B) At least two copies of each history tape is maintained. It is very important, for disaster recovery purposes, that one copy be stored in a safe place in a different location to preclude destruction of both copies. These duplicate copies are stored in room B-3 of the Will Rogers Building.~~

~~(2) **Current records and recent history.** Current and recent history records are still "on-line" and have a propensity for change. It is especially important to have a backup each day of these records to recover in case of a major or minor system problem. This particular type of "system save" is performed each work day and the same rules apply as in the old history files. A duplicate copy is kept "off site" to assure recovery in the event of a disaster. This type of system back-up is more time consuming because it requires capturing the revolving system each day. Established procedures provide back-up security for any situation.~~

~~(A) Save the entire system to tape each week.~~

~~(B) Save daily changes to tape each day.~~

~~(C) Deliver the current weekly "system save" to room B-3 of the Will Rogers Building replacing the older version of the back-up.~~

~~(D) All backups/saves (weekly and daily) are kept for a minimum of 120 days. This provides a double backup in the event of a "tape read" problem.~~

~~(f) **Off-site storage.** Room B-3 of the Will Rogers Building is the designated location to store a copy of the system back-up. This area has been selected because it is remote from the Finance Information Systems Unit computer area. It is also underground and not likely to share in any disaster that may occur in the Sequoyah Building. Additionally, the environment (temperature, humidity, etc.) is ideal for magnetic tape preservation.~~

~~(g) **Site relocation.**~~

~~(1) Shortly after recall, in the event of a disaster, key personnel will be called together to assess and report the damage, and a decision will be made as to what needs to be done. The worst situation would be a complete destruction of the facility which will require relocation to a new site.~~

~~(2) Site requirements are minimal and a location will be found easily. Most any secure building area with 1,000 square feet of storage space will be adequate. The only requirements are the ability to have standard 100 and 220 volts of electric power and telephone capability. Air conditioning will be nice, but not necessary. Certain actions are necessary, assuming complete destruction:~~

~~(A) Make an emergency purchase of used equipment compatible with the original equipment. This is available from many data processing equipment vendors;~~

~~(B) Select a new location;~~

~~(C) Ship the equipment to the new location;~~

~~(D) Prepare the location with electricity and telephone lines to the Data Services Division, Southern Oklahoma Resource Center of Pauls Valley, Hissom Memorial Center, Oklahoma Medical Center, and the State Office Warehouse while the equipment is being shipped;~~

~~(E) Install equipment;~~

~~(F) Load backup system from tapes in the off-site location;~~

~~(G) Resume service.~~

~~(h) **Emergency processing.** Assuming complete destruction, the only essential data processing needs prior to rebuilding a new installation is the printing of daily warrants. This will be performed at the Data Services Division. The procedure will be to input the required information into a Time Sharing Operation data set in the same format as existing records. The check records will then be batch processed through their existing warrant writing module. History records will then be saved to update the Finance Information Systems Unit computer when it becomes operational. The data can be entered via any terminal connected to the DSD mainframe computer.~~

[OAR Docket #04-952; filed 5-18-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 15. ~~PUBLIC ASSISTANCE~~ STATE SUPPLEMENTAL PAYMENT

[OAR Docket #04-954]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
340:15-1-1 through 340:15-1-7 [AMENDED]
(Reference APA WF # 04-03)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Title 56, Oklahoma Statutes, Section 161 et seq.
DATES:
Comment period:
February 17, 2004 through March 18, 2004
Public hearing:
None requested.
Adoption:
March 23, 2004
Submitted to Governor:
March 23, 2004
Submitted to House:
March 23, 2004
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March 23, 2004
Gubernatorial approval:
May 5, 2004
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 14, 2004.
Final adoption:
May 14, 2004
Effective:
July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of the proposed rules is to remove and/or replace language that is no longer appropriate in the State Supplemental Payment Program (SSP).
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004:

340:15-1-1. Purpose

The purpose of this Chapter is to describe the ~~Department's programs~~ Oklahoma Department of Human Services (OKDHS) program for assistance to the aged, blind, and disabled.

340:15-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following ~~meaning~~ meanings, unless the context clearly indicates otherwise. ~~(Refer to DHS Appendix C-1, Schedule VIII.A., for the State Supplemental Payment (SSP/Categorically Needy Standards for Eligible Individual, Eligible Individual with Essential or Ineligible Spouse and Eligible Couple.)~~

"Countable ~~Income~~ income" means the total unearned income plus the net earned income. The net earned income is gross earned minus $20 general income exclusion, minus $65 work exclusion, minus ~~onehalf~~ one half of the remainder. For additional exemptions for ~~blind~~ individuals who are blind, refer to OAC ~~340:35~~ 317:35.

"Disabled individual" means a person who meets the same definition that the Social Security Administration uses in determining eligibility for disability benefits.

"Earned income" means income in cash earned by an individual through the receipt of wages, salary, commission, or profit from activities in which he or she is engaged as a self-employed individual or as an employee.

"Eligible ~~Couple~~ couple" means a husband and wife who are both aged, blind, or disabled and meet the income and resource standard for a money payment. ~~The SSP payment is computed by deducting the combined total countable income from the SSP/Categorically Needy Standard for Eligible Couple. The SSP payment for each is one-half of the remainder, subject to the maximum payment shown on DHS Appendix C-1, Schedule VIII.A., for each eligible individual.~~

"Eligible ~~Individual~~ individual" means a person who is single aged, blind, or disabled ~~person who~~ and meets the income and resource standard for a money payment. ~~Eligibility is determined by deducting the total countable income from the SSP/Categorically Needy Standard for an Eligible Individual, subject to the maximum payment shown on DHS Appendix C-1, Schedule VIII.A for the individual.~~

~~**"Eligible Individual with Essential or Ineligible Spouse"** means an individual who is aged, blind or disabled and has a spouse who does not meet these requirements. Eligibility is determined by:~~

~~(A)~~ **"Eligible ~~Individual~~ individual with ~~Essential Spouse~~ essential spouse"** ~~deducting~~ means an eligible individual has a spouse who is not aged, blind, or disabled but has been continuously included in the case since prior to 1974. The couple must also meet the resource standard ~~the total countable income of the eligible individual and essential spouse from the "SSP/Categorically Needy Standard for the Eligible Individual with Essential or Ineligible Spouse". If the amount is equal to or greater than the SSP/Categorically Needy Standard, the application is denied or the case is closed~~.

~~(B)~~ **"Eligible ~~Individual~~ individual with ~~Ineligible Spouse~~ ineligible spouse"** ~~deducting~~ means an eligible individual has a spouse who is not aged, blind, or disabled and does not meet the definition of an essential spouse. The couple must also meet the resource standard. ~~the total countable income of the eligible individual from the "SSP/Categorically Needy Standard for the Eligible Individual". If the amount is equal to or greater than the SSP/Categorically Needy Standard, the application is denied or the case is closed. If the amount is less than the "SSP/Categorically Needy Standard for the Eligible~~

~~Individual", total countable income of the individual and the ineligible spouse is deducted from the "SSP/Categorically Needy Standard for Eligible Individual with Essential or Ineligible Spouse" to compute the payment, subject to the maximum payment shown on DHS Appendix C-1, Schedule VIII.A. If the amount is equal to or greater than the SSP/Categorically Needy Standard the application is denied or the case is closed. If the amount is less than the standard, the total countable income of the eligible individual and essential spouse is deducted from the eligible individual with essential or ineligible spouse standard to compute the payment amount, subject to the maximum payment shown on DHS Appendix C-1, Schedule VIII,A. Use the one person standard for the Eligible Individual when the ineligible spouse is included in an AFDC case.~~

~~(C)~~ **"Eligible ~~Individual~~ individual with ~~Ineligible Spouse~~ ineligible spouse and ~~Dependent Children~~ dependent child"** means a couple who meets the definition of eligible individual and ineligible spouse have a child younger than 18 of the proper degree of relationship residing in the home full-time.

~~(i) If the ineligible spouse and dependent children are included in an AFDC payment, their income is considered on the AFDC case and none is deemed to the eligible individual.~~

~~(ii) If the ineligible spouse's needs are not included in the AFDC case for the children, the portion of the ineligible spouses income that is considered in determining the grant for the children is not considered in the SSP case.~~

~~(iii) If the dependent children are not receiving AFDC, the child(ren)'s allocation, (minus the child(ren)'s income), is deducted from the ineligible spouse's income to determine the amount to be considered on the SSP case. See DHS OKDHS Appendix C-1, Schedule VIII.C, for child(ren) allocation.~~

~~(iv) Income of a child is never deemed to the adult.~~

"Minor ~~Blind~~ blind or ~~Disabled Individual~~ disabled individual" means a ~~minor~~ child ~~under~~ younger than 18 who is blind or disabled and meets the income and resource standard for a money payment. ~~The SSP payment is computed by adding the child's own income to the amount deemed from the parents according to Form M-87-B, Deeming Worksheet.~~

340:15-1-3. Legal ~~base~~ basis for State Supplemental ~~Payments for Aged, Blind and Disabled~~ Payment Program

The ~~State~~ legal ~~base~~ basis for the program is vested in Article XXV of the Constitution of the State of Oklahoma, Title 56, Oklahoma Statutes Sections 161 et seq. ~~to 319, inclusive, as amended, and opinions of the State Attorney General under dates of September 11, 1957, and October 18, 1960.~~

340:15-1-4. State Supplemental Payment plan

The State Supplemental Payment (SSP) plan for the ~~Aged, Blind~~ aged, blind, and ~~Disabled~~ disabled encompasses the ~~following~~ requirements~~:~~ listed in (1) through (11) of this subsection.

(1) **State-wide ~~Operation~~ operation.** The plan is in effect in all counties of ~~the State~~ Oklahoma as a ~~State administered~~ state-administered program.

(2) **Financing.** The State of Oklahoma provides all the money for financing the ~~State Supplemental Payments~~ SSP Program.

(3) **Single ~~State Agency~~ state agency.** The ~~State Supplemental Payment program~~ SSP Program is administered by the Oklahoma Department of Human Services (OKDHS) with an office in each county in the ~~State~~ state, operating under rules and regulations adopted by the Oklahoma Commission for Human Services (Commission).

(4) **Fair hearings.** Any individual whose application is denied or is not acted upon with reasonable promptness, or who is dissatisfied with the amount of his or her payment or with any other action taken in regard to his or her payment, is provided an opportunity for a fair hearing ~~before the State agency~~.

(5) **Proper and efficient administration.** ~~The Department of Human Services~~ OKDHS operates under the State Merit System which establishes and maintains personnel standards on a merit basis for certain ~~State~~ state agencies, including ~~the State Department of Human Services~~ OKDHS. Employees of ~~the Department~~ OKDHS engaged in the administration of the Combined State Plan are covered by the Merit System.

~~(6) **Reports as required.** The Division of Research and Statistics has been established by the Department of Human Services to assist in fulfilling the requirements of State laws in making necessary reports and to furnish the Department with data necessary for and valuable to the operation of its programs.~~

(~~7~~6) **Safeguarding of information.** State laws and the rules and regulations adopted by the ~~Oklahoma~~ Commission ~~for Human Services~~ restrict the use of or disclosure of information concerning SSP applicants ~~for, or~~ and recipients ~~of, State Supplemental Payments to the Aged, Blind or Disabled~~ to purposes directly connected with the administration of ~~these programs~~ this program.

(~~8~~7) **Right to apply.** A person has the right to make application for any category of assistance he or she chooses, to expect an investigation of eligibility, and to expect a reasonably prompt decision ~~by the Department~~ in regard to his or her application.

(~~9~~8) **Assistance under only one program.** An eligible person can have his or her needs included in only one ~~State Supplemental Payment~~ SSP or ~~AFDC payment~~ Temporary Assistance for Needy Families (TANF) benefit.

(~~10~~9) **Standards for determining eligibility and amount of payment.** Uniform policies ~~and procedures~~ for determination of eligibility and the amount of payment are provided in OAC 340 Chapters 15 and 65 and ~~DHS~~

OKDHS Appendix C-1, Maximum Income, Resource and Payment Standards.

(A) ~~State Supplemental Payment (~~SSP~~)~~ standards are based on the mandatory "Pass-Along Provision" of Section 1618 of the Social Security Act which requires states to pass along ~~Cost~~ cost of ~~Living~~ living adjustments (~~COLAs~~ COLA) ~~increases~~ in Supplemental Security Income (SSI) benefits. The ~~Oklahoma~~ Commission ~~for Human Services~~ approves adjustments in individual payments to maintain total expenditures for SSP in a calendar year at the same level as the total expenditures for SSP in the previous year. ~~The current maximum State Supplemental Payment is $53.~~

(B) Maximum income and resource standards for ~~categorically needy~~ individuals who are aged, blind, or disabled are based on the ~~Federal Benefit Rates~~ federal benefit rates (FBR) ~~found in Volume 60, No. 27 of the Federal Register, February 9, 1995, and~~ shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII.

(i) Countable income for ~~State Supplemental Payments~~ SSP must be less than 100% of the FBR plus the maximum SSP amount.

(ii) Countable income for individuals approved for care and living in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR), including non-eligible SSP individuals who receive Home and Community-Based Waiver Services for the Mentally Retarded Program or patients 65 and older in a mental hospital must be equal to or less than 300% of the FBR.

(iii) Countable ~~Income~~ income for deeming income to ~~blind or disabled~~ a minor ~~children~~ child who is blind or disabled must be less than 100% of the FBR.

(iv) Maximum resources must be equal to or less than 100% of the SSI resource standards.

(~~11~~10) **Income and resources.** ~~The Department of Human Services~~ OKDHS, in determining need for ~~the~~ an aged, blind, or disabled individual, takes into consideration any available income and ~~capital~~ resources of ~~an~~ the individual ~~claiming such aid~~, except the income and resources required to be disregarded by ~~State~~ state law or by ~~regulations of the Department~~ OKDHS policy.

(~~12~~11) **Civil rights.** The ~~State Supplemental Payments for Aged, Blind or disabled programs are~~ SSP Program is administered in accordance with the provisions of Title VI of the Civil Rights Act.

340:15-1-5. State Supplemental ~~Payments~~ Payment

(a) **Eligibility for payment.** An individual is eligible for a State Supplemental Payment (SSP) if ~~he/she~~ he or she would be eligible for Supplemental Security Income (SSI) ~~by virtue~~ because of age or disability and;

(1) is not a resident of a public facility operated by an entity of government, ~~(~~such as any correctional, mental health, nursing care, or juvenile facility ~~operated by an entity of government)~~;

(2) is not a long term, ~~(~~over 30 days~~)~~, patient in a psychiatric facility or a psychiatric unit of an acute care hospital;

(3) has countable income, ~~includes~~ including SSI, that is less than the SSP ~~Need Standard~~ need standard on ~~DHS~~ Oklahoma Department of Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.A.;

(4) was and remains approved for care in a licensed Title XIX nursing care facility since December, 1973 and ~~therefore~~ retains eligibility for a mandatory ~~supplemental payment~~ SSP. See ~~DHS~~ OKDHS Appendix C-1, Schedule VIII.B., for the mandatory supplement standard;

(5) is not a child in ~~DHS~~ OKDHS custody for whom out-of-home care is paid by ~~DHS~~ OKDHS;

(6) is a resident in the ~~State's~~ Oklahoma School for the Blind or the Oklahoma School for the Deaf and meets all other eligibility requirements;

(7) ~~for those individuals who are~~ is ineligible for SSI based on income; but ~~whose~~ has income ~~is~~ less than the SSP maximum, ~~categorical relationship~~ and meets all other conditions of eligibility ~~are established~~; or

(8) takes all appropriate steps to obtain other benefits within 30 days after he or she has been notified of his or her potential eligibility.

(b) **Amount of payment.** The amount of ~~payment~~ SSP is based upon the amount of income the individual(s) ~~receive~~ receives. ~~However, the~~ The maximum payment cannot exceed the maximum payment shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII.A. for an individual. Payment can be authorized retroactively based on appeal or to correct an administrative error. ~~It~~ Payment cannot be authorized retroactively based on client failure to timely report information affecting eligibility.

(1) **Eligible couple.** Income eligibility is determined by comparing the total countable income of the couple with the SSP standard for an eligible couple.

(A) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.

(B) If the amount of countable income is less than the standard, the total countable income of the couple is deducted from the standard to compute the payment amount. The SSP for each member of the couple is one-half of the remainder. If the SSP cannot be divided equally so that each member of the couple receives the same amount, one member of the couple receives a higher SSP, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.

(2) **Eligible individual.** Income eligibility is determined by comparing the total countable income of the individual with the SSP standard for an eligible individual.

(A) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.

(B) If the amount of countable income is less than the standard, the total countable income of the individual is deducted from the standard to compute the payment amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.

(3) **Eligible individual with essential spouse.** Income eligibility is determined by comparing the total countable income of the individual and spouse with the SSP standard for the eligible individual with essential or ineligible spouse.

(A) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.

(B) If the amount of countable income is less than the standard, the total countable income of the individual and spouse is deducted from the standard to compute the payment amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.

(4) **Eligible individual with ineligible spouse.** Income eligibility is determined by comparing the total countable income of the individual with the SSP standard for the eligible individual.

(A) If the amount of countable income is equal to or greater than the SSP standard for the eligible individual, the application is denied or the case is closed.

(B) If the amount of countable income is less than the SSP standard for the individual, the total countable income of the individual and the spouse is compared with the SSP standard for an eligible individual with essential or ineligible spouse.

(i) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.

(ii) If the amount of countable income is less than the standard, the total countable income of the individual and spouse is deducted from the SSP standard for an eligible individual with essential or ineligible spouse to compute the payment amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A. Use the standard for the eligible individual when the ineligible spouse is included in a Temporary Assistance for Needy Families (TANF) benefit.

(5) **Eligible individual with ineligible spouse and dependent child.** Income eligibility is determined by comparing the total countable income of the individual with the SSP standard for the eligible individual.

(A) If the individual's countable income is equal to or greater than the standard, the application is denied or the case is closed.

(B) If the individual's countable income is less than the SSP standard for an eligible individual, the spouse's countable income is determined by following (i) through (iv) of this paragraph.

(i) If the spouse and dependent child are included in a TANF benefit, their income is considered on the TANF case and none is deemed to the eligible individual. The total countable income of the individual is deducted from the standard to compute the SSP amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.

(ii) If the spouse's needs are not included in the TANF case for the child, the portion of the spouse's income that is considered in determining the benefit for the child is not considered in the SSP case.

(iii) If the dependent child is not receiving TANF, the child's allocation, minus the child's income, is deducted from the spouse's income to determine the amount to be considered on the SSP case. See OKDHS Appendix C-1, Schedule VIII.C for the child's allocation.

(iv) Income of a child is never deemed to the adult.

(C) The total countable income of the individual and the spouse is compared with the SSP standard for an eligible individual with an essential or ineligible spouse.

(i) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.

(ii) If the amount of countable income is less than the standard, the countable income is deducted from the standard to compute the payment amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.

(6) **Minor who is blind or disabled.** Income eligibility is determined by adding the child's own income to the amount deemed from the parents and comparing the total to the SSP standard for an eligible individual.

(A) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.

(B) If the amount of countable income is less than the standard, the total countable income is deducted from the standard to compute the payment amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.

(c) **Concurrent receipt of more than one form of payment.** No person who is included in a ~~State Supplemental Payment~~ SSP may be included for the same period in another ~~State Supplemental Payment~~ SSP or ~~an AFDC grant~~ Temporary Assistance for Needy Families (TANF) benefit. A person who is the payee for ~~AFDC~~ a TANF benefit, but whose needs are not included, is not precluded from being a recipient of a ~~State Supplemental Payment~~ SSP if he or she meets eligibility requirements. When a recipient of ~~AFDC~~ TANF or ~~a State Supplemental Payment~~ SSP is ~~to be~~ transferred to another category, the effective date must be the same for the removal from one category and the beginning of payment from the other category.

340:15-1-6. Special requirements

(a) **Solicitation of alms.** State law provides that a recipient of a State Supplemental Payment (SSP) for the ~~Blind~~ blind shall not, during the period of receiving assistance, solicit alms. ~~"~~Soliciting alms~~"~~ means collecting donations for one's personal benefit, selling minor articles when ~~such~~ selling is merely a subterfuge for collecting donations, ~~etc~~ and any similar activities. It does not include house-to-house sale of articles carried on as a regular established occupation. The client's statement regarding solicitation of alms~~,~~ is sufficient verification if there are no facts to the contrary.

(b) **Minor child who is blind or disabled ~~child~~.** In determining eligibility of a ~~blind or disabled~~ child who is blind or disabled, the income and resources of ~~his parent or parents~~ the parent(s) with whom ~~he~~ the child is living are considered unless the parent(s) ~~with whom he is living are~~ is included in a ~~State Supplemental payment~~ SSP or ~~AFDC~~ Temporary Assistance for Needy Families (TANF) application or ~~payment~~ benefit.

(1) **Deeming of income.** Income of a natural or adoptive parent(s) ~~(Natural or adoptive)~~, or step-parent and own parent must be deemed to a minor blind or disabled child who is under age 18 when determining eligibility for a ~~State Supplemental Payment~~ SSP. Income of an ineligible ~~child(ren)~~ child is not deemed. ~~(See Form M-87 B, Deeming Worksheet.) Parent(s)~~ The parent(s)' income is not deemed if an eligible child is residing in a nursing care facility.

(2) **Deeming of resources.** For each ~~minor blind or disabled~~ child who is blind or disabled and under age 18 living with his or her parent(s) whose needs are not included in ~~an AFDC grant~~ TANF benefit, or receiving Supplemental Security Income (SSI) and/or SSP, the ~~parent's~~ parent(s)' resources which exceed the maximum amount allowable are deemed available to the ~~disabled~~ child who is disabled. If there is more than one eligible child, the amount is prorated. If the minor ~~blind or disabled~~ child ~~is residing~~ who is blind or disabled resides in a nursing care facility, the ~~parent(s)~~ parent(s)' resources are not deemed to the child.

(3) **Exceptions.** A ~~mentally retarded~~ child ~~living~~ who has mental retardation lives in ~~the~~ his or her parent(s)' home ~~who~~ and is ineligible for SSP due to the deeming process may be approved for ~~Medical Assistance~~ medical benefits under the Home and Community-Based ~~Waivered~~ Waiver (HCBW) Services for the Mentally Retarded Program ~~(HCBW)~~ as outlined in OAC ~~340:35~~ 317:35. The child who is determined eligible under this provision by not deeming ~~parent(s)~~ the parent(s)' income and resources is not eligible to receive a ~~State Supplemental Payment~~ SSP. When both parents are in the home and one parent is included in ~~an A, B, or D~~ a SSP case and the spouse is included in ~~an AFDC case~~ a TANF benefit with the ~~children~~ child, the resources of both parents are evaluated in relation to eligibility for SSI and/or SSP and ~~therefore~~ are not considered on the ~~AFDC~~ TANF case. All resources of the ~~parents would be~~ parent(s) are shown on the ~~A, B or D~~ SSP case.

(c) **Age.**

(1) **~~Aged~~ Age requirement for the aged.** To be eligible for ~~a State Supplement Payment~~ SSP for the ~~Aged~~ aged, the individual must be 65 years of age or older as verified by the Social Security Administration, or by other sources of verification such as birth ~~certificates~~ certificate, insurance policies, family records, or census records~~, etc~~.

(2) **Age requirement for the ~~Blind~~ blind.** There is no age requirement for a ~~State Supplemental Payment~~ SSP for the ~~Blind, however, the~~ blind. The age of ~~blind children~~ a child who is blind must be verified in order to establish the need for designating a parent or guardian as payee if the ~~blind~~ child is ~~under~~ younger than 16 ~~years of age~~. When a recipient of a ~~State Supplemental Payment~~ SSP for the ~~Blind~~ blind reaches age 65, he or she is transferred to the category for the ~~Aged~~ aged.

(3) **Age requirement for the ~~Disabled~~ disabled.** To be eligible for a ~~State Supplemental Payment~~ SSP for the ~~Disabled~~ disabled, an applicant must be ~~under the age of~~ younger than 65 ~~years~~. A parent or guardian must be designated as payee if a ~~disabled~~ child who is disabled is ~~under~~ younger than 16 ~~years of age~~. When a recipient of a ~~State Supplemental Payment~~ SSP for the ~~Disabled~~ disabled reaches age 65, he or she is transferred to the category for the ~~Aged~~ aged.

(d) **Overpayments.** A client may incur an overpayment in any ~~State Supplemental Payment~~ SSP Program when SSI benefits are terminated and the ~~county~~ worker does not take proper action when notified. ~~If~~ Any premiums for Health Insurance Benefits (HIB) ~~(Health Insurance Benefits) was~~ paid by ~~this Agency~~ the Oklahoma Department of Human Services (OKDHS) on behalf of ~~the client and the~~ an ineligible client ~~is found to be totally ineligible, this monthly amount will be~~ are computed by the Family Support Services Division Overpayment ~~Unit~~ Section and added to the ~~warrant~~ benefit amount received ineligibly.

340:15-1-7. Non-conditioning of assistance payments

The Oklahoma Department of Human Services (OKDHS) does not restrict in any way the use which the client makes of the assistance payment. ~~This also precludes any agreement on the part of the Department to pay or guarantee payment for goods or services provided to clients be vendors in lieu of money payment.~~

[OAR Docket #04-954; filed 5-18-04]

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

[OAR Docket #04-919]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 1. Scope and Applicability

340:75-1-6 [AMENDED]
340:75-1-8 [REVOKED]
340:75-1-21 [AMENDED]
Part 15. Training for Child Welfare Workers
340:75-1-233 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-2 [AMENDED]
340:75-3-6.1 [AMENDED]
340:75-3-8.1 [AMENDED]
340:75-3-12 [AMENDED]
340:75-3-13.1 through 340:75-3-13.2 [REVOKED]
Subchapter 12. ~~Child Welfare~~OKDHS Operated Group Homes
340:75-12-1 [AMENDED]
Subchapter 18. Continuous Quality Improvement
340:75-18-2 through 340:75-18-3 [AMENDED]
(Reference APA WF 04-01)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 7001-1.1 et seq., Oklahoma Children's Code, 7004-1.3, and 7006-1.6 of Title 10 of the Oklahoma Statutes.

DATES:
Comment period:
February 17 through March 18, 2004
Public hearing:
None requested
Adoption:
March 23, 2004
Submitted to Governor:
March 23, 2004
Submitted to House:
March 23, 2004
Submitted to Senate:
March 23, 2004
Gubernatorial approval:
May 5, 2004
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 14, 2004.
Final adoption:
May 14, 2004
Effective:
June 25, 2004

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed revisions to Subchapters 1, 3, 12, and 18 of Chapter 75: eliminate references to procedures that are no longer applicable; include references to investigative procedures relating to the Address Confidentiality program (ACP), the Indian Child Welfare Act (ICWA), and inquiries by a parent regarding child abuse and neglect information; revoke levels of services and service planning; clarify the State Post Adjudication Review Advisory Board's (State PARB) role; and correct scrivener's errors and rule and statutory citations.

340:75-1-6, 75-12-1, 75-18-2, 75-18-3 are revised and 75-1-8 is revoked to eliminate references to procedures that are no longer applicable and delete unnecessary language.

340:75-1-21 is revised to eliminate the once required notification to the State PARB of exceptions to termination of parental rights for children in out-of-home care.

340:75-1-233 is revised to correct scrivener's errors.

340:75-3-2 is revised to update and add definitions relating to Child Protective Services (CPS).

340:75-3-6.1 is revised to include references to investigative procedures relating to ACP and ICWA.

340:75-3-8.1 is revised to include Developmental Disabilities Services Division foster placements in the list of placements that fall within the scope of CPS investigative protocol.

340:75-3-12 is revised to include procedures for responding to inquiries by a parent regarding child abuse and neglect information.

340:75-3-13.1 and 75-3-13.2 are revoked as this information is incorporated in other Sections of policy.

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, Office of Planning, Policy, and Research, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. SCOPE AND APPLICABILITY

340:75-1-6. Organization and scope of ~~Child Welfare (CW)~~Children and Family Services Division

(a) ~~Child Welfare at the State Office~~ Children and Family Services Division (CFSD) is responsible for:

(1) ~~the development of child welfare~~ developing and modifying Child Welfare (CW) programs, policies, and procedures, based on state and federal law and best practices;

(2) ~~program assessments~~ assessing CW programs through continuous quality improvement;

(3) providing training and technical assistance to CW staff;

(4) providing consultation and ~~case staffings~~ policy interpretation to CW staff; and

(5) ~~maintenance of~~ maintaining the Statewide Automated Child Welfare Information System (SACWIS), known as KIDS.

~~(b) The delivery of CW services, with the exception of adoption services, is carried out by CW workers and supervisors who are administratively responsible to the Field Operations Division. CW field staff are supervised by CW supervisors and administrated by county directors and area directors; adoption staff are managed by the Children and Family Services Division (CFSD) program staff.~~

~~(c) CW is fully accredited by the Council on Accreditation for Children and Family Services, Inc., and is a member of the Child Welfare League of America.~~

(~~d~~b) The ~~major program~~ programs and ~~service areas~~ services of ~~CW~~ CFSD are:

(1) Child Protective Services, including:

(A) child abuse ~~or~~ and neglect referrals, assessments, and investigations;

~~(B) follow-up protective services;~~

~~(C) court services;~~

(~~D~~B) Child Abuse and Neglect Information System; and

(~~E~~C) ~~Child Abuse/Neglect~~ child abuse and neglect grants and other federal grants; ~~and~~

~~(F) sexual abuse specialists program;~~

(2) Permanency Planning ~~Services~~, including:

~~(A) services to parents and children who are involved in the juvenile court system;~~

(~~B~~A) family reunification services;

(~~C~~B) services to children in out-of-home placements and placement providers;

(~~D~~C) independent living services;

~~(E) court services;~~

(~~F~~D) contract support services;

(~~G~~E) exploration of relatives and kin for temporary and permanent placements; and

(~~H~~F) concurrent permanency planning, including permanency planning reviews;

(3) Foster ~~home services~~ Homes, including:

(A) ~~foster home~~ recruitment, development, and approval of foster homes;

(B) foster parent training programs;

(C) foster home placements;

(D) emergency foster home program;

~~(E) specialized foster homes;~~

(~~F~~E) kinship placement;

~~(G) contracted foster care;~~

(~~H~~F) tribal foster care; and

(~~I~~G) therapeutic foster care;

(4) Community ~~based residential care services~~ Based Residential Care, including~~:~~

~~(A)~~ recruitment, development, and implementation of residential resources ~~above the foster family home level, either through contract or DHS operation~~;

~~(B) level of care assessments in coordination with continuous quality improvement; and~~

~~(C) liaison program;~~

(5) Mental ~~health services~~ Health, including ~~both~~ inpatient and outpatient services for children who are ~~wards of the court and~~ in ~~DHS~~ Oklahoma Department of Human Services (OKDHS) custody;

(6) ~~Adoption services~~ Adoptions, including:

(A) recruitment, development, and approval of adoptive resources;

(B) adoptive parent training program;

(C) adoptive staffing and selection;

(D) adoptive placement, approval, and finalization;

(E) adoption ~~subsidy~~ assistance;

~~(F) Interstate Compact on the Placement of Children (ICPC);~~

(~~G~~F) Interstate Compact on Adoption and Medical Assistance (ICAMA);

(~~H~~G) post-adoption services; and

(~~I~~H) reunion registry and central paternity registry and search; ~~and~~

~~(J) Swift adoption services; [OAC 340:75-15-8]~~

(7) ~~Emergency~~ emergency shelter ~~services~~ and group home services, including:

(A) two emergency shelter programs, in Oklahoma City and Tulsa, ~~which~~ that care for ~~abused and neglected~~ children in need of protection; and

(B) two group homes in the Oklahoma City area, one for adolescent girls and one for adolescent mothers and their children;

(8) CW Comprehensive Training ~~Program for CW staff~~ program, including:

(A) core curricula for new CW workers~~;~~ and

~~(B) core curricula for~~ supervisors; and

(~~C~~B) specialized training curricula for CW staff;

(9) ~~Placement~~ placement services, including placements for all children requiring placement above family foster care. ~~Children's needs are assessed and placements are facilitated into appropriate settings that can address the child's treatment needs and are within the closest geographic proximity to the child's home community.~~ The Interstate Compact on the Placement of Children (ICPC) facilitates the placement of children into and out of ~~the state of~~ Oklahoma;

(10) voluntary Family-Centered ~~services~~ Services, including services to non-court involved ~~services to~~ families and children~~, provided at the request and with the agreement of the family when the risk of abuse or neglect is not at the level to jeopardize the safety of the child~~ through Oklahoma Children's Services (OCS); and

(11) Technology and Research ~~Services,~~ including the development, maintenance, and training of ~~the SACWIS referred to as~~ KIDS.

~~(e) CW complies with the Civil Rights Act of 1964, Department of Health, Education and Welfare Regulations, Title 45, Code of Federal Regulations, Parts 80 and 84, and the Rehabilitation Act of 1973 as amended, as well as the Multiethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996. These regulations prohibit that any qualified person, on the grounds of race, color, religion, sex, national origin, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Vendor payments for care or services on behalf of the client may be made only to individuals, businesses, or other providers who comply with provisions of these regulations.~~

~~(f) CW staff are actively involved in their local communities. The staff's knowledge of services and resource needs for families is valuable in community planning and organization efforts. Staff can provide information on the Department's services and resources that are available to the citizens of the community. CW staff can serve as a liaison between other state and governmental agencies and local community organizations when alternative funding or development avenues are explored. A strong CW community partnership helps to ensure collaboration and utilization of resources as well as the identification of areas in need of further development.~~

~~(g) CFSD programs staff, with input from field staff, and others, develop, assess, and evaluate CW programs to ensure compliance with state and federal regulations. Both CFSD program staff and CW field staff are responsible for facilitating and coordinating service delivery to children and families with other divisions, units, or sections within the Department. When CW staff obtain information regarding a client's eligibility or ineligibility or need for referral for other Department services, they refer or report such information to the proper unit, section, or division.~~

340:75-1-8. Child Welfare program accreditation [REVOKED]

~~(a) **Council On Accreditation of Services for Families and Children (COA).** As mandated by Oklahoma Statute, Title 10, Section 7004-1.3(4), the Child Welfare program was certified as having met the Provisions for Accreditation by the COA in December 1985. The program is re-evaluated every four years to assure that the program is meeting the standards for accreditation and providing services which the community needs. The sharing of confidential child abuse and neglect information from CW records with the COA as it relates to obtaining accreditation is allowed under Title 10, Section 7005-1.2 through 7005-1.5 and 45 CFR:1340.13(X). The following services are accredited:~~

~~(1) Services for Children in Their Own Homes;~~

~~(2) Protective Services for Children;~~

~~(3) Foster Family Services for Children;~~

~~(4) Group Home Services for Children;~~

~~(5) Adoption Services; and~~

~~(6) Emergency Shelter Services for Abused/Neglected Children.~~

~~(b) **Child Welfare League of America.** Child Welfare is an accredited member of the Child Welfare League of America (CWLA). The CWLA has been the leader in developing standards for children's services and for child welfare practice. CWLA provides consultation, training programs and conferences, conducts research, publishes books and pamphlets, and is a national legislative advocate on behalf of children.~~

340:75-1-21. Post ~~Adjudication Review Board (PARB)~~ adjudication review board

(a) Section 1116.3 ~~and succeeding Sections~~ et seq. of Title 10 of the Oklahoma Statutes~~,~~ ~~mandate~~ mandates the establishment of review boards for each judicial district to review the case of every child ~~adjudicated or~~ alleged ~~to be~~ or adjudicated deprived ~~and held in out-of-home placement~~. The child's court file is reviewed by the local post adjudication review board (PARB) at least once every six months until the court case is dismissed. The PARB's findings and recommendations are submitted to the court within ten days of any review hearing. The review includes consideration and evaluation of the appropriateness of the:

(1) goals and objectives of the treatment and service plan;

(2) services provided to the child, parent(s), ~~stepparent(s)~~ stepparent, or other ~~adult(s)~~ adult living in the home or legal ~~guardian(s)~~ guardian or ~~custodian(s)~~ custodian; and

(3) goals and objectives of the permanency plan ~~and permanency planning~~.

(b) ~~In situations where the~~ When a child is alleged ~~to be~~ deprived and ~~held~~ in out-of-home placement, the PARB reviews ~~these cases~~ the child's case six months after removal and every six months thereafter until adjudication occurs or the child is released from out-of-home placement. The PARB's findings and recommendations are submitted to the court within ten days of any scheduled review hearing. The review includes consideration and evaluation of:

(1) whether the continued out-of-home placement is in the best interests of the child in light of the child's need for permanency ~~and recognizing that permanency is in the best interests of the child~~;

(2) the appropriateness of continued out-of-home placement; and

(3) in the absence of a court-approved treatment and service plan, the appropriateness of the services provided to the child and any other family ~~member(s)~~ member or ~~other adult(s)~~ adult living in the home of the child.

(c) A PARB member may attend any court hearing concerning the case of any child subject to review by ~~the~~ PARB.

(d) The State Post Adjudication Review Advisory Board (State PARB), ~~as set out in~~ per Section 1116.6 of Title 10 of the Oklahoma Statutes, oversees the implementation of the State post adjudication review program in coordination with the Oklahoma Commission on Children and Youth (OCCY). The State PARB makes recommendations to the courts, OCCY, ~~the~~ Governor, ~~the~~ Legislature, Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS), Office of Juvenile Affairs (OJA), and other state agencies providing services to children~~,~~ regarding:

(1) statutory revisions~~,~~;

(2) amendments to court rules and regulations~~,~~;

(3) permanency planning~~,~~;

(4) foster care~~,~~; and

(5) Child Welfare (CW) service delivery policies, guidelines, and procedures.

~~(e) DHS provides the State PARB a listing of the CW cases that have adjudicated deprived children who have been in DHS custody and in out-of-home care for 15 of the most recent 22 months and identifies the cases for which DHS has determined that a petition to terminate parental rights is not required based upon the exceptions. The State PARB disseminates the listings to local PARBs for review. In those cases where the local or State PARB disagrees with DHS' determination, the local or State PARB provides the district attorney with a recommendation of additional cases for which a petition to terminate parental rights should be filed. The State PARB forwards a copy of the recommendation to DHS.~~

(~~f~~e) ~~For~~ PARB reviews the case of every child adjudicated deprived pursuant to the laws of another state or territory, when the child ~~is currently residing~~ resides in Oklahoma and ~~DHS~~ OKDHS has agreed to provide services to the child pursuant to the Interstate Compact on the Placement of Children (ICPC) or other agreement concerning the child~~, the PARB reviews the case~~. ~~The~~ PARB reports its findings to ~~DHS~~ OKDHS and may report these findings to the agency or court in the state having jurisdiction. The child and the child's custodian ~~of the child~~ may be required to ~~be present at~~ attend the local ~~PARB's~~ PARB meeting regarding the child.

(~~g~~f) Any person participating in a judicial proceeding as a PARB member is presumed ~~to be~~ as acting in good faith and in so doing, immune from any civil liability that otherwise might be incurred or imposed.

PART 15. TRAINING FOR CHILD WELFARE WORKERS

340:75-1-233. Support services for CW staff

(a) **Critical incident stress debriefings.** Services are available for Child Welfare (CW) staff upon the death or serious injury of a child with whom CW has been involved or any other type of critical incident, including violence in the workplace.

(b) **Case management services.** Case management groups are available to all CW supervisors. The purpose of this service is to enhance CW practice by providing Master of Social Work level clinicians to all CW supervisors ~~with emphasis on four identified critical decision making points~~.

SUBCHAPTER 3. CHILD PROTECTIVE SERVICES

340:75-3-2. Definitions

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

"Abandonment" means ~~that~~ the person responsible for the child (PRFC) has deserted the child or the PRFC, through incapacitating behavior or absence, is severely limited or prevented from providing minimal care for the child and the PRFC has no ability or ~~no~~ plans to resume care for the child. Abandonment ~~also~~ includes the abandonment of an infant, ~~[10 O.S. § 7006-1.1] Further explanation of abandoned infant is found in OAC 340:75-1-23(c)(10)~~ per Title 10 of the Oklahoma Statutes.

"Abuse ~~and neglect~~" means harm or threatened harm to a child's health or safety by a person responsible for the child's health or safety~~.~~, ~~[10 O.S. §~~ per Section 7102 of Title 10 of the Oklahoma Statutes~~] Harm or threatened harm can occur through non-accidental physical or mental injury, sexual abuse, neglect, or failure or omissions to provide protection from harm or threatened harm~~.

"Accepting the report for investigation or assessment" means the screening process has been completed~~;~~, the report meets the definition of abuse, ~~and~~ neglect, or both, is within the scope of Child Protective Services (CPS), and will be assigned.

"Administrative investigation" means an internal investigation initiated by the ~~Advocate General~~ advocate general upon receipt of a notice of the death or near death of a child known to Child Welfare (CW).

"Advocate ~~General~~ general" means the administrative head of the Office of Client Advocacy of the Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS).

"Assessment" means a systematic process utilized by ~~the Department of Human Services~~ OKDHS to respond to reports of alleged child abuse or neglect ~~which~~ that, according to guidelines established by ~~the Department~~ OKDHS, do not constitute a serious and immediate threat to the child's health or safety.

~~**"Associate Director"** means the administrative head of the Office of Field Operations of DHS.~~

"CPS ~~Programs Manager~~ programs manager" means the administrative head of the ~~Child Protective Services Program~~ CPS program for the ~~Division of~~ Children and Family Services Division (CFSD) of ~~DHS~~ OKDHS.

"Child" means any person ~~under the age of~~ younger than 18 years of age except a person who ~~has been~~ is convicted of a crime ~~specified in~~ per Section 7306-1.1 of Title 10 of the Oklahoma Statutes, or any person who ~~has been convicted~~ is certified as an adult ~~as specified in~~ per Section 7303-4.3 of Title 10 of the Oklahoma Statutes, and convicted of a felony. ~~[10 O.S. § 7001-1.3]~~

"Child known to Child Welfare" means a child who at any time:

(A) ~~a child who at any time~~ within six months prior to the child's death or near death incident:

(i) was the subject of ~~an assigned Department~~ a CPS investigation or assessment alleging child abuse or neglect;

(ii) was the subject of a CPS report ~~which the Division of Children and Family Services (DCFS)~~ that CFSD determines ~~to have been~~ was improperly screened out;

(iii) resided in a household that included a member who was the subject of a ~~Department~~ CPS investigation or assessment alleging child abuse or neglect;

(iv) was in ~~Department~~ OKDHS custody or under ~~Department~~ OKDHS supervision as ~~an alleged deprived~~ a child alleged or adjudicated deprived ~~child~~; or

(v) had an active ~~preventive services~~ CW case with ~~the Department~~ OKDHS~~.~~;

(B) ~~a child who at any time~~ during the two years preceding ~~that~~ the child's death or near death incident:

(i) was the subject of more than five CPS reports or three ~~assigned~~ investigations or assessments alleging child abuse or neglect; or

(ii) resided in a household that included a member who was the subject of more than five CPS reports or three ~~assigned~~ investigations or assessments alleging child abuse or neglect.

"Child's parent" means either custodial or non-custodial parent.

"Custodian" means a person acting in the role of the parent with or without a legal order. A custodian ~~generally~~ is a person who provides for the child's health and welfare on an ongoing basis by performing such functions as enrolling the child in school, securing needed medical attention, and providing a home for the child.

~~**"Division Administrator"** means the administrative head of the Division of Children and Family Services of DHS.~~

"Domestic violence" means a pattern of assaultive and coercive behaviors that an adult uses against another adult when a child is present. The assaultive and coercive behaviors include, but are not limited to, sinister threats, physical injury requiring medical attention, and the presence of weapons. The child in the home is at risk of grave physical danger, significant neglect, or significant emotional consequences.

"Educational neglect" means that the child fails to attend school due to ~~a~~ the PRFC's pattern of failure ~~on the part of the PRFC~~ to ensure that the child is enrolled in ~~school~~, allowed to attend, or assisted in attending school, or provided other

means of education. ~~As indicated in Sections 10-103 through 10-109~~ Per Section 10-105 et seq. of Title 70 of the Oklahoma Statutes, the school district ~~is to~~ must exhaust all available means to compel attendance prior to ~~an~~ a CPS investigation of educational neglect ~~being initiated~~. Truancy or home schooling does not constitute educational neglect.

"Emergency custody" means court-ordered custody of a child prior to adjudication of the child.

"Foster parent" means any ~~individual~~ person maintaining a Developmental Disabilities Services Division (DDSD), therapeutic, emergency, ~~or~~ kinship, or foster family home, who is responsible for providing ~~the~~ care, ~~and~~ supervision, guidance, rearing, and other foster care services to a ~~foster~~ child.

"General ~~Counsel~~ counsel" means the administrative head of the ~~Office of General Counsel of DHS~~ Legal Division of OKDHS.

"Harm or threatened harm" means that the child's health or safety is at substantial risk as a result of the PRFC's actions, intention to act, omissions, or conditions that may result or have resulted in, per Section 7102 of Title 10 of the Oklahoma Statutes:

(A) serious physical abuse;
(B) sexual abuse or exploitation;
(C) serious neglect;
(D) failure or omission to provide protection; or
(E) abandonment.

"Heinous and shocking" means ~~that~~ abuse or neglect ~~has occurred~~ that is extreme, cruel, and results in severe emotional consequences, physical disfigurement, maiming, or death.

"Infant" means a child 24 months of age or younger.

"Initiating ~~an~~ a CPS investigation or assessment" means ~~to make~~ a good faith attempt to make face-to-face contact with all alleged child victims.

"Investigation" means an approach utilized by ~~the Department~~ OKDHS to respond to reports of alleged child abuse or neglect ~~which~~ that, according to guidelines established by ~~the Department~~ OKDHS, constitute a serious and immediate threat to the child's health or safety.

"Medical neglect" means the withholding of medical treatment or prescription of any type that ~~could~~ may significantly harm the child. The withholding of medical treatment is medical neglect ~~if~~ when the:

(A) medical treatment is, in the opinion of a physician, required to safeguard the child from serious medical risk;
(B) ~~the~~ medical condition of the child ~~may be~~ is an emergency or a life-threatening condition, constituting such a substantial risk to the child's health and well-being that a reasonable person would procure medical attention immediately and the PRFC does not do so; or
(C) ~~the withholding of~~ needed medical treatment is withheld from ~~a disabled~~ an infant with disabilities if the infant's life-threatening ~~condition(s)~~ condition will most likely improve or be corrected ~~if~~ with medical treatment, ~~is provided.~~ [per OAC 340:75-3-8.3].

"Mental injury - emotional abuse or neglect" means an injury to the child's intellectual or psychological capacity as evidenced by observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior with ~~due~~ regard to the child's culture. Mental injury is the result of a pattern of cruel or unconscionable acts upon the child, or statements made or permitted to be made to the child, or within the child's environment, by the PRFC.

"Minor injury" means a slight injury that results from inappropriate discipline to ~~children over the age of 10~~ a child older than ten years of age and is located on the legs, shoulders, arms, or buttocks.

"Munchausen ~~Syndrome~~ syndrome by ~~Proxy~~ proxy" means a type of child abuse in which the PRFC fabricates medical conditions in the child.

"Near death" means a child who is in serious or critical condition as certified by a physician.

"Neglect" means a situation in which a PRFC either deliberately or through exceptional lack of attention to the child's basic needs causes the child to suffer emotionally or physically. Neglect ~~must involve~~ involves either a chronic, long-standing problem that impacts several aspects of a child's life or ~~the neglect must be~~ is so severe that it is life-threatening. ~~Children under the age of three years are most vulnerable to life-threatening and significant developmental consequences from neglect. Poverty, alone, does not constitute neglect unless the PRFC does not access known and readily available resources to prevent serious emotional or physical harm to the child. Poor parenting practices that do not result in emotional or physical suffering are not considered neglect.~~

"Owner, operator, employee of the child care facility or home" means a facility or home that ~~should be~~ is licensed under Section 402 of Title 10 of the Oklahoma Statutes. If a facility or home is not licensed but meets the definition of a child care facility, the owner, operator, or employee ~~still~~ meets the definition of a PRFC.

"Person responsible for ~~a child's health or welfare" or "~~the child (PRFC)" means:

(A) the child's parent, legal guardian, custodian, or foster parent;
(B) a person 18 years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child;
(C) an agent or employee of a public or private residential home, ~~residential~~ institution, or ~~residential~~ facility; or
(D) an owner, operator, or employee of a ~~childcare~~ child care facility, ~~as defined by~~ per Section 402 of Title 10 of the Oklahoma Statutes.

"Physical abuse" means ~~physical~~ an injury, ~~for example,~~ such as bruises and fractures, resulting from punching, beating, kicking, biting, burning, or otherwise harming a child. ~~Although~~ Even though the injury is not an accident, the PRFC may not have intended to hurt the child. The injury may have resulted from extreme physical punishment that is inappropriate to the child's age or condition. The injury may be the result of a single episode or ~~of~~ repeated episodes and ~~can~~ range in severity from significant bruising to death. Any action that involves hitting with a closed fist, kicking, inflicting

burns, shaking, or throwing the child ~~may be considered~~ is child abuse, even ~~if~~ when no injury was sustained ~~if~~ and the action placed the child at risk of grave physical danger. Minor injury on a child older than ten ~~would~~ years of age is not ~~be~~ considered physical abuse unless the actions that caused the injury placed the child in grave physical danger.

"Physical injury" means temporary or permanent damage or impairment to the child's body by the PRFC.

"Protective custody" means a child taken into custody by a peace officer or employee of the court, without a court order ~~if~~ when the child's surroundings endanger the child~~.~~, ~~[10 O.S. §~~ per Section 7003-2.1~~]~~ of Title 10 of the Oklahoma Statutes.

"Risk assessment" means determining the level of ~~risk~~ potential danger to a child and the extent to which the ~~risk jeopardizes the~~ child's safety ~~of the child~~ is jeopardized.

"Risk factors" means the circumstances that affect ~~risk and consequently~~ the ~~child victim's~~ child's safety.

"Safety" means freedom from serious danger due to abuse or neglect in the near or foreseeable future. ~~To assess for safety, the~~ The CW worker considers the risk factors within the child's home and family. ~~Safety is considered in determining whether protective custody is needed to protect a child. [OAC 340:75-3-10.1]~~

"Serious abuse and neglect" means:

(A) abuse or neglect ~~that resulted~~ resulting in significant injury, such as burns, fractures, head trauma, genital injuries, extensive deep bruising on multiple sites of the body, or internal injuries;

(B) abuse or neglect resulting in life-threatening consequences, such as failure to thrive conditions, lack of supervision ~~which results~~ resulting in significant injury or danger, extreme malnutrition or dehydration, medical neglect involving a life-threatening illness or life-threatening conditions caused by the PRFC's impaired abilities resulting from substance abuse, mental illness, or other emotional condition; and

(C) sexual abuse.

"Sexual abuse" means rape, sodomy, incest, or lewd or indecent acts~~,~~ or proposals ~~and sexual exploitation~~ to a child. ~~Sexual exploitation includes allowing or encouraging a child to engage in sexual acts with others, prostitution, obscene photographing, filming or depicting of the child, and exposure to adult sexuality such as allowing a child to observe pornography or adult sex acts. In general terms, sexual~~ Sexual abuse is any sexual activity, including sexual propositioning between the PRFC and ~~the~~ child or any acts committed or permitted by the PRFC, for the purpose of sexually stimulating the child, ~~the~~ PRFC, or others.

"Sexual exploitation" means allowing or encouraging a child to engage in sexual acts with others, prostitution, obscene photographing, filming, or depicting of the child and deliberate exposure to adult sexuality, such as allowing a child to observe pornography or adult sex acts.

"Substance abuse" means ~~abuse~~ the illegal or inappropriate use of any ~~substance~~ drug, including alcohol, that incapacitates or severely limits the PRFC in performing minimal ~~levels of~~ basic care for the child. The substance abuse ~~must result~~ results in neglect of the child or ~~create~~ creates the risk of grave physical danger or significant emotional consequences to the child. ~~If substance abuse by the PRFC results in an infant being born drug exposed, the home of the PRFC must be carefully evaluated to determine if the infant can receive the proper nurturing, nutrition and attention to hygiene necessary for the infant to thrive.~~

"Third party perpetrator" means a perpetrator other than the ~~person responsible for the child~~ PRFC.

~~**"Threatened harm"** means a substantial risk of harm to the child. It includes intentions to act, actions, omissions, or conditions which place the child at substantial risk of serious physical abuse, sexual abuse, or serious neglect.~~

"Truancy" means ~~a child who elects not to attend school~~ that despite efforts by the PRFC to encourage and assist in school attendance, a child elects not or refuses to attend school.

340:75-3-6.1. Exceptional reports of child abuse and neglect

(a) **Reports resulting from divorce or child custody actions.** If a report of abuse, ~~or~~ neglect, or both, is made by a referring court resulting from a divorce or child custody action, an investigation or assessment is initiated, ~~as~~ per OAC 340:75-3-7.1 and 340:75-3-8.

(b) **Anonymous reports.** ~~Persons~~ Anonymous reports that meet the definition of abuse or neglect are investigated. When a person reporting suspected child abuse, ~~or~~ neglect, ~~are sometimes~~ or both, is reluctant to identify ~~themselves~~ himself or herself, the Child Welfare (CW) worker:

(1) ~~In most situations, the intake worker, using~~ uses good ~~interviewing~~ interview skills~~, can~~ to obtain the reporter's identity. ~~In some situations, however, it will~~ It is not ~~be~~ always possible to obtain the name of the reporter~~.~~; and

(2) ~~If this situation arises, the Child Welfare (CW) worker~~ attempts to determine the reporter's relationship to the child and family in question and any other relevant information. ~~Anonymous reports that meet the definition of abuse or neglect are investigated.~~

(c) **Child Protective Services (CPS) reports on ~~a DHS~~ an OKDHS employee.** Specific procedures are followed when a report of neglect, ~~or~~ abuse, or both is received ~~which~~ that involves ~~a DHS~~ an Oklahoma Department of Human Services (OKDHS) employee or a member of the employee's immediate or extended family, with the exception of alleged ~~institutional~~ abuse in an institution.

(d) **CPS reports to other counties.** A referral is made to CW in the family's county of residence when a referral is received regarding a child and family who are in another county.

(e) **Reports of abuse or neglect in an active permanency planning or ~~prevention~~ voluntary FCS case.** Information regarding the injury is documented ~~as a referral~~ on Form CWS-KIDS-1, Referral Information Report, if a child, who is ~~a~~ part of an ongoing permanency planning or ~~prevention~~ voluntary Family-Centered Services (FCS) case, is reported or observed by the CW worker to have any injury to the face, head, neck, stomach, or genitals, even an allegedly accidental injury,

or to have evidence of any abuse, ~~or~~ neglect~~.~~, or both, per ~~[~~OAC 340:75-3-6(d) and ~~340:75-6-24(8)]~~ 340:75-4-13(10).

(f) **Newborns in an active permanency planning or ~~prevention~~ voluntary FCS case.** When a baby is born to a person responsible for the child (PRFC) with an open permanency planning or ~~prevention~~ voluntary FCS case, the information is documented ~~as a referral~~ on Form CWS-KIDS-1, per ~~[~~OAC 340:75-3-6(d)~~]~~. ~~The referral is assigned as an investigation in order to determine the immediate safety of and threat of harm to the new child. [OAC 340:75-3-10.1, Instructions to Staff]~~

(g) **Address Confidentiality program (ACP).** Reports regarding child abuse and neglect that fall within the scope of CPS are accepted for investigation or assessment even though the actual finding address of the child is confidential, per Section 60.14 of Title 22 of the Oklahoma Statutes.

(h) **CPS reports on Indian children.** In order to ensure compliance with the Indian Child Welfare Act (ICWA), procedures per OAC 340:75-19-9 and 340:75-19-10 are followed for all children reported or determined Indian.

340:75-3-8.1. Protocol for addressing reports regarding foster or trial adoptive homes

(a) **Purpose in investigations or assessments of foster or trial adoptive homes.** Children who are in the care or custody of the Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) require ongoing protection from subsequent abuse or neglect while in therapeutic, emergency, Developmental Disabilities Services Division (DDSD), ~~and~~ kinship, and foster family care ~~placement~~ or trial adoptive placement. Children placed in care due to abuse or neglect are not only vulnerable due to their previous victimization but also due to the heightened risk of abuse or neglect that occurs when there is an out-of-home placement. It is, therefore, imperative that an evaluation and response be made when there is an observation of or report of abuse or neglect or potential for abuse or neglect of a child in a foster or trial adoptive home.

(b) **Observation of abuse or neglect in foster or trial adoptive homes.** It is the responsibility of Child Welfare (CW) staff to be alert to indicators that a child is at risk of abuse or neglect or has been abused or neglected in his or her ~~DHS foster or trial adoptive home~~ out-of-home placement.

(c) **Reports regarding children in foster or trial adoptive homes.** When a report regarding a foster or trial adoptive home is received, it is documented and evaluated to determine if the allegations indicate abuse or neglect or a violation of ~~DHS~~ OKDHS rules.

(d) **Foster or trial adoptive home investigative or assessment protocol.** The investigative protocol ~~to be followed~~ is the same as the protocol for conducting an investigation or assessment in the child's own home ~~[OAC 340:75-3-8, 340:75-3-8.5, and 340:75-3-8.6]~~, ~~although~~ including additional interviews and the evaluation of case records relating to the foster or trial adoptive home, ~~are necessary~~ per OAC 340:75-3-8, 340:75-3-8.5, and 340:75-3-8.6.

(e) **Time limitations on accepting reports regarding children in foster or trial adoptive homes.** Incidents are sometimes reported ~~which~~ that allege child abuse or neglect in foster or trial adoptive homes that are not recent events, for example, an adult reports she was molested as a child by her foster father and this is an open foster home. As in cases of intrafamilial child abuse or neglect, information is obtained to determine ~~if~~ whether there are children in the foster or trial adoptive home who may be at risk.

(f) **Determining safety.** Safety refers to the present security and well-being of a child. Protection of children in foster or trial adoptive ~~home care~~ placement is of primary importance and concern. The determination ~~as to~~ regarding whether ~~or not~~ a child ~~or children~~ can safely remain in a foster or trial adoptive home is based upon the urgency, severity of the allegations, and the definition of risk~~.~~, ~~[~~per OAC 340:75-3-2~~]~~.

(g) **Notification of parent regarding injury.** Parents of children who are in emergency or temporary custody of ~~DHS~~ OKDHS are ~~also~~ notified by the family's ~~ongoing social~~ CW worker when the child is injured or removed from the placement due to abuse or neglect. The notification occurs immediately after the condition of the child ~~has been~~ is determined through interview and observation.

(h) **Allegations of abuse or neglect of a child in foster or trial adoptive ~~care~~ home by a non-PRFC.** When ~~reports~~ a report of child abuse or neglect ~~are~~ is received regarding a child in a foster or trial adoptive ~~care~~ home that ~~identify~~ identifies the alleged perpetrator as a person not responsible for the child (non-PRFC), a referral is made to law enforcement. Regardless of whether law enforcement investigates and determines no crime has been committed or chooses not to conduct an investigation, ~~Child Welfare~~ CW completes a third party investigation to determine ~~if~~ whether the foster ~~parent(s)~~ or trial adoptive parent failed to protect the child from a high risk situation that ~~they~~ he or she had knowledge of or could have predicted.

(i) **Foster or trial adoptive home investigative findings and assessment conclusions.** Any report regarding a child in a foster or trial adoptive home is investigated or assessed immediately by CW staff. After completing the investigation a finding is made ~~as to whether the child was abused or neglected~~ regarding abuse and neglect as defined by state statutes and OKDHS rules ~~in this Chapter~~.

(j) **Time frames for completion of investigations or assessments of foster or trial adoptive homes.** Reports of suspected child abuse or neglect in foster or trial adoptive homes are investigated or assessed within ten working days of acceptance of the referral for investigation or assessment.

(k) **Investigation or assessment of reports regarding ~~DHS custody~~ children in OKDHS custody in tribal foster ~~care~~ homes.** The protocol ~~followed~~ for investigating or assessing suspected abuse or neglect of ~~DHS custody~~ children in OKDHS custody in tribal foster ~~care~~ homes is the same as investigations or assessments of child abuse or neglect in the child's own home, ~~[~~per OAC ~~340:75-1-201]~~ 340:75-1-9, 340:75-3-8.1(d), and ~~as per (d) of this Section~~ 340:75-19-10.

(l) **Contracted therapeutic or emergency foster and trial adoptive homes.** When an investigation or assessment is initiated on a contracted therapeutic or emergency foster or trial adoptive home, the investigative or assessment CW worker ~~responsible for completing the investigation or assessment~~ follows the same investigative protocol ~~described in (d) of this~~

~~Section~~ per OAC 340:75-3-8.1(d). The contracting agency, ~~the~~ appropriate ~~DHS~~ OKDHS liaison, ~~the~~ county director, and ~~the State Office~~ Children and Family Services Division (CFSD) Foster Care, Therapeutic Foster Care (TFC), or Adoption ~~Program area~~ Section are ~~also~~ notified of the investigation as soon as it is determined that the home is not ~~a DHS~~ an OKDHS foster or trial adoptive home. The contracting agency is informed that no information regarding the referral ~~will be~~ is discussed with the foster or trial adoptive home prior to the initiation of the investigation or assessment.

(m) **Decision-making regarding the continued use or closure of the foster or trial adoptive home.** When there is an investigation of abuse or neglect in a foster or trial adoptive home, the results of the investigation are evaluated to determine whether ~~the home will~~ to continue to ~~be utilized~~ utilize or ~~whether~~ close the home ~~will be closed~~.

(1) It is the role of the investigative ~~social~~ CW worker to make a finding ~~as to~~ regarding the allegations. ~~However, all parties~~ All persons involved with the child are a part of the decision-making process from the time the allegations are reported until the investigation or assessment is completed. The decision-making process includes assessing safety, safety planning, and continued use of the foster or trial adoptive home. The ~~parties~~ persons involved include the investigative or assessment ~~social~~ CW worker, ~~the~~ child's ~~social~~ CW worker, ~~the~~ foster or trial adoptive home ~~social worker~~ specialist, ~~the~~ family's ~~ongoing social~~ CW worker, and all appropriate CW supervisors. When the finding of a child abuse or neglect investigation is confirmed or services recommended, input is provided by all ~~parties~~ persons involved regarding continued use of the home. The CW field liaison (CWFL) and ~~State Office~~ CFSD Foster Care, Adoption, ~~Therapeutic Foster Care~~ TFC, DDSD, and Child Protective Services ~~Program~~ (CPS) programs staff are also available for consultation.

(2) Decisions or any other actions regarding the continued use or closure of the foster or trial adoptive home are made and discussed with the family by the foster ~~care~~ or trial adoptive home ~~social worker~~ specialist and supervisor. Any findings regarding the occurrence or presence of ~~policy~~ violations in the foster or trial adoptive home, ~~as defined in~~ per OAC 340:75-7-37, are handled as outlined in OAC ~~340:75-7-91~~ 340:75-7-94.

(3) ~~If~~ When abuse, neglect, or ~~DHS~~ OKDHS discipline or other policy violations are identified in a tribal foster home, the tribe ~~assures that it will~~ must work with the foster home to correct those conditions if the home is to continue to care for ~~DHS custody~~ children in OKDHS custody. The tribal foster home case must reflect the correction. The ~~DCFS Tribal Liaison Program Field Representative~~ CFSD tribal coordinator monitors those cases for corrective action before any additional ~~DHS custody~~ children in OKDHS custody are placed in those foster homes.

(n) **Review process for suspected abuse or neglect in foster or trial adoptive homes.** All reports of abuse or neglect in ~~DHS~~ OKDHS and ~~agency~~ contracted foster or trial adoptive homes are reviewed by the ~~Child Protective Services Program area~~ CPS Section and ~~the~~ appropriate Foster Care ~~Program area~~, Adoption, ~~Program area~~ or ~~Therapeutic Foster Care area~~ TFC Section. ~~The Child Protective Services Program area~~ CPS programs staff, along with any other appropriate ~~program area~~ programs staff, is responsible for addressing, with the appropriate CW staff, any concerns regarding the investigation and finding ~~with the appropriate field staff~~. The appropriate ~~program area~~ programs staff is responsible for addressing, with the contracted agency staff, the findings of the investigation and any other issues of concern ~~with the contracted agency staff~~.

340:75-3-12. Child Abuse and Neglect Information System

The Child Abuse and Neglect Information System (information system) is a permanent, computerized record-keeping system maintained by Child Welfare (CW), pursuant to Section 7111 of Title 10 of the Oklahoma Statutes, ~~. In part, it states: ... *the Department of Human Services shall be responsible for maintaining an information system for*~~ that requires *the maintenance of all reports of child abuse, sexual abuse, and neglect made pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act.*

(1) **Purpose.** The purpose of the ~~Child Abuse and Neglect Information System~~ information system is to:

(A) provide central storage of information pertaining to reports of child abuse ~~or~~ and neglect in Oklahoma;

(B) serve as a tracking system for reports of child abuse ~~or~~ and neglect; and

(C) provide raw data for statistical analysis of child abuse and neglect reports.

(2) **Staff authorized to inquire and report to the Child Abuse and Neglect Information System.** Only authorized ~~DHS~~ Oklahoma Department of Human Services (OKDHS) staff may inquire and report to the information system. Authorized staff and functions are listed in (A) through (D) ~~of this paragraph~~.

(A) CW staff, investigating or assessing reports of suspected child abuse and neglect, must inquire and make reports to the ~~Child Abuse and Neglect Information System~~ information system.

(B) ~~DHS~~ OKDHS foster and adoptive home staff must inquire into the information system to determine if any persons in the household, applying to become a foster or adoptive home, were involved in any child abuse or neglect situations investigated or assessed by ~~DHS~~ OKDHS.

(C) Reasons CW staff may inquire into the information system are:

(i) for internal administrative purposes;

(ii) to respond to inquiries from ~~individuals~~ persons who, as a part of their official duties, have responsibilities directly connected with child abuse laws, prosecution, or delivery of services, such as the district attorney, law enforcement, or another state's child protective services (CPS) agency; or

(iii) to respond to an absent parent's inquiry about a child abuse investigation or assessment involving his or her ~~child(ren)~~ child. ~~The information that can be released to an inquiring parent is the same information that may be released to a custodial parent, including a summary of the allegations, the outcome of the investigation or assessment and the placement situation the child is in, such as foster care, relative or kinship care, or shelter care.~~ The inquiring parent must provide verification of his or her identity and that he or she is the child's parent. ~~This can be done by~~ Verification is in the form of a written, notarized ~~request~~ statement or ~~through~~ other proof, ~~such as~~ including the child's birth certificate, court order, or other such document.

(I) When there is a pending investigation or other current CW involvement with the parent's child, the parent is referred to the assigned CW worker and supervisor.

(II) When the parent is aware that he or she was the subject of a previous investigation or assessment for which the parent did not receive notification of the investigative findings or assessment conclusions, the appropriate letter of findings or conclusions, per OAC 340:75-3-13(a), is sent to the parent.

(III) The parent is advised that a court order is required to release confidential CW information except in the circumstances in OAC 340:75-3-12(2)(C)(iii)(I) and (II).

(D) Division of Child Care (DCC) staff may inquire into the information system to determine if any ~~individual~~ person who signs the application for a family child care home license or the owner of a child care facility has had a previous report of child abuse, ~~or~~ neglect, ~~report~~ or both. ~~The Division of Child Care~~ DCC staff may inquire only when the applicant ~~has submitted~~ submits a signed:

(i) Form OCC-42, Application for License - Family Child Care Home and Large Child Care Home~~,~~; or

(ii) ~~a signed~~ Form OCC-41, Child Care Staff Information.

~~(3) **Inquiry and reporting to the Child Abuse and Neglect Information System.** CW staff involved in child abuse investigations or assessments follow the procedures outlined in the Instructions to Staff of this paragraph for inquiring and reporting to the Child Abuse and Neglect information system.~~

340:75-3-13.1. Service planning [REVOKED]

~~(a) **Decision making about service needs.** Once an assessment or an investigation has been completed it is important to make a determination utilizing all available information.~~

~~(b) **Collaboration with the family in safety and service planning.** Whenever possible, the safety evaluation and service planning occurs with the involvement and input of the family. Even in a case where there is conflict and tension between Child Welfare (CW) and the family, every attempt is made to encourage the family to participate in safety and service planning for their child(ren). The risk to the child(ren) and the level of need within the family determines the intensity and duration of services required to address any concerns within the family.~~

~~(c) **Service agreements.** After discussing service options with the family, it is explained that services are voluntary unless there is court action involving the child and family. Form DCFS 75, Voluntary Family Service Agreement, is explained to the family and they are offered the opportunity to enter into a voluntary agreement to accept further services, if it is determined that services are recommended. If the finding is services recommended or confirmed - services recommended, the types of voluntary services offered range from referring the family to a service provider and closing the case to opening a CW Family Centered Services (FCS) case for a specified and agreed upon time period. The family's agreement to participate in services is documented by their signature on Form DCFS 75. Taking into consideration all available information including the risk to the child(ren), the CW worker makes a recommendation for the level of service for FCS. [OAC 340:75-3-13.2]~~

~~(d) **Informal supports to the safety and service plan.** With the family's permission, supportive persons such as neighbors, friends, volunteers, and extended family members can be involved in safety plans and service agreements. Available supports can be identified through processes such as family group conferences and service agreement discussions. Supportive persons who agree to be resources for the family may commit to their involvement in safety planning and services by signing Form DCFS 75.~~

~~(e) **Formal supports to the safety and service plan.** Formal supports include programs and professional services that assist the family in providing a safe environment for their child(ren). Where available and with the voluntary agreement of the family, DHS Integrated Family Services Program (IFS) is utilized to assist families in linking with prevention and intervention related services. [10 O.S. § 7106] The Child Welfare FCS program with comprehensive home-based services available through Oklahoma Children's Services and community based service programs are also service options to be considered, when appropriate, and can be utilized in conjunction with IFS.~~

340:75-3-13.2. Levels of service and models of intervention [REVOKED]

~~When the Child Welfare (CW) worker has completed the investigation or assessment, a finding is made as to whether the child(ren) was or is at risk of being abused, neglected, or both. Once a finding is made, all information pertaining to the family is taken into consideration when determining the service needs of the family. The family receives the level of service that best promotes the safety, well-being, and permanence of the child(ren). Families can move between levels of service during the time they are served by Family Centered Services (FCS). [OAC 340:75-4] Levels of service are outlined in (1) - (4) of this Section. Levels of service and models of intervention were~~

~~adapted from the Illinois Intact Family Services Handbook, Appendix A, Levels of Service/Models of Intervention.~~

~~(1) **Level 1 - No Services Needed.** No Services Needed is consistent with the finding of Services Not Needed, as there is no identified risk of abuse or neglect and the family does not need FCS or intervention related services.~~

~~(2) **Level 2 - Referral for Agency or Community-Based Services.** Agency or community-based services are recommended when there is low risk to the child(ren) and when the family is able to use agency or community resources for support without further intervention by CW. A finding of Services Recommended is most consistent with this level of service. However, cases with a finding of Confirmed - Services Recommended, with a safety assessment indicating low risk to the child(ren), could also benefit from this level of service.~~

~~(3) **Level 3 - Short-Term Services.** Short-term services are recommended when there is low risk to the child(ren) and when services can be successfully completed within 90 days of case opening. Cases in which the safety of the child(ren) in the home can only be increased by longer-term, more intensive services should not be referred to this level. Cases with findings of Services Recommended or Confirmed - Services Recommended can be referred to this level of service, keeping in mind the safety assessment indicates low risk to the child(ren) and services can be completed within 90 days.~~

~~(4) **Level 4 - Regular Services.** Regular services are recommended when there is moderate to high risk to the child(ren) and when the child(ren) is not at imminent risk of placement. A finding of Confirmed - Services Recommended is most consistent with this level of service. However, cases with findings of Confirmed - Court Intervention Recommended, where the district attorney has declined to file a deprived petition, must be referred to this level of service if the family agrees to accept FCS services.~~

SUBCHAPTER 12. ~~CHILD WELFARE~~ OKDHS OPERATED GROUP HOMES

340:75-12-1. General description

(a) ~~Child Welfare (CW)~~ The Oklahoma Department of Human Services (OKDHS) operated group homes are residential facilities ~~which~~ that emphasize family style living in a home-like environment. The group homes provide full-time care to residents. The homes comply with the licensing standards and requirements of the ~~Department of Human Services (DHS)~~ Division of Child Care. ~~The Council on Accreditation for Children and Family Services (COA) accredits the homes.~~ Group home staff ~~assist~~ assists the ~~residents~~ youth in developing parenting skills and ~~in~~ learning independent living skills.

(~~b~~1) The Pauline E. Mayer group home serves a maximum of five adolescent mothers, 13 through 17 years of age, who are adjudicated deprived and in ~~the~~ OKDHS custody ~~of DHS~~, and their children. ~~The girls must be no younger than 13 years and no older than 17 years of age.~~ Referrals for placement are made to the group home supervisor.

(~~c~~2) The Deborah A. Rothe group home serves a maximum of eight girls, 13 through 17 years of age, who are adjudicated deprived and ~~are~~ in ~~the~~ OKDHS custody ~~of DHS~~. Referrals for placement are made to the Placement Section of Children and Family Services Division (CFSD).

(~~d~~b) Both ~~CW~~ OKDHS operated group homes are structured, community-based settings for ~~children~~ youth who require a high degree of individualized supervision and service provision. These group home programs are designed to serve ~~DHS~~ youth in OKDHS custody ~~children~~ who demonstrate significant behavior problems.

(~~e~~c) The ~~CW~~ OKDHS operated group homes provide or arrange services for residents~~, including~~ that include:

(1) individual and group counseling;
(2) medical and dental services;
(3) educational and vocational services;
(4) recreation;
(5) independent living skills;
(6) social work services;
(7) nutrition, clothing, and shelter;
(8) family visitation;
(9) transportation; and
(10) basic child care.

SUBCHAPTER 18. CONTINUOUS QUALITY IMPROVEMENT

340:75-18-2. Definitions

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

"Administration on Children and Families (ACF)" means an agency within the ~~U.S.~~ United States Children's Bureau that has primary oversight of child welfare (CW) services administered by the states with the participation of federal financing.

"Child and Family Service Review (CFSR)" means a procedure developed by ACF to assess and improve ~~Child Welfare (~~CW~~)~~ services. The Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) has replicated this procedure with minor modification to assess outcomes from and systemic factors of Oklahoma's CW services. ~~This state initiative is also called Child and Family Service Review (CFSR). Reference to CFSR in this policy will be to the Oklahoma initiative unless otherwise specified.~~

"Contractor" means an individual or agency that provides CW services through a contract or agreement with ~~DHS~~ OKDHS or the Oklahoma Health Care Authority. ~~**Contractor** and **provider** are used interchangeably.~~

~~**"Council on Accreditation (COA)"** means an independent organization that develops best practice standards for a variety of social services and assesses performance in the context of those standards. Accreditation is awarded to eligible organizations.~~

"Oklahoma Health Care Authority (OHCA)" means ~~a~~ the state agency that administers federal Medicaid, ~~(~~Title XIX~~)~~, funding for social services.

"Outcomes" means statements describing achievements ~~to be~~ realized by children and families as a result of CW services.

"Site" means a county or grouping of counties, typically supervised by one county director, that is the focus of review by one team during a CFSR.

"Systemic factors" means components of CW services important to the successful realization of targeted outcomes by children and families~~.~~, ~~The ACF has identified a variety of systemic factors as subjects of evaluation during CFSRs. Systemic factors are also~~ as measured in CFSRs ~~conducted by DHS~~.

340:75-18-3. Independent safeguards

(a) The Oklahoma Commission on Children and Youth (OCCY) is an agency established ~~by~~ per Section 601 of Title 10 of the Oklahoma Statutes to advocate for the interests of children. ~~The agency~~ OCCY:

(1) conducts reviews of children's services~~,~~;

(2) advocates for individual and systemic service improvement~~,~~; and

(3) facilitates the review and revision of the comprehensive State plan for the prevention of child abuse and neglect.

(b) A ~~Court Appointed Special Advocate~~ court-appointed special advocate (CASA) or guardian ad litem is a volunteer who ~~has been~~ is appointed by the court to represent the best interests of any ~~deprived or~~ child, alleged or adjudicated deprived, ~~child~~ over whom the court has jurisdiction, per Section 7001-1.1 et seq. of Title 10 of the Oklahoma Statutes. ~~[10 O.S. § 7003.7 and 7112]~~

(c) Local ~~Post Adjudication Review Board~~ post adjudication review boards (PARBs) are established within each judicial district, ~~by~~ per Section 1116.3 of Title 10 of the Oklahoma Statutes. ~~Until~~ At least once every six months until the court case is dismissed, PARBs review the ~~following elements of each child's services at least once every six months~~:

(1) ~~the~~ goals and objectives of the treatment and service plan;

(2) ~~the~~ services provided to the child, ~~parent~~ parent(s), and stepparent;

(3) ~~the~~ goals and objectives of the child's permanency plan; and

(4) appropriateness of the child's placement, when the child is placed ~~outside of the home, the appropriateness of the placement as well as the array of services provided the child and family or other adults living in the home of the child~~ in out-of-home care.

(d) The State Post Adjudication Review Advisory Board ~~is established by~~ (State PARB), per Section 1116.6 of Title 10 of the Oklahoma Statutes, ~~to oversee~~ oversees the statewide implementation of PARBs. ~~They make~~ The State PARB makes recommendations to the courts, OCCY, ~~the~~ Governor, ~~the~~ Legislature, ~~DHS~~ Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), and other state agencies providing services to children regarding:

(1) statutory revisions~~,~~;

(2) amendments to court rules~~,~~;

(3) permanency planning~~,~~;

(4) foster care~~,~~; and

(5) Child Welfare (CW) services delivery policies, guidelines, and procedures.

~~(e) Child Welfare services provided by DHS are reviewed and accredited by the Council on Accreditation (COA) as required by Section 7004-1.3.A.4 of Title 10 of the Oklahoma Statutes.~~

(~~f~~e) The Office of Client Advocacy (OCA) is an administratively independent division of ~~DHS which~~ OKDHS that conducts investigations of maltreatment involving children in placements more restrictive than foster care, and processes grievances filed by or on behalf of children and foster parents~~.~~, ~~[~~per OAC 340:2-3~~]~~.

[OAR Docket #04-919; filed 5-17-04]

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

[OAR Docket #04-920]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-1 [REVOKED]
340:75-7-2 [AMENDED]
340:75-7-8 [REVOKED]
Part 2. Development of Resources
340:75-7-10 [AMENDED]
340:75-7-12 [AMENDED]
340:75-7-12.1 [REVOKED]
340:75-7-14 through 340:75-7-15 [AMENDED]
340:75-7-15.1 through 340:75-7-17 [REVOKED]
340:75-7-18 through 340:75-7-19 [AMENDED]
340:75-7-20 [REVOKED]
340:75-7-22 through 340:75-7-23 [REVOKED]
340:75-7-24 [NEW]
Part 4. Foster Parents' Roles and Responsibilities
340:75-7-36 [REVOKED]
340:75-7-37 through 340:75-7-38 [AMENDED]
340:75-7-41 [AMENDED]
340:75-7-41.1 through 340:75-7-42 [REVOKED]
340:75-7-48 [REVOKED]
Part 5. Eligibility and Payments
340:75-7-51 through 340:75-7-53 [AMENDED]
340:75-7-54 through 340:75-7-56 [REVOKED]
340:75-7-58 through 340:75-7-60 [REVOKED]
Part 6. Foster Home Care Support Services
340:75-7-62 [REVOKED]
340:75-7-64 [REVOKED]
340:75-7-65 [AMENDED]
340:75-7-66 [REVOKED]
340:75-7-69 through 340:75-7-70 [REVOKED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-86 through 340:75-7-93 [REVOKED]
340:75-7-94 [NEW]
Part 25. Emergency Foster Care Program
340:75-7-260 through 340:75-7-261 [REVOKED]

340:75-7-262 [AMENDED]
340:75-7-263 through 340:75-7-269 [REVOKED]
(Reference APA WF 04-02)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 7202.1 et seq. of Title 10 of the Oklahoma Statutes, Oklahoma Foster Care and Out-of-Home Placement Act.

DATES:
Comment period:
February 17 through March 18, 2004
Public hearing:
None requested
Adoption:
March 23, 2004
Submitted to Governor:
March 23, 2004
Submitted to House:
March 23, 2004
Submitted to Senate:
March 23, 2004
Gubernatorial approval:
May 5, 2004
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 14, 2004.
Final adoption:
May 14, 2004
Effective:
June 25, 2004

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed revisions to Subchapter 7 of Chapter 75 clarify Foster Care resource services and program procedures in chronological order, update statutory citations, improve readability, eliminate unnecessary language, conform to current formatting guidelines, and coordinate with the KIDS system.

340:75-7-1; 75-7-8; 75-7-12.1; 75-7-15.1 through 75-7-17; 75-7-20 through 75-7-23; 75-7-36; 75-7-41.1 through 75-7-48; 75-7-54 through 75-7-64; 75-7-66 through 75-7-93; 75-7-260 and 75-7-261; and 75-7-263 through 75-7-269 are revoked.

340:75-7-2 is revised to include information previously included in 75-7-1 and delete definitions no longer applicable to the resource assessment process.

340:75-7-10 is revised to reflect the current focus of recruitment efforts.

340:75-7-12 is revised to provide a comprehensive listing of requirements for foster applicants.

340:75-7-14 is revised to expound on pre-service and in-service training requirements and the process for the waiver of training requirements.

340:75-7-15 is revised to detail the assessment of background investigation results for all foster resources, including those conducted after-hours and on holidays.

340:75-7-18 is revised to reflect the chronological sequence of assessing resource families.

340:75-7-19 is revised to clarify that joint approval of a resource home is child-specific and approval based on the child's needs.

340:75-7-24 is issued to provide comprehensive information specific to kinship care, placement, requirements, and payment options.

340:75-7-37 is revised to clarify the responsibilities of foster parents participating in the development and support of the child's permanency goal.

340:75-7-38 is revised to highlight the responsibilities, principles, teaching techniques, and behavior management of discipline.

340:75-7-41 is revised to specify placement considerations and requirements.

340:75-7-51 is revised to detail the procedures for foster care claims adjustments.

340:75-7-52 is revised to include information regarding the foster care contract provisions.

340:75-7-53 is revised to incorporate all difficulty of care (DOC) information in one section of policy and provide guidance on requesting, reviewing, and authorizing a DOC payment for a child.

340:75-7-65 is revised to incorporate foster care child care, formal and informal, and supportive services in one section of rule.

340:75-7-94 is issued to provide information regarding Foster Care reviews and update associated forms.

340:75-7-262 is revised to include roles and responsibilities of CW staff and emergency foster care (EFC) agencies regarding EFC. Additionally, information pertaining to discharge of the child and change of placement information accompanying the child is included.

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 25, 2004:

SUBCHAPTER 7. FOSTER HOME CARE

PART 1. GENERAL PROVISIONS

340:75-7-1. Foster resource family care services [REVOKED]

~~(a) **Foster resource family care.** Foster resource family care is an essential child welfare service for children and their parents, legal guardians, or custodians when the safety of a child cannot be assured in his or her own home due to the risk of child abuse, neglect, or special circumstances necessitating out of home care. Foster resource family care is a planned, goal directed service that provides 24 hour a day substitute care and supportive services for children and their parents, legal guardians or custodians in a home environment. The identification of foster resource families within 40 miles of the child's own community provides continuity of neighborhood based services. Foster resource family care includes regular foster family care, kinship foster family care, tribal foster family care, therapeutic foster family care, specialized foster family care, and emergency foster family care.~~

~~(b) **Regular foster family care.** Regular foster family care is continuous care provided for a child requiring out of home placement in a home environment, including, but not limited to, the care, supervision, guidance, and rearing of a child by a foster resource parent, approved and under formal contract with the Department of Human Services (DHS).~~

~~(c) **Kinship foster family care.** Kinship foster family care is continuous care provided for a child requiring out of home placement by a kinship relation. A kinship relation means relatives, stepparents, or other responsible adults who have a bond or tie with a child or to whom has been ascribed a family relationship role with the child's parents or the child. Kinship relationship may fall outside the degrees of blood relationship. Kinship relationships are identified in subsections (1) - (6).~~

~~(1) **Related by blood.** Blood relatives considered as kinship, including half blood, are:~~

~~(A) siblings;~~

~~(B) grandparents, including those denoted by prefixes of great, great great;~~

~~(C) aunts and uncles, including those denoted by the prefixes of great and great great;~~

~~(D) nieces and nephews, including those denoted by prefixes of grand and great grand; and~~

~~(E) first cousins and first cousins once removed.~~

~~(2) **Related by marriage.** Kinship is as denoted under (1) of this subsection, whether marriage is common-law or ceremonial, including step-relations. Kinship by marriage is included even after the marriage is terminated by death or divorce.~~

~~(3) **Related by adoption.** Kinship is as denoted under (1) or (2) of this subsection.~~

~~(4) **Paternal relatives.** Paternal relatives as denoted under (1), (2), or (3) of children born out of wedlock are kinship.~~

~~(5) **Related by emotional tie or bond.** An emotional tie or bond kinship relationship exists when a child or the child's parent acknowledges and accepts a person as part of the extended family or in the family's close network of friends and other relationships. The family relationship role exists prior to the necessity for out-of-home placement.~~

~~(6) A child returned to or placed with a non-custodial parent or a parent with terminated parental rights is not in a kinship placement. Decisions of legal responsibility do not change the existence of blood lines. Biological parents are not kinship resources and are not eligible for foster care reimbursement.~~

~~(d) **Tribal foster family care.** Tribal foster family care is continuous care provided for Indian children, in the custody of the Department of Human Services (DHS) or in the custody of a tribe, by Indian foster resource families as defined in OAC:75-19 Working with Indian Children.~~

~~(e) **Emergency foster family care.** Emergency foster family care (EFC) provides short-term substitute family care for children from birth through five years of age on an emergency basis. Provided by contracted agencies and DHS with service coordination and delivery, emergency foster family care, as defined in OAC 340:75-7-265 through 75-7-269, Part 25, Emergency Foster Care Program, meets the child's total needs.~~

~~(f) **Therapeutic foster family care.** Therapeutic foster family care (TFC), as defined in OAC 340:75-8, provides for the child's mental, emotional, and physical needs when regular foster family care cannot meet those needs. The contracted agencies, with DHS coordination, provide TFC services.~~

~~(g) **Specialized foster family care.** Specialized foster family care is continuous care provided to a child in a specialized foster home or agency-contracted home certified by the Developmental Disabilities Services Division (DDSD) of DHS and funded through the Home and Community-Based Waiver Services Program administered by the DDSD as defined in OAC 340:75-35, Part 3, DDSD Services for Custody Children.~~

340:75-7-2. Purpose, legal base, and definitions

(a) **Purpose.** Foster ~~resource~~ family care ~~services provide~~ is a planned, goal directed service that provides 24-hour a day substitute temporary care and supportive services in a home environment for any child, ~~up~~ birth to 18 years of age, residing ~~within the boundaries of the state of~~ in Oklahoma and in the custody of ~~the~~ Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS). Voluntary foster care is available for any child, ~~up~~ birth to ~~the age of~~ 21 ~~is available~~ years of age, per OAC 340:75-4-12.1 and 340:75-6-115.9.

(b) **Legal base.**

(1) ~~Section 7202 of Title 10 of the Oklahoma Statutes amends the~~ The Oklahoma Foster Care and Out-of-Home Placement Act ~~and grants~~ acknowledges that foster parents have a recognizable interest in the familial relationship they ~~have established~~ establish with a ~~foster~~ child who ~~has been~~ is placed in their care. The law ~~provides~~ recognizes that foster parents are ~~considered~~ essential participants ~~with regard to decisions~~ in decision-making related to the ~~care, supervision, guidance, rearing, and other foster care services provided to a foster~~ child in their home.

(2) Sections ~~7003.7.1.A~~ 7203 and ~~7206.1A~~ 7204.4 of Title 10 of the Oklahoma Statutes define and ~~outline the authority for~~ authorize foster ~~resource~~ family care.

(3) Titles IV-B and IV-E of the ~~Federal~~ Social Security Act mandate and provide funding for certain child welfare services, including foster care.

(4) OKDHS implements recruitment and retention activities that support the:

(A) Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 (MEPA/IEP), per OAC 340:75-1-9;

(B) Federal Indian Child Welfare Act (FICWA), per Section 1901 et seq. of Title 21 of the United States Code, and Oklahoma Indian Child Welfare Act (OICWA), per Section 40 et seq. of Title 10 of the Oklahoma Statutes;

(C) Adoption and Safe Families Act of 1997 (ASFA) that amended Titles IV-B and IV-E of the Social Security Act, per Sections 620 through 679 of Title 42 of the United States Code; and

(D) regulations promulgated to implement each Act.

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

~~(1) **"At-home consultation"** means the first face-to-face meeting at the prospective foster or adoptive family's home. It is an extension of the first response to the family's interest in the Foster Care or Adoption Program.~~

~~(2) **"Behavior Crisis Management Training (BCMT)"** means a training program designed to teach foster parents parent-child conflict resolution, restraining and holding techniques, stress management, or any other appropriate technique to control potentially violent behavior in a manner appropriate to the age and development of a foster child. This training is completed prior to certification of the foster home.~~

~~(3) **"Community education"** means to inform the general community and prospective foster and adoptive parents about the value of culturally relevant, community-based family foster care and adoption; the need for foster and adoptive parents; the roles community members can play in helping the agency meet this need; the supports community members can provide the agency and the families and children it serves; and the important~~

~~role of foster and adoptive parents in meeting the needs for families and children in their community.~~

~~(4) **"Competencies"** means the knowledge and skills foster parents need to perform a job task. These include:~~

~~(A) connecting children to safe, nurturing relationships intended to last a lifetime;~~

~~(B) meeting children's developmental needs and addressing developmental delays;~~

~~(C) protecting and nurturing children;~~

~~(D) supporting relationships between children and their families; and~~

~~(E) working as a member of a professional team.~~

~~(5) **"Eco-map"** means a graphic tool that helps clarify the family's connections to systems outside the family that either support or hinder their assuming the role of foster parent.~~

~~(6) **"Family development plan"** means a written statement which contains the foster family's present level of competencies, annual educational goals, methods for reaching those goals, and a way to determine whether goals have been met. The Family Development Plan (FDP) is developed jointly by the family and the Department.~~

~~(7) **"Genogram"** means the graphic tool for recording, organizing, and analyzing information about the extended and current family. It helps in understanding how the members of the prospective foster and adoptive families have a sense of who they are, what their relationships are like, and expectations of life.~~

(1) **"Emergency foster care (EFC)"** means short-term substitute care for children in the custody of OKDHS from birth through five years of age. Care is provided by a contracted agency to meet the child's needs through service coordination and delivery in conjunction with OKDHS.

(2) **"Foster family care"** means an essential temporary Child Welfare (CW) service for a child and parent(s), legal guardian, or custodian when the child's safety cannot be ensured in his or her own home due to the risk of child abuse, neglect, or special circumstances necessitating out-of-home care on a temporary basis. A service of continuous care is provided for a child requiring out-of-home placement in a home environment, including, but not limited to, the care, supervision, guidance, and rearing of a child by a foster parent, who is approved by and under contract with OKDHS.

(~~8~~3) **"House assessment"** means the ~~assessment~~ evaluation of the prospective foster or kinship family's ~~house~~ place of residence to ~~see if~~ determine whether the ~~house~~ residence meets ~~the Department's~~ OKDHS physical ~~standards~~ requirements for safety.

~~(9) **"Impact of loss chart"** means a tool to help the family identify the losses they have experienced and how they were supported in moving through the grief process.~~

(4) **"In-service training"** means instruction on a yearly basis that is required to maintain continued approval of a foster home.

(~~10~~5) **"Inquiry"** means the first ~~personal~~ contact a prospective resource ~~parents have~~ parent has with ~~the Department~~ OKDHS. ~~This is usually a telephone call to the county Child Welfare~~ The prospective resource parent may ask the local OKDHS office staff about foster parenting, through a phone call, email, or personal contact.

~~(11) **"Loss manager"** means someone who has moved along the grieving process path in his or her own life, developed some skills to cope, and has the emotional resources to help others.~~

(6) **"Kinship foster family care"** means continuous care provided for a child requiring out-of-home placement by a relative, stepparent, or other responsible adult who has a bond or tie with the child or a family relationship role with the child's parent(s) or the child prior to the child's entry into foster care.

(~~12~~7) **"Mutual decision-making"** means the process by which the prospective resource ~~families decide~~ family decides, given what they have learned about themselves and the children served by ~~the Department~~ OKDHS, whether they want to become approved foster, kin, or adoptive parents. ~~The Department~~ OKDHS, represented by the ~~foster home developer~~ resource specialist, determines whether the family has the skills, willingness, and resources to foster or adopt an available ~~children~~ child.

~~(13) **"Mutual family assessment process"** means a series of meetings between the foster home developer and the family which relates directly to the educational experience of the family who is simultaneously attending the Oklahoma PATH training.~~

~~(14) **"Oklahoma Parents as Tender Healers (OK PATH)"** means the orientation series program which is comprised of seven three-hour sessions conducted in conjunction with and made part of the resource assessment. This program is designed to meet the needs of resource families in Oklahoma.~~

~~(15) **"OK PATH packet"** means the initial information that is sent to a person who inquires about the foster home or adoptive home programs.~~

~~(16) **"Parent connections"** means the written homework assignments completed before and during OK PATH sessions; for example, impact loss chart, genogram, and eco-map.~~

(~~17~~8) **"Parental substitute authority"** means the ability of the foster ~~parents~~ parent to integrate the ~~foster~~ child requiring out-of-home placement into the family setting and to care for the child as ~~they~~ the foster parent would ~~their~~ his or her child~~. It also means, but is not limited to~~, by:

(A) meeting the child's physical and emotional needs~~,~~;

(B) teaching the child problem-solving, self-control, and responsibility~~,~~; and

(C) building the foster parent ~~and foster~~ - child relationship. ~~It~~ This does not include the authority to use corporal punishment on any ~~foster~~ child in OKDHS custody.

~~(18) **"PATH"** means the acronym for Parents as Tender Healers.~~

(9) **"Pre-service training"** means instruction required of a foster parent applicant prior to approval.

340:75-7-8. Number and ages of children allowed placed in a regular or kinship foster resource home [REVOKED]

~~(a) To determine the number and ages of children placed in a regular or kinship foster resource home, the foster resource specialist considers the:~~

~~(1) capabilities and skills of the foster parents;~~

~~(2) number and ages of the foster resource parents' own children;~~

~~(3) accommodations of the home;~~

~~(4) known behavioral patterns of the foster resource family's own children and foster children; and~~

~~(5) anticipated effect of the placements upon the family as a unit. Needs of a child already placed in the home may restrict the capacity of a home regardless of the approved number of children for the home.~~

~~(b) The total number of foster children allowed placed in a regular or kinship foster resource home cannot exceed five. The total number of all children in the home, which includes biological, adoptive, foster, and other children not in the custody of the Department of Human Services (DHS) cannot exceed six.~~

~~(c) No more than two children under two years of age, including the foster parents' own children, are allowed placed in the same home.~~

~~(d) The number of children allowed in a therapeutic foster resource family home is defined in OAC 340:75-8.~~

~~(e) Each tribe determines the number of DHS custody children and tribal custody children allowed placed in a tribal foster resource family home. DHS makes every attempt to place DHS Indian custody children in tribally approved resource homes. However, if a tribal foster resource family is unwilling or unable to meet the custody child's individualized strengths and needs, placement of any DHS custody child in the tribal foster resource home ends and no new placements are made. OAC 340:75-19 Working with Indian Children defines tribal foster resource family care.~~

~~(f) OAC 340:75-7-261 defines the number of children and ages of children allowed placed in emergency foster family care.~~

~~(g) Oklahoma Health Care Authority (OHCA) OAC 317:40-5-75 Standards for Specialized Foster Care and Respite Homes defines the number of children allowed placed in specialized foster family care.~~

PART 2. DEVELOPMENT OF RESOURCES

340:75-7-10. Recruitment of foster ~~resource~~ families

(a) **Foster families.** The recruitment of foster ~~resource~~ families is a crucial component for providing safe home environments for children requiring out-of-home placement due to child abuse, neglect, or other special circumstances. ~~Recruitment activities must meet the requirements of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 (MEPA/IEP) as outlined in OAC 340:75-1-9(b). It is inconsistent with the goals of MEPA/IEP and may create circumstances which constitute a violation of state plan requirements and Title VI of the Civil Rights Act of 1964 if diligent recruitment efforts fail to provide all custody children with an opportunity for placement and all qualified members of the community an opportunity to become foster or adoptive parents. Recruitment must reflect the ethnic and racial diversity of children in care for whom foster and adoptive resource homes are needed.~~ Diligent recruitment ensures children have access to foster families who:

(1) live in close proximity to biological families;

(2) can meet each child's unique needs;

(3) allow sibling groups to remain together; and

(4) reflect and understand the racial and ethnic diversity of local communities.

(b) **Recruitment and retention.** In order to impact the availability and diversity of resources, the Oklahoma Department of Human Services (OKDHS) implements recruitment and retention activities that are defined by each county.

340:75-7-12. Initial screening of foster ~~resource~~ family inquiries

(a) **Inquiries.** Any person, who is at least 21 years of age, may apply to become a foster parent by contacting the local Oklahoma Department of Human Services (OKDHS) office. ~~DHS is responsible for the approval of foster resource families who:~~

~~(1) can fulfill the expectations and requirements of the role;~~

~~(2) have the ability and willingness to understand the importance of helping children and youth remain part of their families and culture;~~

~~(3) understand that preserving and strengthening families is one of the primary goals of Child Welfare;~~

~~(4) can provide a safe and nurturing home environment;~~

~~(5) can integrate the foster child into the family setting and care for the foster child as the foster parents would their own child;~~

~~(6) can protect and nurture physically, sexually, and emotionally, abused and neglected children;~~

~~(7) can support the relationship between children and their parents, siblings, and relatives as appropriate; and~~

~~(8) are willing to work in collaboration with the Department of Human Services (DHS) as an effective and essential member of a professional team to meet needs for safety, well-being, and permanence of a child.~~

(b) **Requirements.** ~~All applicants are advised of the minimum requirements required for the approval process.~~ Requirements described in OAC 340:110-5 serve as a framework for families and OKDHS in the mutual assessment process that assists in selecting the best home for children placed in foster family care. All applicants must:

(1) ~~must~~ be at least 21 years of age and preferably no more than 55 years older than the child considered for placement;
(2) if married, be married one year or more. Applicants may be married, single, ~~or married~~ legally separated, or divorced;
(3) ~~must~~ have the ability to manage personal and household financial needs without relying on the foster care reimbursement;
(4) ~~must~~ provide appropriate sleeping arrangements for each child placed ~~appropriate sleeping arrangements which offer privacy and meet the individual needs of the child as defined in OAC 340:75-7-18~~;
(5) ~~must~~ provide verification that all members of the household are in sufficiently good physical and mental health to provide for the individual needs of each child placed ~~in the home~~;
(6) submit to a search of all OKDHS records, including Child Welfare (CW) records;
(~~6~~7) ~~must~~ ensure that each member of the household, 18 years of age or older, ~~will submit~~ submits fingerprints for a state and national criminal history records search ~~as defined in OAC 340:75-7-15, 340:75-7-15.1, and 340:75-7-17~~;
(8) submit to a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the household;
(~~7~~9) ~~must~~ ensure that no member of the household has a prior conviction of any sexual offense ~~as defined in OAC 340:75-7-17~~;
(~~8~~10) ~~must~~ provide references ~~as defined in OAC 340:75-7-18~~;
(~~9~~11) ~~must be willing to~~ complete 27 hours of pre-service ~~orientation~~ training ~~as defined in OAC 340:75-7-14~~;
(~~10~~12) ~~must be willing to~~ complete 12 hours of in-service training each ~~contracted~~ contract year ~~as defined in to OAC 340:75-7-69~~;
(13) demonstrate the basic competencies that are to:
(A) protect and nurture children who have been abused, emotionally maltreated, or neglected;
(B) meet the medical and developmental needs of these children;
(C) support relationships between children and their parents, siblings, and kin, as specified by OKDHS;
(D) connect the child to a safe, nurturing relationship; and
(E) collaborate with OKDHS as a team member;
(~~11~~14) ~~must~~ have a ~~home~~ house assessment completed;
(15) have extended family or friends to provide support and child care other than, or, in addition to, licensed child care paid by OKDHS;
(~~12~~16) ~~must~~ submit verification of employment ~~if~~ when requesting paid child care services for a ~~foster~~ child ~~as defined in OAC 340:75-7-65.~~ in foster care;
(17) acknowledge and agree to abide by applicable State statutes and OKDHS rules regarding children in their care that include, but are not limited to:
(A) OKDHS, as the legal custodian of the child, has the right to move any child from any foster home at any time when in the child's best interests and in accordance with statutes governing movement of children;
(B) the necessity of maintaining and respecting the confidential nature of all information regarding a child placed in the foster home, and that a breach of confidentiality may be grounds for closure of the foster home and termination of the foster care contract; and
(C) the requirement that OKDHS investigate or assess allegations of abuse, neglect, or maltreatment of any child in OKDHS custody placed in an approved foster home in the same manner as any other abuse or neglect investigation or assessment conducted by OKDHS;
(18) notify OKDHS whenever any member of the foster family is seriously ill or hospitalized;
(19) provide a physician's statement, once approved as a foster parent:
(A) for any hospital stay;
(B) for ongoing outpatient medical or mental health care, including psychological counseling; or
(C) upon OKDHS request;
(20) agree to provide foster care as a planned, temporary placement for children with the goal of family reunification or other permanency plan;
(21) work as a member of a professional multidisciplinary team with OKDHS staff to develop a case plan for each child placed;
(22) share parenting of the child in care with the parent(s), who may have different values and lifestyles;
(23) treat all information regarding the child and family as confidential, only sharing such information necessary to obtain services for the child or with persons who are directly involved with the case;
(24) participate in the development of an effective parent and child visitation plan that may include contact with the parents and siblings, if siblings are separated;
(25) comply with OKDHS rules on discipline;
(26) maintain requirements necessary for continued approval as a foster home;
(27) participate in the re-assessment of the foster home and the evaluation of the OKDHS Foster Care program and services;
(28) utilize the foster care reimbursement for the care and maintenance of the child's basic needs, such as food, clothing, shelter, incidentals, non-prescription medications, including special activity fees, allowances, and recreational opportunities; and
(29) comply with all state statutes relating to the care and support of minors including those that prohibit the use of tobacco, alcohol, or non-prescribed medications.
(c) **Specific inquiries.** Temporary Assistance for Needy Families (TANF) recipients and OKDHS employees may apply to be OKDHS foster families.

(d) **Requests from other states.** When former foster parents apply in another state to be a foster resource and that state requests information about the foster parents from OKDHS, Children and Family Services Division Foster Care Section responds to the request.

340:75-7-12.1. Inquiries of Department of Human Service (DHS) employees [REVOKED]

~~The potential for the development of a conflict of interest, or the perception of a conflict of interest, is present when a Department employee engages in multiple roles and responsibilities. This is a major concern if the employee is employed, full or part-time, with the Children and Family Services Division (CFSD), or with related divisions, such as Family Support Services, Child Support Enforcement, Developmental Disabilities Services, Office of Client Advocacy, or Field Operations. One of the major goals of the foster care program is for every foster resource parent to integrate the child in placement into the existing family structure. The natural progression of the integration process can affect objective decision making which can directly affect the delivery of services to children in DHS care. Foster resource parents are expected to advocate for the child placed and cooperate in a team relationship with the biological parents, service providers, and Child Welfare staff. These responsibilities present an area of potential disagreement due to role conflicts for the employee foster resource parent, county staff, biological parents and family.~~

340:75-7-14. ~~Oklahoma PATH Orientation Series~~ Training

~~(a) **Purpose.** Foster parent training effectively reduces the number of placements for children requiring out-of-home care. Foster parent training substantially reduces the possibility of abuse and neglect occurring in a foster resource family home, increases the retention of quality foster families, enhances the recruitment of additional foster families, and improves the quality of the Foster Resource Family Care Program.~~

~~(b) **Philosophy.** Oklahoma Parents as Tender Healers (OK PATH) is a program for the training, assessment, and selection of prospective kinship, foster, and adoptive resource parents. This program is based on the philosophy that knowledgeable and skilled resource parents are integral to providing quality foster care and adoption services. It is designed to strengthen the quality of foster family care and adoption services by providing a standardized, consistent, structured framework for training and ongoing professional development.~~

~~(c) **Goals.** The major goals of OK PATH are to help:~~

~~(1) meet the protective, developmental, cultural, and permanency needs of children placed with foster and adoptive families;~~

~~(2) strengthen families, whether they are families of origin, blended families, extended or kinship families, foster families, or adoptive families;~~

~~(3) strengthen the quality of foster family care and adoption services by providing a standardized, consistent, structured framework for the competency based preparation and selection of foster and adoptive parents, and foster parent in-service; and~~

~~(4) share resources among public and voluntary child welfare agencies, colleges and universities, foster and adoptive parent associations, and national child welfare organizations.~~

~~(d) **Mandatory OK PATH Orientation Series.** Training requirements for prospective resource parents are listed in this subsection. Both husband and wife in all prospective resource homes and Child Welfare (CW) specialized community home operators, attend the 21 hour orientation series and six hours Behavior Crisis Management Training (BCMT) prior to approval of the home. Foster resource families may have children placed prior to the final completion of the assessment process.~~

~~(1) Kinship foster resource families, both paid and non-paid, complete the assessment process within 90 days of placement.~~

~~(2) Kinship foster resource families qualify for a one-time training stipend per family. Receipt of the full stipend payment requires the completion of OK PATH and BCMT by each kinship foster caregiver.~~

(a) **Pre-service training.** Applicants and adult household members complete a prescribed course of training that addresses the values and competencies essential to caring for children who are victims of maltreatment.

(1) Each adult in a foster home identified as a provider for a child completes required training or is determined to possess required competencies as a result of prior foster care training and experience.

(2) Required pre-service training consists of approximately 27 hours of instruction addressing required competencies, including, but not limited to:

(A) protecting and nurturing children who have been abused, emotionally maltreated, or neglected;

(B) meeting the medical and developmental needs of these children;

(C) supporting relationships between children and their parents, siblings, and kin, as specified by the Oklahoma Department of Human Services (OKDHS);

(D) connecting the child to safe, nurturing relationships; and

(E) collaborating with OKDHS as a member of a team.

(3) Applicants may request a waiver of training requirements by submitting to the resource specialist a list of subjects addressed in training as a result of prior service with Oklahoma, another state, or a private agency. Requests for training waivers are reviewed and acted on by Children and Family Services Division (CFSD) Foster Care and Training Sections programs managers.

(A) An applicant with a break in OKDHS service of less than five years meets the training requirements.

(B) Supplemental information or confirmation of training may be requested from another state or private agency identified by the applicant to aid in decision-making.

(C) The resource specialist notifies the applicant of the decision within 30 working days of the request for a training waiver.

(4) Resource families may be approved as placement resources before the conclusion of classroom training.

(5) Resource families may request exception to training based on work schedule or disability.

(A) A self-study curriculum addressing the required competencies may be:

(i) requested by an adult in the applicant's home when the person's work schedule precludes the completion of training; and

(ii) approved by the Foster Care and Training programs managers. The assigned resource specialist supervises self-studies.

(B) A permanent training waiver may be approved by the Foster Care programs manager for adults in the applicant's home when verification is received that the person has a significant disability that precludes completion of classroom or self-study curriculums. Persons who are granted a permanent training waiver may not be considered as a provider for a child.

(b) **In-service training.** All foster parents complete 12 hours of continuing in-service training per year on subjects that promote their skills and interests as providers.

(1) OKDHS offices provide free in-service training options to foster families, including conferences, video and taped instruction, and literature.

(2) Internet instruction through recognized state and private foster care agencies is accepted as meeting in-service training requirements. Certificates of completion listing approved hours are typically available from the training source upon completion of such training.

(3) Foster families have options in selecting classes, conferences, reading materials, or other learning opportunities that enhance their skills as providers and meet the in-service training requirement. Prior approval from the resource specialist is secured to ensure a common understanding of credit for each event.

(4) Foster families caring for children in OKDHS custody residing in another state must meet the requirements of that state for ongoing training to maintain approval.

340:75-7-15. Background investigation~~, OSBI name search, OSBI records search, and FBI national criminal history records search, including fingerprinting~~ and assessment of results

(a) **Requirements.** ~~An applicant's signature, as well as the signatures of all adult members of the household, regardless of the length of time they are in the home, on Forms DCFS-26, Resource Family Assessment Application, and ADM-130, Request for Background Check, authorizes DHS to complete an investigation of the applicants.~~ A background investigation is conducted on all adults in the foster applicant's home as a safeguard for children placed in Oklahoma Department of Human Services (OKDHS) custody. Background investigations are conducted at the time of application and include:

(1) an Oklahoma State Bureau of Investigation (OSBI) name and records criminal history search, including the Department of Public Safety (DPS) and Sex Offenders Registry, of the applicant and any adult living in the applicant's household;

(2) a Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the applicant and any adult members of the household;

(3) a search of all OKDHS records, including Child Welfare (CW) records, for past confirmation of child maltreatment involving the applicant and any adult living in the household; and

(4) a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the applicant's household.

~~(b) **Approval based on Oklahoma State Bureau of Investigation (OSBI) name search.** One of the requirements to approve a resource home is background investigations.~~

~~(c) **Applicants living in the state less than five years.** If an applicant or anyone age 18 years or over residing in the applicant's home has lived in the state less than five years, the home approval requires OSBI records search and Federal Bureau of Investigation (FBI) national criminal history search.~~

(b) **Criminal history search.** The applicant and adult members of the household provide consent for an OSBI and FBI criminal history search by signing Form ADM-130, Request for Background Check.

(~~d~~c) **Exception to fingerprinting.** The Director of ~~the Department of Human Services (DHS)~~ OKDHS or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe condition ~~which~~ that precludes such person being fingerprinted.

~~(e) **Contractors completing home assessments.** Contractors completing home assessments for DHS provide documents, with signatures to DHS to perform the investigation process.~~

~~(f) **Review of existing DHS records.** DHS completes a review of existing Department records on all applicants, which includes a search in KIDS for child abuse and neglect history and a Juvenile Justice Information System (JOLTS) records search of any person age 13 years to 18 years residing in the home. DHS discusses any significant information obtained through this review with the applicants, includes the information in the written resource assessment summary, and considers the information in making the final recommendation as to the approval of the home.~~

(d) **Residence time frame.**

(1) If every person age 18 or older residing in the applicant's home has resided in Oklahoma for at least five years immediately preceding approval, the initial approval may occur upon completion of the entire home assessment process utilizing results per OAC 340:75-7-15(a).

(2) Fingerprints are submitted to the FBI for a national criminal history records search before initial approval. Final approval, per OAC 340:75-7-18(b)(3), is contingent upon receipt of the results of the national criminal history records search.

(e) **Occupancy of the household.** A criminal history search is completed for every adult who sleeps in the household more than 30 days per calendar year or engages in a pattern of overnight visitation that meets this test. Such persons are considered household members.

(~~g~~f) **New occupants in the foster ~~resource~~ home.** The foster parent notifies ~~DHS~~ OKDHS within 24 hours of any person taking up residence in the foster ~~resource~~ home. ~~DHS~~ OKDHS completes ~~the~~ a background investigation ~~as outlined in this Section~~ per OAC 340:75-7-15 for persons ~~ages~~ age 18 years ~~and~~ or older. The foster ~~parents'~~ parent's child who reaches age 18 is considered in this category. Adults in this category have no provider responsibility until the background investigation is complete. ~~The juvenile justice system review is completed on youth 13 years of age and older. The outcome may affect the continued approval status of the home.~~ A foster family's failure to notify OKDHS of a new household member or refusal of a household member to consent to a background check is grounds for cancellation of the foster care contract.

(g) **Kinship applicant criminal background records search after normal business hours or on a holiday.** When OKDHS considers placement of a child with a prospective kinship foster family in an emergency situation, after normal business hours or on a holiday, OKDHS requests that local law enforcement conduct a criminal history search. This is based upon submission of the name, race, gender, date of birth, and Social Security number of each person age 18 or older living in the household. Each person completes and signs Form ADM-130 to initiate the search.

(h) **Assessment of background investigation results.**

(1) **History of felony convictions.** OKDHS denies a resource home application if the applicant, or any person residing in the home of the applicant, has a criminal conviction record for any of the felony offenses listed in (A) through (E). The criminal conviction of an approved foster parent or any person residing in the foster home of any of the felony offenses listed in (A) through (E) requires the closure of the foster home, cancellation of the foster care contract, and removal of each child in OKDHS custody. The felony offenses are:

(A) physical assault, battery, or a drug-related offense within the five year period preceding the application date;

(B) child abuse or neglect;

(C) domestic abuse;

(D) a crime against a child including, but not limited to, child pornography; or

(E) a crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery. Homicide includes manslaughter.

(2) **Exceptions to history of felony convictions.**

(A) OKDHS does not grant exceptions regarding felony convictions per OAC 340:75-7-15(h)(1) of a prospective or approved foster parent or of anyone residing in the foster home. Approval may be granted by the county director on a case-by-case basis, per OAC 340:75-7-15(4), for any applicant who has, or is living with a person who has, a prior conviction or charges pending for any other felony or a relevant misdemeanor.

(B) A prospective adoptive parent or long-term placement provider for a specific child in OKDHS custody, who has not been approved as a placement provider due to a conviction of a felony offense specified in OAC 340:75-7-15(h)(1)(A) within five years preceding the application date, may be approved only by the court after:

(i) an evaluation is made and accepted by the court that considers the:

(I) nature and seriousness of the crime in relation to the long-term placement;

(II) time elapsed since the commission of the crime;

(III) circumstances under which the crime was committed;

(IV) degree of rehabilitation; and

(V) number of crimes committed by the person involved; and

(ii) a showing by clear and convincing evidence that the child will not be at risk by such placement.

(3) **Sex related crimes.** OKDHS denies the application of an applicant if the applicant, or any person residing in the applicant's home, has been convicted, whether upon a verdict or a plea of guilty or upon a plea of nolo contendere, for any crime specified per Section 582 of Title 57 of the Oklahoma Statutes. OKDHS denies the application of an applicant if the applicant is subject to, living with, or married to a person who is subject to the Oklahoma Sex Offenders Registration Act.

(4) **History of crimes, charges, or other convictions.** Approval of any applicant who has, or is living with a person who has, a history of arrests, charges, or convictions for any felony other than those listed in OAC 340:75-7-15(h)(1) or a relevant misdemeanor may be approved on a case-by-case basis. A relevant misdemeanor includes, but is not limited to, assault and battery, alcohol or drug related offenses, crimes involving domestic abuse, and other such offenses.

(5) **History of child abuse and neglect investigations.** OKDHS determines the approval of any applicant with a history of child abuse and neglect investigations on a case-by-case basis. The county director considers the:

(A) nature and seriousness of the CW history;

(B) time elapsed since the CW history;

(C) circumstances of the CW history;

(D) degree of rehabilitation; and

(E) risk, if any, to the child by such placement.

(6) **JOLTS information.** The information obtained from a JOLTS search on the child older than 13 years of age living in the applicant's home is used to determine whether that child poses a risk to a child in OKDHS custody.

340:75-7-15.1. Prospective kinship foster resource criminal background records search after normal business hours and holidays [REVOKED]

~~If the Department of Human Services (DHS) is considering placement of a child with a prospective kinship foster resource parent in an emergency situation after normal business hours and holidays, DHS may request local law enforcement to conduct a criminal history records search based upon submission of the name, race, sex, date of birth, and Social Security number of each person over the age of 18 living in the household of the prospective kinship foster resource home.~~

340:75-7-16. Automated fingerprinting authorizations [REVOKED]

~~DHS will reimburse vendors to provide fingerprint services to DHS foster and adoptive applicants, including tribal applicants serving DHS custody children.~~

340:75-7-17. Assessment of background investigation results [REVOKED]

~~Factors considered in the assessment include information obtained from the background investigation; from interviews with the applicants or other adults in the home; and from data documented on the forms during the application process. If the background investigation results in any findings as set out in categories (1) - (3) the Department of Human Services (DHS) denies the foster resource home application.~~

~~(1) **History of felony convictions.** DHS denies a foster resource home application if the applicant, or any person residing in the home of the applicant, has a criminal conviction record for any of the felony offenses outlined in (A) - (E) of this subsection. The criminal conviction of an approved foster parent, or any person residing in the foster resource home of any of the felony offenses listed in (A) - (E) of this subsection requires the closure of the foster resource home and the removal of all DHS custody children. The felony offenses are:~~

~~(A) physical assault, battery, or a drug related offense within the five year period preceding the application date;~~

~~(B) child abuse or neglect;~~

~~(C) domestic abuse;~~

~~(D) a crime against a child including, but not limited to, child pornography; or~~

~~(E) a crime involving violence including, but not limited to, rape, sexual assault or homicide, but excluding physical assault or battery.~~

~~(2) **Exceptions to history of felony convictions.** The Department may not grant exceptions regarding felony convictions as defined in paragraph (1) above of a prospective or approved foster parent or of anyone residing in the foster home. However, approval of any applicant who has, or is living with a person who has, a prior conviction or charges pending for **any other felony or a relevant misdemeanor** may be granted on a case by case basis as set forth in paragraph (4) of this Section. A prospective adoptive parent or long-term placement provider for a specific custody child who has not been approved as a placement provider due to a conviction of a felony offense specified in (1)(A) above within five years preceding the application date, may nonetheless be **approved by the court** after it has been determined that:~~

~~(A) an evaluation has been made and accepted by the Court which considers the nature and seriousness of the crime in relation to the long-term placement;~~

~~(B) the time elapsed since the commission of the crime;~~

~~(C) the circumstances under which the crime was committed;~~

~~(D) the degree of the rehabilitation;~~

~~(E) the number of crimes committed by the person involved; and~~

~~(F) a showing by clear and convincing evidence that the child will not be at risk by such placement. This placement may be approved only by the court, and felony exceptions include only those specified in paragraph (1)(A) of this Section and not any of the other felony offenses listed in paragraph (1) of this Section.~~

~~(3) **Sex related crimes.** DHS denies the foster resource home application of a foster resource applicant if the applicant, or any person residing in the applicant's home, has a criminal conviction or has entered a guilty plea or a plea of nolo contendere to a sexually related crime. DHS denies the application of a foster resource applicant if the applicant is subject to, living with, or married to, a person who is subject to the Oklahoma Sex Offenders Registration Act.~~

~~(4) **History of crimes, charges, or other convictions.** Approval of any applicant who has, or is living with a person who has, a history of arrests, charges, or convictions for **any felony other than those listed in paragraph (1) of this Section or a relevant misdemeanor** may be approved as determined on a case by case basis. The term "relevant misdemeanor" includes, but is not limited to, such offenses as assault and battery, alcohol or drug related offenses, crimes involving domestic abuse and other such offenses.~~

~~(5) **History of child abuse and neglect investigations.** DHS determines the approval of any foster resource applicant with a history of child abuse and neglect investigations on a case by case basis.~~

340:75-7-18. Resource family assessment

~~The mutual family resource assessment process begins after the initial screening has been completed and the family wishes to continue in its pursuit to become a Department of Human Services (DHS) resource home by submitting a completed application to the local DHS Child Welfare office. After the application is accepted and the assessment is initiated, the family attends orientation training sessions.~~

~~(1) **Legal requirements.** Prior to approval, the foster resource specialist explains (A) through (C) to the applicants. It is essential the applicants understand:~~

~~(A) that the Department, as the legal custodian of the child, has the right to move any child from any foster resource home at any time when it is determined to be in the child's best interest in accordance with statutes governing movement of children;~~

~~(B) the necessity of maintaining and respecting the confidential nature of all information regarding a child placed in their home, and that a breach of this confidentiality may be grounds for closure of the foster resource home; and~~

~~(C) that the Department conducts investigations or assessments of abuse, neglect, or maltreatment of any child in DHS custody placed in an approved resource home in the same manner as any other abuse or neglect investigation or assessment conducted by the Department.~~

~~(2) **Placement requirements.** Only after disposition of the assessment, signing of the foster resource family contract, and approval of the foster resource home application, may placement of a DHS custody child occur in the foster resource home. The placement requirements do not apply to kinship resource placements.~~

~~(3) **Foster resource home approval for placement of DHS custody children.** A resource home is approved for placement of DHS custody children when (A) through (E) of this paragraph are completed.~~

~~(A) Form DCFS 69-A, Resource Family Assessment, including all references;~~

~~(B) Resource Family Orientation training (RFO);~~

~~(C) criminal records search, background checks, Child Abuse and Neglect Information System review, and Juvenile Justice Information System review for any child, other than a foster child, over the age of 13 years residing in the home;~~

~~(D) disposition as to the outcome of the assessment; and~~

~~(E) foster resource family contract.~~

~~(4) **Initial kinship placement.** A child can be placed in a kinship foster resource home prior to completion of Form DCFS 69-A and RFO training, provided that:~~

~~(A) Form DCFS 10, Initial Kinship Placement Agreement, is completed and signed;~~

~~(B) the criminal records search, background checks, Child Abuse and Neglect Information System review, and Juvenile Justice Information System review for any child, other than a foster child, over the age of 13 years residing in the home are completed; and~~

~~(C) Form DCFS 11, House Assessment, is completed and approved.~~

~~(5) **Payment pending completion of the resource family assessment process.**~~

~~(A) Foster resource care services reimbursement is contingent upon the completion of the:~~

~~(1) resource family assessment process;~~

~~(2) all required training; and~~

~~(3) signing of the foster resource family contract.~~

~~(B) The Child Welfare (CW) worker refers relative kinship caregivers to Family Support Services Division (FSSD) at the local county office for application for a child only Temporary Aid to Needy Families (TANF) benefits pending completion of this process.~~

~~(C) The CW worker enters a training stipend adjustment for kinship foster resource families pending completion of training requirements.~~

~~(6) **Identification of Indian tribal resource homes.** The State and Federal Indian Child Welfare Acts define an "Indian" as any person who is a member of an Indian tribe. In order for CW to identify valid placement resources for children who meet the definition of Indian under the Indian Child Welfare Acts, tribal membership or affiliation of foster resource home applicants must be determined at the time the assessment is completed. Certificate of Degree of Indian Blood (CDIB) cards are usually not sufficient for purposes of establishing tribal membership. The applicant provides written documentation of tribal membership or tribal affiliation to DHS.~~

~~(7) **Reference information.** The information listed on the resource family assessment application provides reference information to assess a family's ability to provide foster care services to DHS custody children. This application constitutes permission to contact persons identified as personal references and others as required. The contacts and documents listed in (A) - (F) are required as part of the reference information needed in the assessment process.~~

~~(A) **Personal references.** The applicants provide three personal references, only one of whom can be a relative. The references must know the applicants well enough to provide first hand information regarding their emotional, mental, social, and parental functioning abilities. In the event a reference is not well enough acquainted with the applicants to provide pertinent information or when the person declines to serve as a reference for any reason, this is documented in the assessment and the applicants are asked for another reference.~~

~~(B) **Employer.** The assessment process requires contact with the applicant's employer or direct supervisor. The assessment process requires DHS contact with the applicant's past employer or direct supervisor when warranted.~~

~~(C) **School personnel.** The assessment process requires contact by letter with the school principal, counselor, or teacher for each school age child of the applicants to obtain a better understanding of the applicants' child and an indication of the applicants' parenting.~~

~~(D) **Adult children.** The assessment process requires contact with all adult children of the applicants. They are a valuable source of information regarding the applicants' parenting ability.~~

~~(E) **Military history.** If an applicant has been discharged from the armed forces, the assessment~~

~~process requires that an applicant provide a copy of the Certificate of Release of Discharge From Active Duty, DD Form 214, to determine the type of discharge. A discharge of anything less than honorable requires an assessment of the reason as it relates to ensuring the safety, protection, and well-being of a child needing foster care services.~~

~~(F) **Previous foster care experience.** Applicants who have foster care certification, licensure, or approval with another state or agency must provide a copy of all previous foster resource home assessments, related information, and training records from the state or agency. The applicant must sign a Consent for Release of Confidential Information.~~

~~(G) **Other references.** The assessment process requires the applicant have at least six sources to provide reference information.~~

~~(i) With the exception of the three personal references, all other references require contact by letter, telephone, or face-to-face.~~

~~(ii) The information provided by references, voluntary and applicant referred, assists DHS in making a determination of the applicants' ability to provide foster care services. All information obtained from reference sources is confidential. This is explained to all reference contacts.~~

(a) **Resource family assessments.** Resource family assessments are completed by Oklahoma Department of Human Services (OKDHS) staff or by a contractor of OKDHS. The foster family assessment consists of an evaluation of the items listed in (1) through (7).

(1) **Background investigation.** A completed and signed Form DCFS-26, Resource Family Assessment Application, and Form ADM-130, Request for Background Check, authorizes OKDHS to conduct an investigation into criminal and OKDHS records, including Child Welfare (CW) records, of the applicant and each adult member of the household, per OAC 340:75-7-15.

(2) **House assessment.** The resource specialist conducts an evaluation of the applicant's residence to assess the location, condition, and ability to accommodate children in foster care. The evaluation addresses requirements found in OAC 340:110-5.

(3) **Total number of children in placement.** The total number of children in OKDHS custody placed in a kinship or foster home may not exceed five. The total number of all children in the home, which includes biological, adoptive, foster, and other children not in OKDHS custody, cannot exceed six.

(4) **Children younger than two years of age.** No more than two children younger than two years of age, including the foster family's own children, are placed in the same home.

(5) **References.** The resource specialist solicits and reviews the comments of personal, employer, and school references identified by the applicant regarding the applicant's parenting strategies and skills. Information obtained through references is confidential.

(A) Three personal references are interviewed by phone or in person.

(B) The applicant's current or most recent employer is contacted by letter, phone, or in person.

(C) School teachers, counselors, or administrators who have recently served the applicant's child are contacted by letter, phone, or in person to assess the applicant's involvement in educational concerns, if applicable.

(D) All adult children of the applicant are interviewed in person, by letter, or by phone, if applicable.

(E) A total of at least six references are required.

(6) **Military discharge.** If an applicant has been discharged from the armed forces, a copy of DD Form 214, Certificate of Release of Discharge From Active Duty, is required to determine the type of discharge. Any discharge other than honorable must be specifically addressed in the assessment as a consideration in the applicant's ability to attend to the safety and well-being of a child requiring foster care services.

(7) **Previous foster care experience.** Applicants who have previously served as foster parents in another state or with a private agency provide or authorize release of all previous foster home assessments, reports, and training records from the state or agency.

(b) **Disposition of foster home assessments.** Upon completion of the foster home assessment, a decision regarding disposition is made assessing all the information gathered. The assessment process is completed and the determination regarding disposition is made no later than 90 days after receipt of Form DCFS-26. The resource specialist confirms in writing all decisions made concerning the assessment and application with the applicant. The resource specialist shares with the applicant Form DCFS-69, Guidelines for Resource Family Assessment, or Form DCFS-69-A, Resource Family Assessment, as applicable, for the applicant's input prior to deciding to select in or out of the Foster Care program. Disposition of the assessment may result in:

(1) the postponement of the assessment. The applicant is advised of any condition that does not conform to Foster Care rules, per OAC 340:75-7, during the assessment. When determined appropriate, the resource specialist postpones the assessment to afford the applicant the opportunity to resolve issues of concern;

(2) a voluntary withdrawal of the application. If the resource specialist determines that the applicant does not meet the requirements for becoming a foster parent, the reasoning for the determination is explained, and the resource specialist gives the applicant the option to voluntarily withdraw the application;

(3) the approval of the assessment.

(A) The resource specialist reviews and discusses the assessment with the applicant, except for the Juvenile Justice Information System (JOLTS) review, CW records search, and reference information.

(B) The resource specialist, CW supervisor, and applicant sign Form DCFS-69-A, and a copy is provided to the applicant. The home is not considered

approved until the CW supervisor approves the family assessment in KIDS and signs Form DCFS-69-A.

(C) Prior to initiation of reimbursement, the applicant signs the foster care contract with the exception of a kinship placement, per OAC 340:75-7-24.

(D) The resource specialist provides the family OKDHS Publication No. 99-17, Foster Parent Handbook. Each foster parent signs verification of the receipt of OKDHS Publication No. 99-17.

(E) The foster parent signs Form OCA-GR-4, Notice of Grievance Rights - Foster Parents; or

(4) the denial of the assessment. The decision to deny requires an explanation to the applicant by the resource specialist regarding the reasons the assessment is denied. If a kinship home is denied, the child in OKDHS custody in the home is moved immediately. Reasons for denying an assessment may include, but are not limited to:

(A) the lack of stable, adequate income to meet the applicant's own or total family needs;

(B) inadequate physical facilities to accommodate the addition of children to the home;

(C) a history of confirmed child abuse or neglect; or

(D) the home is determined unsuitable for the child requiring placement.

(c) **Re-application to provide foster care.** Persons who desire to re-open their foster home must re-apply.

(d) **Dissolved marriage or other relationships.** If foster parents divorce or the relationship is dissolved, the person who continues to foster retains the existing resource number and information.

(e) **Contract foster home assessments.** Children and Family Services Division (CFSD) may contract with licensed child-placing agencies or a qualified person to provide a range of CW services that include conducting resource family assessments. OKDHS makes the final decision regarding the disposition of all resources assessed by contractors.

340:75-7-19. Joint approval of foster ~~resource~~ homes~~.~~

~~Department of Human Services (DHS) may jointly approve homes to provide Child Welfare (CW) foster care services to custody children when the home is also approved by other agencies, divisions, tribes, or for families who are approved as adoptive homes. Joint approval occurs only after the home meets the eligibility requirements for a CW foster resource home. The CW worker does not complete a new home assessment. Joint approval meets the requirements in (1) - (7) of this subchapter. These requirements include documentation of pre-service Behavior Crisis Management Training (BCMT), completion of the criminal background fingerprinting, or any other requirements found in this Subchapter. Placement of a DHS custody child in the home does not occur without completion of all requirements.~~

~~(1) **Joint use of therapeutic foster care (TFC) homes.** The Children and Family Services Division (CFSD) can enter into a contract with a private agency resource home to provide DHS foster care services to custody children in TFC. The TFC foster parent completes BCMT within six months of the date of consent for the joint approval. Joint approval requires an agreement to "share" a foster resource home when:~~

~~(A) a custody child no longer needs the level of care and treatment of a TFC placement but removal from the TFC family is not in the child's best interests;~~

~~(B) the need exists to place an infant, who does not require TFC services, in the TFC home where the custody mother resides;~~

~~(C) siblings need to be placed together but only one of the siblings requires TFC services;~~

~~(D) a DHS custody child in a kinship placement needs the level of care provided by TFC home and removal to a TFC family is not in the child's best interests; or~~

~~(E) a DHS custody child requires a kinship placement in a TFC home and does not meet the criteria for TFC services.~~

~~(2) **Joint use of Developmental Disabilities Services Division (DDSD) resource homes.** The specialized needs of a specific child who is anticipated to qualify for the DDSD program may require consideration as to the joint use of a DDSD foster resource home.~~

~~(3) **Joint use of tribal foster resource homes.** Using a tribal resource home as a DHS CW foster resource home requires joint approval. Assessment of the home requires the use of DHS guidelines and requirements, if considering the home as a placement for a non-Indian DHS custody child.~~

~~(4) **Joint use of the Office of Juvenile Affairs (OJA) foster resource homes.** The county CW staff and OJA, after careful consideration of the safety and other needs of the children already placed in the home, agree to share a specific foster resource home before granting joint approval status. There is no placement or visitation of children or youth with a sole adjudication of delinquent or In Need of Supervision (INS) or jointly adjudicated as deprived and delinquent or INS in the same foster resource home as children or youth who are solely adjudicated as deprived without prior knowledge and approval of both CW and OJA. [OAC 340:75-6-46] Neither OJA nor CW may contact the other's resources directly. The approving agency is responsible for placement decisions, foster resource home re-assessments, number of children placed, and corrective action issues.~~

(a) **Joint approval of resource homes.** Resource families may be jointly approved to provide foster care services to children in the custody of Oklahoma Department of Human Services (OKDHS) while approved by other agencies, OKDHS divisions, or tribes. Joint approval decisions follow assessment by all involved that the child's needs are best met in a jointly approved home. While the home is jointly approved, any changes or concerns are shared between all involved with the joint-approved home. Joint approval is child specific and occurs when:

(1) a child's need for specialized services, treatment, or placement changes;

(2) a child re-enters the Child Welfare (CW) system and has a previous relationship with the placement provider;
(3) siblings need to be placed together;
(4) an infant of a child in OKDHS custody requires placement; and
(5) a child in OKDHS custody requires specialized services or treatment in a kinship placement.

(~~5~~b) **Joint use of kinship homes.** Using a kinship foster ~~resource~~ home as a ~~regular~~ CW foster ~~resource~~ home requires that the kinship family continue to meet all the requirements of a ~~regular~~ CW foster home. ~~Both the husband and wife in kinship households applying as regular CW foster parents must complete sessions 1, 5, and 7 of Oklahoma Parents as Tender Healers (OK PATH) training prior to joint approval as a CW foster resource home.~~

(~~6~~c) **Joint use of adoptive home.** ~~DHS~~ OKDHS advises the family of the differences in the goals of foster care and adoptive services and the differences in the roles and responsibilities that the family has to the ~~foster~~ child in foster care and ~~his or her~~ the child's family. ~~DHS~~ OKDHS advises the family that ~~DHS does~~ a child in foster care is not ~~allow the movement of foster children~~ moved in order to place ~~an adoptive~~ a child for adoption and considers the needs of all children in the home when making decisions about adoptive placements.

(~~7~~d) **Joint use of licensed family child care homes.** Joint approval of a licensed family child care home as a CW foster ~~resource~~ home occurs after a case-by-case assessment.

340:75-7-20. Contract foster resource home assessments [REVOKED]

~~(a) Children and Family Services Division can contract with licensed child-placing agencies or a qualified individual to provide a range of child welfare services which include conducting resource home assessments.~~
~~(b) DHS makes the final approval decision on all homes assessed by contractors.~~

340:75-7-22. Disposition of foster resource home assessments [REVOKED]

~~Upon completion of the foster resource home assessment process, the foster resource specialist makes a decision regarding disposition of the foster resource home assessment.~~

340:75-7-23. Regular Child Welfare (CW) foster resource home contracts including Interstate Compact on the Placement of Children (ICPC) [REVOKED]

~~All approved foster resource parents must have a current signed contract on file. This includes approved ICPC foster resource families providing foster family care.~~

340:75-7-24. Kinship placements

(a) **Kinship care.** Kinship care is considered as the first option in providing care for the child requiring out-of-home placement, provided the child's needs are met and safety is reasonably ensured in the kinship placement. A kinship placement is assessed as a potential permanent placement for the child if reunification is not achieved. Kinship relationships do not require a blood relationship. The types of kinship relationships are identified in (1) through (6).

(1) **Related by blood.** Blood relatives considered as kinship, including half-blood, are:
(A) siblings;
(B) grandparents, including those denoted by prefixes of great and great-great;
(C) aunts and uncles, including those denoted by prefixes of great and great-great;
(D) nieces and nephews, including those denoted by prefixes of grand and great-grand; and
(E) cousins.

(2) **Related by marriage.** Per OAC 340:75-7-24(a)(1), relationships by marriage, whether common-law or ceremonial, including step-relations and even after the marriage is terminated by death or divorce, are considered kinship.

(3) **Related by adoption.** Relatives by adoption, per OAC 340:75-7-24(a)(1) and (2), are considered kinship.

(4) **Paternal relatives.** Paternal relatives, per OAC 340:75-7-24(a)(1) through (3), of children born out of wedlock, are kinship.

(5) **Related by emotional tie or bond.** An emotional tie or bond exists when a child or the child's parent acknowledges and accepts a person as part of the extended family or in the family's close network of friends and relationships. The family relationship role exists prior to the necessity for out-of-home placement of the child.

(6) **Non-custodial parent.** A child returned to or placed with a non-custodial parent or a parent whose rights were terminated is not a kinship placement. Biological parents are not kinship resources and are not eligible for foster care reimbursement.

(b) **Initial kinship placement.** A child may be placed in a kinship foster home prior to completion of the resource family assessment and pre-service training, provided:

(1) Form DCFS-10, Initial Kinship Placement Agreement, is completed and signed;
(2) Form DCFS-26, Resource Family Assessment Application, and Form ADM-130, Request for Background Check, are completed and signed, per OAC 340:75-7-15 and 340:75-7-18;
(3) Form DCFS-11, House Assessment, is completed and approved; and
(4) three personal references, only one of whom is a family member, are interviewed by phone.

(c) **Kinship reimbursement option.** The kinship applicant may opt for payment by the Oklahoma Department of Human Services (OKDHS) or a money payment for which the child is eligible instead of the foster home reimbursement. Payment may include:

(1) Supplemental Security Income (SSI);
(2) Social Security for a deceased or disabled parent (SSA);
(3) other financial resources, per OAC 340:75-13-28; or
(4) Temporary Assistance for Needy Families (TANF) benefits, per OAC 340:10-9.

(d) **Kinship requirement.** All kinship foster homes, paid or non-paid, must meet the same requirements as all other CW foster homes.

PART 4. FOSTER PARENTS' ROLES AND RESPONSIBILITIES

340:75-7-36. Foster parents' rights [REVOKED]

~~Section 7206.1 of Title 10 of the Oklahoma Statutes provides for certain foster parents' rights. For a complete listing of the rights set out in statute see the "Foster Parent Handbook" or Section 7206.1 of Title 10 of the Oklahoma Statutes.~~

340:75-7-37. Responsibilities of ~~the~~ foster parents

As members of a professional team with the Oklahoma Department of Human Services ~~(DHS)~~ (OKDHS) staff ~~in service provision to children and families~~, foster ~~resource~~ parents assume responsibility both to ~~the Department~~ OKDHS and to the ~~service recipients~~ children and families served. A clear understanding of the roles, ~~the~~ abilities, and ~~the~~ requirements of the foster parents is necessary for effective coordination with ~~DHS~~ OKDHS staff and the children and families served.

~~(1) **Responsibilities of the foster parents to the Department.** These responsibilities include, but are not limited to:~~

~~(A) viewing foster care as a planned, temporary placement for children and youth with the goal of family reunification, independent living, or an alternate permanency plan;~~

~~(B) being the primary source of information regarding the child's strengths, needs, progress, and development;~~

~~(C) working as a member of a professional multidisciplinary team with Department staff to develop a case plan for each child placed in the home;~~

~~(D) sharing parenting of the child in care with the parents who may have different values and lifestyles, the Department, and the court;~~

~~(E) treating all information regarding the child and family as confidential and not sharing such information with friends and relatives;~~

~~(F) collaborating with the child's worker prior to any additional activities which include contact with birth parents;~~

~~(G) participating in the development of an effective parent and child visitation plan which may include contact with the parents and siblings, if siblings are separated;~~

~~(H) keeping the worker advised of all pertinent information about the child and family;~~

~~(I) complying with the Department's discipline policy;~~

~~(J) maintaining standards necessary for continued approval;~~

~~(K) participating in the re-assessment of the foster resource home and evaluating the Department's foster care program and services;~~

~~(L) providing a current Form DCFS-38, Medical Examination Report, for each adult member of the household every two years at the time of the re-assessment;~~

~~(M) utilizing the foster care reimbursement for the care and maintenance of the child, including basic needs, such as food, clothing, shelter, incidentals, non-prescription medications, as well as special activity fees, clothing, allowances, and recreational opportunities;~~

~~(N) notifying the Department whenever any member of the foster resource family is seriously ill or hospitalized;~~

~~(O) providing a physician's statement verifying that the foster parent is capable of providing care:~~

~~(i) after the hospitalization of a foster parent;~~

~~(ii) when a foster parent requires ongoing outpatient medical care, including psychological counseling; or~~

~~(iii) at such time as the Department requests;~~

~~(P) complying with state statutes relating to minors regarding purchasing and providing tobacco, alcohol, and other items prohibited for their consumption and use;~~

~~(Q) understanding that background checks, including a National Criminal History Records Search with fingerprinting, are completed every two years on all adults living in the home;~~

~~(R) participating in the Permanency Planning Review;~~

~~(S) participating in the permanency planning meeting and report;~~

~~(T) completing all required training hours annually, including annual policy training when offered.~~

(~~2~~1) **Responsibilities of the foster ~~parents~~ parent to the ~~custody~~ child in OKDHS custody and the child's family.** Responsibilities of the foster ~~parents to the child and the child's family~~ parent include:

(A) integrating the child into the foster family setting~~, making the child an integral part of the family~~ and caring for the child as the foster ~~parents~~ parent would for ~~their~~ the foster parent's own child;

(B) providing mentoring services to the child's ~~parents~~ parent(s) and coordinating visitation and contact whenever possible to facilitate timely reunification, including phone and mail contact when appropriate ~~or identification of the need for termination and pursuit of alternative permanency planning~~;

(C) working as a multidisciplinary team member with the Child Welfare (CW) worker and the child's

~~parents~~ parent(s) toward family reunification~~, independent living,~~ or ~~an alternate~~ other permanency plan;

(D) helping the child understand why he or she is in foster care and to deal with the grief caused by the separation;

(E) cooperating and assisting in ~~allowing~~ sibling contact or visitation, including phone and mail contact, when siblings are separated;

(F) cooperating and assisting the CW worker in the placement of siblings;

(~~F~~G) helping the child develop a positive identity and self-esteem by feeling lovable, capable, worthwhile, and competent;

(~~G~~H) helping the child learn appropriate behavior without using physical punishment;

(~~H~~I) utilizing appropriate behavior management, parent-child conflict resolution, and stress management techniques in a manner appropriate to the age and development of the ~~foster~~ child in foster care;

(~~I~~J) enrolling the child in an accredited school, if applicable, and ensuring that the child attends;

(~~J~~K) advocating for the child to obtain appropriate educational testing and placement in a timely manner which may include becoming a ~~volunteer~~ surrogate parent ~~for a custody child~~ volunteer for participation in ~~an~~ the child's Individualized Education Plan (IEP). To serve as a surrogate parent volunteer, the foster parent must complete the Oklahoma State Department of Education SoonerStart Form EI-12, Surrogate Parents Verification of Training;

(~~K~~L) attending school conferences;

(~~L~~M) ensuring the child participates in extracurricular and other recreational activities as appropriate;

(~~M~~N) ~~seeing that all~~ ensuring the child's necessary medical, dental, and counseling needs are met by:

(i) making appointments~~,~~;

(ii) providing transportation to appointments and sibling and parent visits~~,~~; and

(iii) ~~ensuring that~~ obtaining prescription medications ~~are obtained and taken properly~~ or over-the-counter medications as necessary and administering the medication as directed;

(~~N~~O) maintaining records of all medical, dental, and counseling appointments and notifying the CW worker of the time and place of the appointments, all medications prescribed for the child, and over-the-counter medications given to the child;

(~~O~~P) notifying the CW worker of all medical and educational problems and progress;

(~~P~~Q) ensuring the child's opportunity to participate in the religious practices of the child's family's choice, including the provision of transportation to worship services other than those of the foster ~~parents~~ parent, if necessary, and ensuring a ~~foster~~ child in foster care is not made to attend religious services against the child's wishes;

(~~Q~~R) providing transportation for the child to meet with legal counsel upon reasonable request, attending court hearings as desired or required, submitting to the court written reports or ~~present~~ presenting testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to other information the court ~~may request~~ requests;

~~(R) developing a Life Book for each child and updating it as information is acquired;~~

(S) providing from the foster care reimbursement ~~allowances, and if appropriate~~:

(i) ~~other~~ essentials such as food, shelter, non-prescription medical needs, clothing, shoes, and toiletries;

(ii) clothing and fees for special activities;

(iii) school pictures;

(iv) athletic and band instrument fees;

(v) cap and gown rental and prom clothing; and

(vi) birthday and holiday gifts; ~~and~~

(T) providing federally mandated independent living services to youth who are at least 16 years of age and assisting other ~~youth~~ children in learning basic life skills ~~which also~~ that allow the opportunity to improve self-concept and strengthen identity in preparation for life after foster care~~.~~;

(U) allowing the child access to mail from family members and the child's attorney; and

(V) allowing the child overnight stays with friends of the child whom the foster parent knows and approves while ensuring the safety of the child.

(2) **Responsibilities of the foster parent in the development and support of an appropriate permanency goal for each child.** Responsibilities of the foster parent include:

(A) informing the CW worker and other team members of each child's strengths, needs, progress, and development;

(B) participating in the development of an effective parent and child visitation plan that defines contact with the parent(s) and siblings, if siblings are separated;

(C) collaborating with the child's CW worker prior to visits with the birth parents unless part of a specific plan;

(D) advising the CW worker of all pertinent information about the child and family;

(E) participating in meetings and case staffings when appropriate;

(F) completing all required training hours annually, including annual policy training when offered; and

(G) maintaining current medical and education records for each child in foster care. A Life Book is maintained for each child placed in the home to support the child's sense of family continuity. These records accompany the child when he or she leaves the foster home.

340:75-7-38. Discipline for children in foster family care

~~Department of Human Services (DHS) guidelines regarding discipline and punishment of a DHS custody child in an out-of-home resource placement are outlined in (1)-(4) of this Section.~~

~~(1) **Discipline.** The Department prohibits the use of any form of physical discipline for any DHS custody child in an out-of-home resource placement or any act or omission that would emotionally, physically or psychologically harm the child or youth.~~

~~(A) The Department does not authorize any school personnel to administer corporal punishment to any custody child or youth. Foster parents do not sign such authorizations, but refer school personnel to the child's worker to establish alternative discipline methods.~~

~~(B) Goals of effective discipline are:~~

(a) **Primary responsibility.** A primary responsibility of foster families is to help children learn behaviors that promote their self-regard, personal ability, and socialization skills. The rules governing these efforts are outlined in OAC 340:75-7-38(b) through (d).

(b) **Positive interactions.** Foster family interactions with a child:

(~~i~~1) ~~protecting~~ protect and ~~nurturing~~ nurture the child's physical and psychological well-being;

(~~ii~~2) ~~advancing~~ advance the child's development;

(~~iii~~3) ~~meeting~~ meet the child's needs;

(~~iv~~4) ~~teaching~~ teach the child ways to prevent and solve problems;

(~~v~~5) ~~maintaining~~ maintain and ~~building~~ build the parent and child relationship;

(~~vi~~6) ~~building~~ build the child's self-control and responsibility; and

(~~vii~~7) ~~complying~~ comply with the Oklahoma Department ~~policy~~ of Human Services (OKDHS) rules on discipline to provide a safe, nurturing environment ~~which~~ that allows ~~children~~ the child to experience security and positive self-esteem.

~~(C) The developmental needs of a child and the desired outcomes define the discipline techniques used to modify the behaviors of the child. Some of the circumstances which may affect the technique used include the behavior the child is exhibiting, the foster parents' feelings about the behavior, the purpose assigned to the behavior, where the behavior occurs, and who is present at the time of the behavior.~~

~~(2) **Punishment.** Punishment is a penalty imposed for an offense and gives pain which includes spanking, ridiculing, threatening, imposing suffering, or isolation. DHS prohibits these forms of punishment and the use of punishment constitutes a violation of the Department's discipline rules. Foster parents do not use or authorize corporal punishment as part of their ability to exercise parental substitute authority.~~

~~(A) Foster parents help children learn appropriate behavior without using physical or emotional punishment.~~

~~(B) For children who have been abused, spanking or hitting is traumatic.~~

~~(3) **Behavior management.** A child in an out-of-home resource placement may become unruly, unmanageable, or out of control of his or her own behavior. Foster parents may employ reasonable means of restraining and holding, or other methods of parent-child resolution techniques appropriate to the age, development, and the situation to prevent the child from injury to self, others, or property.~~

~~(4) **Department rules.** The applicant is provided a copy of and instructed in the Department's discipline rules during the foster resource family assessment. The Department does not approve the foster resource home application and assessment of any applicant who cannot or will not abide by the rules of discipline. There may be a difference between Department discipline rules and the methods used to discipline the applicant's own children. Even though the foster resource family has the right and responsibility to integrate the foster child into the family setting and to care for the foster child as the foster parent would his or her own child, the applicant agrees to follow Department rules regarding any DHS custody child placed in the home. At any time a foster parent cannot or will not abide by the Department rules and procedure, any DHS custody child in the home is removed and the home closed. Any report of noncompliance with the rules is investigated.~~

(c) **Teaching techniques.**

(1) **Positive behavior management.** Positive behavior management techniques include, but are not limited to:

(A) rewards. Rewards may be small gestures of approval, such as treats, toys, and symbols of recognition such as stickers, stars, happy faces, or money. Rewards are for the interest, desire, and effort the child displays, not for performance, talent, or ability. This technique must not be used all the time;

(B) privileges. Privileges allow the child to experience greater freedom or opportunity and an increased responsibility. Privileges are used to encourage the child's interest and talents by supporting the child's efforts in pursuing interests; and

(C) praise. Praise may be communicated with a smile or nod of approval, expressing to the child how pleased the person is with him or her.

(2) **Self-control.** To promote the child's self-control, foster parents clearly communicate expectations and provide structured, safe environments. The foster parent's use of planning and preparation prevents confrontation, acting-out, and negative behaviors by:

(A) establishing expectations. Children in out-of-home care experience varied expectations of foster parents in every placement setting. Since each placement setting is different, the foster parent must communicate expectations to the child. Expectations are communicated through setting rules, telling the child

what to expect, and modeling. Clearly communicated expectations provide structure for the child and a structure for building and maintaining self-control; and

(B) modifying the environment. Structured, safe environments allow children to succeed at identified tasks. Foster parents structure environments by removing sources of stimulation for the child and establishing routines and consistency in day-to-day schedules.

(3) **Direct intervention.** When the child does not have sufficient self-control to ensure acceptable behavior, the foster parent uses direct intervention and techniques, per OAC 340:75-7-38(c)(1) and (2). Techniques used are dependent upon the child's developmental needs and anticipated outcomes. Techniques appropriate for responding to lack of self-control include:

(A) rules. Rules are established guidelines that:

(i) allow the child to know what can and cannot be done;

(ii) help the child know right from wrong;

(iii) communicate to the child how something is done and help prevent problems; or

(iv) provide a way to respond to a problem;

(B) time-out. Time-out provides space between the child and a situation where the child exhibits behavior that is not acceptable or where the situation is dangerous. Recommended time-out is one minute per age of the child;

(C) restricting privileges. Privileges are restricted when a child is not allowed to do something for a specified period of time, such as not playing with a particular toy, watching television, playing the stereo, playing computer games, having phone privileges, or engaging in some other pleasant activity. Talking to parents or siblings is not included in restricting phone privileges;

(D) grounding. Grounding involves imposing restriction on a child's interaction and involvement with friends or activities outside of the placement setting, such as restriction to the house or leaving the premises to attend parties, movies, or visit friends. Grounding is typically used for the older child;

(E) logical consequences. Logical consequences require the family to impose a response to the child's behavior consistent with and connected to the unacceptable behavior exhibited; and

(F) natural consequences. Natural consequences occur in response to the behavior. This technique is most appropriately used with adolescents and for those who tend to get in power struggles. Natural consequences are never allowed when a child's safety or well-being is in question.

(4) **Physical discipline.** OKDHS prohibits the use of any form of physical discipline for any child in OKDHS custody in an out-of-home placement or any act or omission that would emotionally, physically, or psychologically harm the child.

(A) The foster parent contacts the child's Child Welfare (CW) worker or the resource specialist if he or she cannot discipline the child through appropriate non-physical means.

(B) OKDHS does not authorize any school personnel to administer corporal punishment to any child in OKDHS custody. The foster parent does not sign such authorizations, but refers school personnel to the child's CW worker to establish alternative discipline methods.

(C) The developmental needs of a child and the desired outcomes define the discipline techniques used to modify the behaviors of the child. Some of the circumstances that may affect the technique used include:

(i) the behavior the child is exhibiting;

(ii) the foster parent's feelings about the behavior;

(iii) the purpose assigned to the behavior;

(iv) where the behavior occurs; and

(v) who is present at the time of the behavior.

(5) **Punishment.** Unacceptable behavior management methods and techniques promote negative behavior, are punitive, and do not promote self-control. Unacceptable behavior management techniques for a child include, but are not limited to:

(A) the use of the hand or any object, such as a board, fly swatter, paddle, belt, switch, electrical cord, hair brush, or wooden spoon, to hit, strike, swat, or physically discipline;

(B) deprivation of food;

(C) deprivation of family visits;

(D) slapping, pinching, shaking, biting, pushing, shoving, thumping, or rough jerking;

(E) cursing or other verbal abuse;

(F) private or public humiliation or any act that degrades;

(G) derogatory remarks about the child, the child's biological family, race, religion, or cultural background;

(H) solitary confinement in areas such as closets, cellars, and rooms with locked doors;

(I) threatening to move the child from the foster home;

(J) use of any chemical agent, such as mace, sleeping pills, or alcohol;

(K) physical force or threat of physical force;

(L) assuming and maintaining an unnatural position, that may include holding arms out-stretched from the body, placing the nose against a wall, or forced squatting;

(M) tying with a rope, cord, or other object;

(N) ordering, allowing, or encouraging physical discipline or hitting by other children or anyone else in the home;

(O) washing the mouth out with soap, eating certain foods, which may include peppers or hot sauce for punishment; and

(P) forced physical exertion, such as running laps and push-ups.

(d) **Physical restraint.** The use of physical restraint is only justified as an emergency safety measure in response to imminent danger to the child or others and when no alternative means are sufficient to accomplish the purpose. The foster parent completes and submits to the child's CW worker or resource specialist Form DCFS-53, Restraint Report for Foster Family Care, when restraint is used.

(e) **OKDHS rules.** The foster family must abide by OKDHS rules for discipline of a child in OKDHS custody even if there is a difference between OKDHS discipline rules and the methods used to discipline the family's own children.

340:75-7-41. Placement ~~options, resource searches, and responsibilities for identifying resources for placement~~ considerations and requirements

(a) **Approved foster family homes.** Approved foster ~~resource~~ family homes serve as out-of-home placements for ~~the DHS custody~~ children ~~of~~ in Oklahoma Department of Human Services (OKDHS) custody. ~~To insure~~ Cooperation between Child Welfare (CW) workers and foster families is required to ensure the effective and appropriate ~~utilization~~ use of ~~all~~ foster ~~resource homes across the state for the maximum benefit of all custody children in accordance with~~ families to serve the best interests of the children ~~and foster resource parents requires cooperation between counties, workers, and foster resource parents~~.

(b) **Number and ages of children placed.** To determine the number and ages of children placed in a kinship or foster home, consideration is given to:

(1) capabilities and skills of the foster family;

(2) number and ages of the foster family's own children;

(3) accommodations of the home;

(4) known behavioral patterns of the foster family's own children and the children in foster care; and

(5) the anticipated effect of the placements upon the family as a unit. The needs of the child placed in the home may restrict the capacity of the home regardless of the approved number of children for the home.

(c) **Tribal foster homes.** Each tribe determines the number of children in OKDHS and tribal custody allowed for placement in a tribal foster home. OKDHS makes every attempt to place Indian children in OKDHS custody in compliance with the placement preferences of the Indian Child Welfare Act, per OAC 340:75-19.

340:75-7-41.1. Types of reimbursement for kinship provider [REVOKED]

~~Kinship care is considered as the first option in providing care for the child requiring placement outside of the home, if the child's needs can be met and safety ensured in the kinship placement. A kinship placement, as with any other placement, must be assessed as a potential permanent placement resource for the child if reunification is not achieved. A kinship resource caregiver has the option of receiving reimbursement from the state for the care of the DHS custody child. Reimbursement requires completion of all requirements as defined in OAC 340:75-7.~~

340:75-7-42. Exceptions to foster family care policy [REVOKED]

~~A child's unique needs and circumstances may require exceptions to existing policy. Approval for such exceptions requires documentation of how the exception promotes better services to the child than existing policy allows.~~

340:75-7-48. Professional team of the foster resource specialist, Child Welfare (CW) specialist, and foster parents [REVOKED]

~~Foster parents are members of the professional team that includes the Children and Family Services Division staff, service providers for the child and family, and the court systems of the State of Oklahoma. As a member of that team, a foster parent has the right to expect and receive professional and respectful treatment and cooperation from all Department of Human Services (DHS) staff. County staff is available to foster parents 24 hours a day to assist with problems which may arise. DHS advises all foster parents of the home phone numbers of appropriate staff, including supervisors, to contact in case of an emergency. Information pertaining to the child and parents is confidential for all parties involved.~~

PART 5. ELIGIBILITY AND PAYMENTS

340:75-7-51. Foster ~~resource family~~ care claims

Reimbursement for foster ~~resource family~~ care claims requires the completion and approval of a foster ~~resource~~ home assessment, ~~and~~ pre-service training, ~~the approval of the home assessment,~~ and a signed foster ~~resource family~~ care contract. ~~Payment~~ Reimbursement may not precede the date of the contract signatures.

(1) **Foster care claims adjustments.** Foster parents are responsible for ensuring the accuracy of claims upon receipt. When errors occur, the procedures for adjustments listed in (A) through (D) must be completed.

(A) The foster parent immediately notifies the resource specialist upon discovery of an error in reimbursement.

(B) The Oklahoma Department of Human Services (OKDHS) authorizes reimbursements upon discovery for previously unclaimed services, underpayments. When an overpayment coincides with the underpayment, the overpayment is recouped before payment of the underpayment.

(C) OKDHS authorizes repayment schedules when foster parents are paid for services not rendered or at an amount greater than authorized. The county office and foster family establish an agreed upon repayment plan.

(i) Foster parents are responsible for reimbursing OKDHS for any overpayment, regardless of the party responsible for the initial error, per OAC 340:75-1-27. Each monthly payment toward resolving the overpayment must equal at least ten percent of the overpayment.

(ii) The resource specialist authorizes overpayment reimbursement schedules. The foster parent is sent a notice of overpayment on Form DCFS-8, Notification of Overpayment in Foster Home.

(iii) The Foster Care Section refers the overpayment to the Legal Division if the foster family does not respond to the county or abide by the agreement.

(iv) Payments must be made by check or money order with payment assigned to OKDHS. Cash is not accepted from the foster family.

(v) When the foster family chooses to reduce the foster family claim by an agreed upon amount until the overpayment no longer exists. A signed and notarized statement from the foster family authorizing the reduction of the claim in reimbursement is sent to OKDHS.

(I) Payments are made by the day fixed by the repayment schedule each month.

(II) Payments may be deducted from claims for current services, or the foster parent may make payments to the Finance Division by check or money order. Reference to the payment purpose is listed in the memo section of the check or transmittal letter to ensure proper credit.

(D) OKDHS may authorize the issuance of a warrant when the foster care reimbursement is late or lost.

(i) The contract for services affords OKDHS 20 days to process each claim. Late claim adjustments are not made during this interval. The foster family may verify the status of the warrant by calling the automated phone number provided to each family.

(ii) OKDHS cancels the reimbursement warrant per state statutes when a foster parent reports the warrant lost after 90 days.

340:75-7-52. ~~Rates~~ Foster care contracts and rates of reimbursement ~~for foster family care~~

~~The Committee on Rates and Standards establishes the rates for foster family care reimbursements. The foster family care and difficulty of care (DOC) payments are not salary or wages. They are reimbursement for the cost of the child's care. The foster parent does not report the reimbursement on his or her income tax return because it is not taxable income. Foster parents do not declare the reimbursement as income in application for financial loans for such items as cars, furniture, or homes. DHS does not verify the reimbursement amounts to financial institutions. Reimbursement means payment for services already provided and requires the filing of a monthly claim.~~

~~(1) The standard monthly rates based on a 30 day month are for:~~

(a) **Foster care contracts.** The rules in OAC 340:75-7-52 and the provisions of a contract for services define the responsibilities of foster parents and the Oklahoma Department of Human Services (OKDHS) regarding the care of children in a foster home. Foster care contracts are signed when all conditions for approval are met, per OAC 340:75-7-18.

(1) Foster care contracts are perpetually renewed and considered in effect unless a specific action by one of the parties to the contract terminates the contract. Foster parents are eligible for foster care reimbursement effective the date the contract is signed. Kinship parents are eligible for foster care reimbursement effective the date the home is approved.

(2) Reimbursements are authorized for intervals of care provided to a child in foster care placed through OKDHS or a tribe with an approved Tribal State Agreement with OKDHS.

(3) Kinship families may be approved for expedited reimbursements, per OAC 340:75-7-24.

(4) Kinship families who meet the degree of relationship may file for assistance through Temporary Assistance for Needy Families (TANF) at the local OKDHS office pending foster home approval and entry into a contract, per OAC 340:75-7-52(a)(1) through (3) and OAC 340:10-9.

(b) **Foster care reimbursement.** The foster care contract authorizes reimbursement to offset the cost of each child's care and a difficulty of care (DOC) adjustment to address the additional expense of caring for a child with extraordinary needs. The OKDHS Committee on Rates and Standards authorizes the amount of reimbursement available through the foster care reimbursement and the DOC adjustment, per OAC 340:75-7-53.

(1) Foster care payments correspond to the child's age:

(A) ~~age 0~~ birth through 5 years, the monthly rate is $300 and the daily rate is $10;

(B) ~~age~~ 6 ~~-~~ through 12 years, the monthly rate is $360 and the daily rate is $12; and

(C) ~~age~~ 13 ~~- over~~ years and older, the monthly rate is $420 and the daily rate is $14.

~~(2) The maximum amount reimbursed for DHS foster resource family care services in a calendar month is the monthly rate unless there is an additional approved DOC rate increase applied. If a child comes into placement any time after the beginning of the month, reimbursement begins the date of placement. DHS foster parents receive no reimbursement for the last date of placement. If a child in DHS foster family care is in care for 30 days in a month that has 31 days, the reimbursement amount is equal to the regular monthly reimbursement.~~

(2) Foster care payments are provided to address the costs of room, board, and incidentals.

(3) Foster parents receive a monthly and quarterly clothing allowance for each child, per OAC 340:75-13-45.

(4) The medical expense of a child in foster care is covered through Medicaid, if private insurance is not available to the child, per OAC 340:75-13.

(5) Reimbursement received through the foster care contract is not considered income pursuant to Section 131 of Title 26 of the United States Code Annotated and the foster family does not receive Form 1099 from OKDHS at year's end. Foster parents should consult their own tax advisor for advice.

(6) Foster care reimbursement and DOC rates are a fixed monthly amount.

(7) When a partial month of foster care service is provided, reimbursement begins on the child's date of entry to the home and concludes on the day before the child's departure from the home. A prorated sum is paid based on the number of days of service provided multiplied by the daily rate, per OAC 340:75-7-52(b)(1).

(8) When a change in the child's age qualifies for a new rate, the new rate becomes effective on the first day of the month following the child's birthday.

(~~3~~9) ~~In the event~~ When a child is out of the foster ~~resource~~ home for family reunification purposes or is absent without leave (AWOL) for up to seven consecutive days, the foster ~~parents receive~~ parent receives reimbursement ~~up to seven consecutive days~~ if the child is expected to return to the foster ~~resource~~ home.

~~(4) Claims for partial months are calculated based on the daily rate. Difficulty of care payment rates are prorated based on 30 days and rounded to the nearest penny.~~

~~(5) When a child moves to the next age group within the foster resource family care rate structure, the higher rate becomes effective the month following the child's birthday.~~

(~~6~~10) ~~When arrangements are made for a child in foster resource family care to attend~~ The foster parent is eligible for prorated foster care reimbursement and DOC payments when the child attends an Indian boarding school, Oklahoma School for the Deaf, ~~or~~ Oklahoma School for the Blind, ~~foster resource family care payments are made at the daily rate to foster parents when the child~~ or a similar residential program and returns to the foster home for weekends or school vacations. When the child returns to the foster ~~resource family~~ home for a summer vacation, the monthly rate is used.

(~~7~~11) The standard rate includes room, board, clothing, care, and incidental expenses. ~~The complete clothing policy is found at OAC 340:75-13-45. Clothing purchased for a specific child with DHS funds is the property of the child and is given to the child when a change of placement occurs as long as clothing is usable, for example, when a child returns home or to relatives, moves to another foster resource family home or facility, or is placed for adoption. It is the foster parents' responsibility to maintain clothing in good condition for the child's use. Clothing needed while in foster resource family care is purchased by the foster parent and child from the designated clothing allowance portion of the standard foster resource care reimbursement rate for each age group in addition to the quarterly clothing voucher which each foster resource family parent receives. Reimbursement rates per age group are:~~

~~(A) age 0 - 5, monthly rate = $300, clothing allowance = $17;~~

~~(B) age 6 - 12, the monthly rate = $360, clothing allowance = $31; and~~

~~(C) age 13 - over, the monthly rate = $420, clothing allowance = $47.~~

~~(8) The Department is not liable for any costs or expenses voluntarily paid by a foster parent for a foster child which are in excess of the funds authorized for providing foster care services to the foster child.~~

~~(9) There is no reimbursement to foster parents for mileage for family or sibling visits or for transportation for routine medical appointments.~~

(12) The foster parent is eligible for foster care reimbursement and DOC payment for up to 20 days of each event of hospitalization for the child's treatment of health or mental health concerns when there is no evidence of foster parent misconduct contributing to the event.

(13) The foster care reimbursement is an automatic electronic filing system based on the child's placement episode in the KIDS system.

(14) A foster care contract is signed for approved Interstate Compact on the Placement of children (ICPC) foster families residing in another state providing care for children in OKDHS custody, per OAC 340:75-1-86. No foster care contract is signed for ICPC foster families living in Oklahoma caring for children in the custody of another state.

(c) **Cancellation of the foster care contract.** Cancellation of the foster care contract occurs when:

(1) the foster family fails to meet the terms and conditions of the contract. Cancellation of the contract results from:

(A) a criminal felony conviction, per OAC 340:75-7-15(h)(1);

(B) the receipt of findings of the Oklahoma State Bureau of Investigation (OSBI) records search and Federal Bureau of Investigation (FBI) national criminal history records search when a child has been placed through kinship or in the home initially approved; or

(C) a serious and significant violation of the foster care contract, OKDHS rule, or law. Serious and significant violations include, but are not limited to, behaviors by the foster parent or other person in the foster home that place the child at significant risk of harm;

(2) OKDHS closes a foster family home that no longer meets OKDHS requirements, per OAC 340:75-7-12; or

(3) the foster parent fails to implement provisions of Form DCFS-115, Written Plan of Compliance, per OAC 340:75-7-94, designed to resolve conditions that present a risk to the child and do not conform with the requirements of the foster care contract or rules, per OAC 340:75-7-52.

(d) **Termination of the foster care contract.** A foster parent requests termination of the foster care contract verbally or in writing. Verbal requests are witnessed whenever possible.

(1) Contract termination occurs subsequent to a request by the foster family only if there are no pending issues of concern.

(2) When the relationship between the foster parents is dissolved, and the person who wishes to continue providing foster care services, per OAC 340:75-7-18, is not the primary foster parent, that foster parent signs a new foster care contract. Removal of the child from the home is not necessary during contract transition when the foster parent is determined fit and continued placement is in the child's best interests.

340:75-7-53. Difficulty of care ~~payments~~

(a) **Difficulty of ~~Care (DOC) payment~~ care payments.**

(1) Difficulty of care (DOC) payment rates are available to reimburse Oklahoma Department of Human Services (OKDHS), tribal, and contracted emergency foster care (EFC) foster ~~parents~~ families for the additional care and supervision required due to the child's extraordinary physical, mental, or emotional ~~disability~~ needs. ~~This increased payment is not taxable income. DHS or tribal custody children are eligible for the additional DOC payment, if approved, while in placement in regular, tribal, or paid kinship foster resource care settings as well as contracted foster care.~~

(~~b~~2) ~~Specialized~~ DOC reimbursement is not available to children in specialized community homes, specialized foster care through Developmental Disabilities Services Division, therapeutic community homes, and therapeutic foster care placements ~~are not eligible for DOC payments~~.

(b) **DOC rates and descriptions.** DOC payments are made in addition to foster care reimbursement, per OAC 340:75-7-52, or adoption assistance payments, per OAC 340:75-15-128.1.

(1) **DOC Rate I:** $50 per month or $1.67 per day. A child approved for DOC Rate I has one or more of the needs, conditions, or behaviors described in (A) through (D). The child:

(A) requires ongoing scheduled medical or psychological appointments that routinely occur more than twice weekly;

(B) displays emotional difficulties that result in destruction of property;

(C) requires medical or educational supplies on a routine basis that are not compensable through Medicaid; or

(D) requires daily physical therapy performed by the foster family.

(2) **DOC Rate II:** $100 per month or $3.33 per day. A child approved for DOC Rate II has one or more of the needs, conditions, or behaviors described in DOC Rate I and, in addition:

(A) requires 24-hour intensive supervision due to severe medical or emotional needs;

(B) requires special food preparation and feeding due to a condition that restricts normal eating;

(C) requires special equipment for transportation that results in restricted mobility for the child and foster family;

(D) displays incontinence of the bladder and bowel that is not age appropriate;

(E) displays multiple disabilities, birth defects, or brain damage that prevents normal intellectual or physical functioning;

(F) requires strict monitoring of medication;

(G) requires assistance in movement that is very difficult due to the child's size;

(H) requires post-hospitalization care, such as frequent changing of bandages, tubes, and special hygiene techniques; or

(I) displays emotional disturbances, developmental delay, or mental retardation that results in behavior, such as constant difficulties in school, aggressive and delinquent activities, destructiveness, resistance to authority, and sexual disturbances.

(3) **DOC Rate III:** $150 per month or $5.00 per day. A child approved for DOC Rate III has one or more of the needs, conditions, or behaviors described in DOC Rates I and II and, in addition, requires:

(A) medical supplies, special equipment, or educational supplies on a routine basis that are not compensable through Medicaid; or

(B) specialized substitute care.

(4) **DOC Rate IV:** $225 per month or $7.50 per day. A child approved for DOC Rate IV has one or more of the needs, conditions, or behaviors described in DOC Rates I, II, and III and requires such specialized care that normally the child would be in institutional or inpatient psychiatric care. The child:

(A) requires special equipment, such as apnea monitor, suction machine, gastrostomy tube, oxygen, tracheotomy tube, and shunt;

(B) requires special feeding or nursing care around-the-clock;

(C) requires frequent nighttime supervision and care that is not age appropriate;

(D) displays frequent seizures or other abnormal physical reactions that require 24-hour monitoring;

(E) displays bizarre, socially unacceptable behavior, violent tendencies, potentially harmful behavior to self or others, or sexually predatory behavior to others or animals;

(F) required previous inpatient mental health treatment or was recently discharged from an inpatient facility;

(G) requires such intensive care that the foster family is severely restricted in normal daily activities and is frequently homebound;

(H) requires frequent 24-hour awake supervision; or

(I) requires post-hospitalization care for severe burns.

(5) **DOC Rate V:** $400 per month or $13.33 per day. A child approved for DOC Rate V has one or more of the needs, conditions, or behaviors described in DOC Rates I, II, III, and IV and has a significant number of intense needs. The child's level of need is likely to become more severe over time and is likely at some time to require personal attendant care or specialized care outside of the home, when prescribed by a professional. A current medical or psychological report within the last six months is required from a qualified physician. This report must include a diagnosis, prognosis, and recommended treatment. Conditions considered in the determination of DOC Rate V include a child who has:

(A) been diagnosed by a qualified physician as having severe mental illness, such as child schizophrenia, severe developmental disabilities, brain damage, or autism;

(B) severe physical disabilities or medical conditions that are not expected to improve over time and adversely impact life expectancy when compared with others who have similar physical disabilities or medical conditions;

(C) severely inhibiting diagnosed mental health conditions, defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM), diagnosed within the past year, that severely limit normal social and emotional development and require ongoing outpatient behavioral health services;

(D) severe mental retardation as determined by the Social Security Administration and defined by the DSM;

(E) been waiting for organ transplant or is up to one year post transplant; or

(F) a physical condition uncontrolled by medication or treatment, such as Tourette's syndrome or epilepsy.

(c) **DOC request.** A foster parent, a Child Welfare (CW) worker, or an adoption specialist may initiate a request for DOC.

(1) Requests are made in the child's KIDS case.

(2) The relevant CW supervisor reviews and may authorize DOC Rates I through IV based on the criteria per OAC 340:75-7-53.

(3) Requests for DOC Rate V are forwarded to the Children and Family Services Division (CFSD) Foster Care programs manager.

(4) A CFSD committee reviews and makes the determination for DOC Rate V.

(5) Actions by each party in the DOC review process occur within ten calendar days of receiving all necessary information for a determination.

(6) Each DOC authorization is limited to one year.

340:75-7-54. Difficulty of Care rate descriptions [REVOKED]

~~There are five different rates of Difficulty of Care (DOC) payment based on the care and supervision needs of a specific child.~~

~~(1) **Rates.** The standard rates for foster care reimbursements are described in (A) through (C) of this subparagraph.~~

~~(A) Ages 0 - 5: $300 plus DOC Rate I, II, III, IV, or V, if eligible.~~

~~(B) Ages 6 - 12: $360 plus DOC Rate I, II, III, IV, or V, if eligible.~~

~~(C) Ages 6 - 18+: $420 plus DOC Rate I, II, III, IV, or V, if eligible.~~

~~(2) **DOC rate descriptions.** The descriptions in this subparagraph are guidelines from which the most appropriate DOC rate can be determined for the eligible child. Not every situation clearly fits into one DOC rate category. Consideration of the child's age is part of determining the appropriate rate category.~~

~~(A) **DOC Rate I.** The rate is $50 per month or $1.67 per day more than the standard rate. A child approved for DOC Rate I has one or more of the needs, conditions, or behaviors described in (i) through (iv) of this subparagraph. The child:~~

~~(i) requires ongoing scheduled medical or psychological appointments that routinely occur more than twice weekly;~~

~~(ii) displays emotional difficulties that result in destruction of property;~~

~~(iii) requires medical or educational supplies on a routine basis that are not compensable through Medicaid; or~~

~~(iv) requires daily physical therapy performed by the foster parent(s).~~

~~(B) **DOC Rate II.** The rate is $100 per month or $3.33 per day more than the standard rate. A child approved for DOC Rate II has one or more of the needs, conditions, or behaviors listed in DOC Rate I, and, in addition:~~

~~(i) requires 24 hour intensive supervision due to severe medical or emotional needs;~~

~~(ii) requires special food preparation and feeding due to a condition that restricts normal eating;~~

~~(iii) requires special equipment for transportation that results in restricted mobility for child and foster parent(s);~~

~~(iv) displays incontinence of the bladder and bowel that is not age appropriate;~~

~~(v) displays multiple disabilities, birth defects or brain damage that prevents normal intellectual or physical functioning;~~

~~(vi) requires strict monitoring of medication;~~

~~(vii) requires assistance in movement which is very difficult due to the child's size;~~

~~(viii) requires post-hospitalization care such as frequent changing of bandages, tubes, and special hygiene techniques; or~~

~~(ix) displays emotional disturbances, developmental delay, or mental retardation that results in behavior such as constant difficulties in school, aggressive and delinquent activities, destructiveness, resistance to authority, and sexual disturbances.~~

~~(C) **DOC Rate III.** The rate is $150 per month or $5.00 per day more than the standard rate. A child approved for DOC Rate III has one or more of the needs, conditions, or behaviors in each DOC Rates I and II, and, in addition:~~

~~(i) requires medical supplies, special equipment, or educational supplies on a routine basis which are not compensable through Medicaid; or~~

~~(ii) requires specialized substitute care.~~

~~(D) **DOC Rate IV.** The rate is $225 per month or $7.50 per day more than the standard rate. A child approved for DOC Rate IV has one or more of the needs, conditions, or behaviors described in each of DOC Rates I, II, and III and requires such specialized care that normally the child would be in institutional or inpatient psychiatric care. The child:~~

~~(i) requires special equipment, such as apnea monitor, suction machine, gastrostomy tube, oxygen, tracheotomy tube, and shunt;~~

~~(ii) requires special feeding or nursing care around the clock;~~

~~(iii) requires frequent nighttime supervision and care that is not age appropriate;~~

~~(iv) displays such frequent seizures or other abnormal physical reactions that 24-hour monitoring is required;~~

~~(v) displays bizarre, socially unacceptable behavior, violent tendencies, potentially harmful behavior to self or others, or sexually predatory behavior to others or animals;~~

~~(vi) required previous inpatient mental health treatment or has recently been discharged from an inpatient facility;~~

~~(vii) requires such intensive care that the foster parent(s) is severely restricted in normal daily activities and is frequently homebound;~~

~~(viii) requires frequent 24-hour awake supervision; or~~

~~requires post-hospitalization care for severe burns.~~

~~(E) **DOC Rate V.** The rate is $400 per month or $13.33 per day more than the standard rate. A child approved for DOC Rate V has one or more of the needs, conditions, or behaviors described in each of DOC Rates I, II, III, and IV and has a significant number of high-severity needs. The child's level of need is not moderate, is likely to become more severe over time, and is likely at some time to require personal attendant care or specialized care outside of the home, when prescribed by a professional. A current medical or psychological report within the last six months is required from a qualified physician. This report must include a diagnosis, prognosis, and recommended treatment. Medical or psychological conditions considered in the determination of DOC Rate V include a child who has:~~

~~(i) been diagnosed by a qualified physician as having severe mental illness, such as child schizophrenia, severe developmental disabilities, brain damage or autism;~~

~~(ii) severe physical disabilities or medical conditions that are not expected to improve over time and adversely impact life expectancy when compared with others who have similar physical disabilities or medical conditions;~~

~~(iii) severely inhibiting diagnosed mental health conditions, defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM), diagnosed within the past year, that severely limit normal social and emotional development and require ongoing outpatient behavioral health services;~~

~~(iv) severe mental retardation as determined by the Social Security Administration and defined by the DSM;~~

~~(v) been waiting for organ transplant or is up to one year post transplant; or~~

~~(vi) a physical condition uncontrolled by medication or treatment such as Tourette's syndrome or epilepsy.~~

340:75-7-55. Difficulty of care approval process [REVOKED]

~~Upon determination of a child's special needs or a request made by the foster parent, a request for a difficulty of care increase is made by the child's Child Welfare (CW) worker.~~

340:75-7-56. Difficulty of care reviews [REVOKED]

~~Each difficulty of care DOC rate increase requires a review in the county of service every six months. The review determines the continuation or termination of the need for the DOC rate.~~

340:75-7-58. Foster resource home overpayments [REVOKED]

~~Foster parents notify the Department of Human Services (DHS) immediately when they receive an incorrect amount for reimbursement. This applies to overpayments as well as not receiving a full payment for a child placed in their home. DHS notifies the foster parent immediately of any known incorrect reimbursement amounts paid. The foster parent is responsible for repayment, even if not responsible for causing the overpayment. The foster parent:~~

~~(1) repays the Department in full by using a check or money order made out to DHS;~~

~~(2) establishes a repayment plan if the foster parent is unable to repay the total amount immediately; or~~

~~(3) agrees upon a reduction in future foster resource home claims.~~

340:75-7-59. Foster resource home underpayments [REVOKED]

~~Payment adjustments may be made to correct underpayments to foster resource homes.~~

340:75-7-60. Late or lost foster home payments [REVOKED]

~~Foster care payments not received by the 20th of the month are considered late. The county staff designated by the county director determines the status of the late payment.~~

~~(1) Oklahoma statutes allow a warrant to be canceled if not cashed within 90 days of the issue date.~~

~~(2) If a foster parent is unwilling to wait 90 days for the warrant to be canceled by statute, another warrant may be issued.~~

PART 6. FOSTER HOME CARE SUPPORT SERVICES

340:75-7-62. Foster care grievance procedure [REVOKED]

~~Both foster parents and children in foster care have access to the Department of Human Services (DHS) grievance procedure through the Office of Client Advocacy. [OAC 340:2-3 Part 5-Grievances]~~

340:75-7-64. Child care services for children in foster or kinship care [REVOKED]

~~**Child care.** A child in a foster resource home may require child care services due to the resource parent's employment, training, or schooling. Child care must be provided in a licensed child care facility, licensed child care home, or in the resource parent's own home when provided by a licensed child care professional. Licensure is verified by Department of Human Services (DHS). DHS foster care child care is available to regular or kinship foster resource parents. Both foster parents must have employment out of the home 20 hours or more per week and receive foster care reimbursement for eligibility of child care benefits. Regular DHS child care is available for non-paid relative foster parents for employment, training, or school purposes.~~

340:75-7-65. ~~Payment for foster~~ Foster care child care and supportive services

Child Welfare (CW) staff arranges services that address the needs of foster parents as well as children in foster care. Foster parent needs are assessed as a component of treatment planning for each child in foster care and appropriate services are recorded on Form CWS-KIDS-8, Placement Plan. Service delivery and effect are monitored monthly to ensure intended effects. Form CWS-KIDS-8 is modified as necessary to address the evolving needs of foster parents.

(~~a~~1) **Child care ~~services~~ paid by OKDHS.** ~~The Oklahoma Department of Human Services (OKDHS) pays for foster care child services in certain situations as defined in (1) and (2).~~

(A) **Foster care.** Services available to foster families include child care when both foster parents in a foster home are employed 20 hours a week or more or when only one foster parent works and the other foster parent has a significant disability that precludes employment.

(~~1~~i) Child care ~~services are paid by OKDHS to the~~ must be provided:

(I) in a licensed and contracted child care center~~, child care~~ or home~~,~~; or

(II) ~~to~~ by a ~~licensed child care professional~~ registered caregiver in the foster ~~parent(s)'own~~ parent's home, ~~when:~~ per OAC 340:40-13-1 and 340:40-13-2.

~~(A) the foster parent(s) is gainfully employed outside the home for 20 hours a week or more;~~

~~(B) the child has no special needs which preclude care in a child care setting;~~

(ii) The foster parent may request approval for child care by contacting the child's CW worker.

(iii) Child care paid by OKDHS must be approved before payment may occur.

(~~C~~iv) The foster parent provides written verification of gainful employment ~~is obtained prior to utilization of the services and~~ that includes the number of hours and days the foster ~~parent(s)~~ parent works~~; and~~. When the foster parent operates a child care home, refer to OAC 340:40-7-8(a). In a foster family, when one foster parent works days and the other works nights, refer to OAC 340:40-7-7(b).

~~(D) provided in a licensed child care home, a licensed child care center, or in the foster parent(s)' home by a licensed child care professional.~~

(B) **Family Support Services Division (FSSD).** If the foster parent is not receiving a foster payment through OKDHS, the family is referred to local OKDHS FSSD staff for child care, per OAC 340:40. Child care may be available to:

(i) tribal foster homes providing care for tribal custody children;

(ii) foster parents who have finalized an adoption on a foster child;

(iii) non-paid foster parents receiving training or attending school; and

(iv) children in the custody of another state placed in a kinship home through the Interstate Compact on the Placement of Children (ICPC).

(2) **Foster care child care not paid by OKDHS.** Foster care child care is not paid when the:

(A) child is placed in contracted emergency foster care;

(B) child is placed in therapeutic foster care;

(C) foster parent attends school or participates in training;

(D) foster parent chooses child care providers per OAC 340:40-5-1(g);

(E) foster parent's hours of employment interfere with the provision of suitable family life; or

(F) foster parent makes informal arrangements for child care.

(3) **Child care services for a child with disabilities.** Refer to OAC 340:75-6-91.

(4) **Electronic benefit transfer (EBT) responsibilities.** Refer to OAC 340:40-13-4 for information regarding the EBT system that includes the manual claim process Foster parent responsibilities include:

(A) watching the EBT training video;

(B) signing Form K-2, Application for Child Care Services;

(C) swiping the EBT card every day the child attends child care;

(D) not swiping the EBT card for any day the child does not attend child care;

(E) checking the message on the point of service (POS) machine for correct times of attendance and approval;

(F) not giving the EBT card or personal identification number (PIN) to anyone, including the child care provider; and

(G) paying for care that OKDHS refuses to pay because:

(i) the EBT card was not swiped for the correct days and times the child attended child care;

(ii) swipes were denied and corrected within ten days; and

(iii) the provider loses the weekly rate payment for absent days because the correct attendance for every day the child attended that month was not swiped.

(~~2~~5) **Therapeutic child care services.** Therapeutic child care services are paid by OKDHS when recommended by a mental health professional~~, prior authorized by~~ and supporting documentation is provided. Prior authorization from the Administrative Services Unit (ASU) of Children and Family Services Division (CFSD)~~, and funded~~ is required. ASU makes the determination of the availability of funds.

(~~b~~6) **Overpayment of child care.** OKDHS seeks repayment for any child care ~~that has been~~ paid in error to ~~the~~ a licensed child care center, child care home, or ~~to a~~ licensed child care professional in the foster ~~parent(s)'~~ parent's own home. The foster parent is responsible for reimbursing these costs to the child care provider when overpayment occurs due to the foster parent's ineligibility for child care paid through OKDHS.

~~(c) **Child care services not paid by OKDHS.** The cost of foster care child care is the responsibility of the foster parent(s) when:~~

~~(1) the foster parent(s) attends school or participates in training, unless the foster parent(s) is a non-paid relative receiving regular child care through Temporary Assistance for Needy Families (TANF);~~

~~(2) child care has not been arranged and approved by the Child Welfare (CW) worker or supervisor prior to utilization of the service;~~

~~(3) the foster parent(s) owns or operates the child care center which the child attends;~~

~~(4) informal arrangements are made for child care;~~

~~(5) the rates charged are higher than that allowed by OKDHS;~~

~~(6) the child is placed in contracted emergency foster care;~~

~~(7) the child is placed in therapeutic foster care;~~

~~(8) the foster parent(s) is employed in a child care home that the child attends;~~

~~(9) the foster parent(s) operates a child care home, and the child attends another child care home or child care center;~~

~~(10) the foster parent(s)' hours of employment interfere with the provision of a suitable family life;~~

~~(11) the child is adopted by the foster parent(s); and~~

~~(12) the child care center is licensed as a one star facility unless there are no one star plus, two, or three star centers in the community, or one of the special exception criteria in (A) through (C) is met.~~

~~(A) The child was already approved for care at this one star center prior to January 1, 2003. The child can remain at this facility unless the child stops attending there for more than 30 days. The child can also be approved at this same facility again if the only reason the child did not attend for more than 30 days was because of a school break or due to circumstances beyond the control of the foster family, such as illness of the child.~~

~~(B) Care is requested for a child living in the same home as a child already approved for care as described in (12)(A) of this subsection for the same one star child care provider.~~

~~(C) The foster parent(s) demonstrates that he or she does not have another child care option that meets the foster family's needs.~~

(7) **Informal arrangements or baby-sitting.** Foster parents may make informal care arrangements with friends, neighbors, or relatives for the occasional care of children, including before and after school hours.

(A) The foster parent ensures that informal care providers possess the maturity and skills to address the needs of the child in foster care.

(B) The foster parent secures prior authorization for informal care from the child's CW worker.

(C) The resource specialist considers whether the needs of the child can be met in informal care.

(D) Prior authorization may apply to multiple events using the same informal provider.

(E) A person younger than 18 years of age living outside of the home may not be an informal provider.

(F) An informal provider living in the home must be at least 16 years of age and related to the foster parent.

(G) Informal providers must know how to reach the foster parent and other emergency contacts.

(H) The foster parent does not utilize a child in OKDHS custody to baby-sit a younger child, unless approved by the child's CW worker.

(8) **Alternate care.** The foster family is encouraged to develop a relationship with another family as an alternate provider who can serve as respite in case of family emergencies, family vacations, or when the family needs a break. The foster family is responsible for identifying an alternate provider and reimbursing the alternate provider. The alternate provider must be at least 21 years of age and willing to:

(A) submit to a background assessment by the Oklahoma State Bureau of Investigation (OSBI);

(B) submit to a CW records search for past confirmations of child maltreatment involving the alternate provider;

(C) submit to a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age living in the house;

(D) engage in an evaluation of the home to assess the locale, repair, and ability to accommodate the child in foster care;

(E) provide one reference; and

(F) comply with discipline policy, per OAC 340:75-7-38.

(9) **Insurance for foster homes.** Liability insurance is provided for foster families for damages incurred by children in OKDHS custody.

(10) **Foster care associations.** OKDHS cooperates with and promotes the development of foster care associations for foster parents in each county. OKDHS provides names and addresses of foster families, who have provided written authorization for the release of this information, to persons who are developing a local foster care association.

(11) **Foster parent hotline.** The foster parent hotline number, 1-800-376-9729, is maintained by the CW foster parent liaison in the Office of Information and Referral. The foster parent liaison assists with problem resolution, policy clarification, and grievance information.

(12) **Foster parents' rights.** Foster parents' rights are found in Section 7206.1 of Title 10 of the Oklahoma Statutes. Information shared among CW staff, foster parents, and parents includes, but is not limited to:

(A) the child's legal status;

(B) upcoming court hearings;

(C) reason for foster care placement;

(D) the child's and parent(s)' prior and present living experiences; and

(E) the child's medical, psychological, and behavioral information, current pictures, and educational records.

(13) **Foster care grievance procedures.** Foster parents and children in foster care have access to OKDHS grievance procedures through the Office of Client Advocacy, per OAC 340:2-3.

(14) **Timely response to questions or needs.** OKDHS staff commits to responding to foster families' questions and inquiries within one working day. The resource specialist is the key person to provide necessary information to the foster family.

(15) **Information relevant to fostering.** Pre-service and in-service training is provided to enhance the foster family's skills, ability to foster, and interests. A quarterly newsletter is sent to all foster families informing of OKDHS, related issues, and articles with relevant information.

340:75-7-66. Alternate care [REVOKED]

~~(a) **Informal arrangements or baby-sitting.** Informal arrangements or baby sitting which foster parents make with friends, neighbors, or relatives for the occasional care of children or for before and after school hours are exempt from the formal approval process. The foster parent makes all requests for such alternate care to the Child Welfare (CW) foster resource specialist or other CW worker performing those duties. The foster parents do not utilize anyone under the age of 18 years living outside the foster home for baby sitting services. The use of the foster parent's own child to provide baby sitting services is carefully assessed as to the needs of the foster child and the maturity and skill level of the foster parent's own child. No biological child under the age of 16 is used for baby sitting purposes. Allowing a custody child to baby sit a younger biological child requires the approval of the custody child's worker. The baby sitter knows how to reach the foster parent and other emergency contacts.~~

~~(b) **Overnight visitation.** The foster parent may allow the custody child overnight stays with friends of the child whom the foster parent knows and approves. The foster parent shall know and approve the friend's parents. The foster parents use the same discretion as to the safety and well-being of the child as they would use with their own children.~~

~~(c) **Short-term care.** A foster family may need short term care for foster children placed in the home due to vacation, hospitalization, or similar situations. The child's worker assists the foster parents in making appropriate plans for the child.~~

340:75-7-69. In-service training programs for resource families [REVOKED]

~~(a) In-service training is essential for resource families to assist them in gaining the knowledge and skills necessary to work with special needs children and their families. Foster training programs may include, but need not be limited to, in-service training as required by the Department; workshops and seminars developed by the state agency; seminars and courses offered through public and private education agencies and workshops; seminars and courses pertaining to behavioral and developmental disabilities; and the development of mutual support services for foster resource families. Appropriate in-service programs can be found within the Division, the Department, and through various community resources. CW county staff are aware of available related training, such as first aid, nutrition, "Assertive Discipline," "Systematic Training for Effective Parenting," and encourage resource families to participate. Resource families may also make a written request for additional training.~~

~~(b) **Mandatory in-service training for resource parents.** Each resource parent is required to have a minimum of 12 hours~~

~~of training per contract, year which begins July 1 and ends June 30, following the first year of approval. The types of in-service training required are listed in (1) - (5) of this subsection.~~

~~(1) **Foster care policy training.** Each resource parent participates in foster care policy training if conducted.~~

~~(2) **Foster PRIDE in-service training.** Foster PRIDE is an in-service training program for new and experienced resource parents. The program consists of ten modules which increase the resource parent's knowledge and skill levels. (A) - (J) of this paragraph outline the ten modules.~~

~~(A) Session 1, The Foundation for Meeting the Developmental Needs of Children at Risk.~~

~~(B) Session 2, Using Discipline to Protect and Nurture.~~

~~(C) Session 3, Addressing Developmental Issues Related to Sexuality.~~

~~(D) Session 4, Responding to the Signs and Symptoms of Sexual Abuse.~~

~~(E) Session 5, Supporting Relationships Between Children and Their Families.~~

~~(F) Session 6, Working as a Professional Team Member.~~

~~(G) Session 7, Promoting Children's Personal and Cultural Identity.~~

~~(H) Session 8, Promoting Permanency Outcomes.~~

~~(I) Session 9, Managing the Foster Experience.~~

~~(J) Session 10, Understanding the Effects of Chemical Dependency on Children and Families.~~

~~(3) **Behavior Crisis Management Training (BCMT).** All resource parents, existing and newly approved, complete BCMT or an equivalent. Therapeutic foster resource parents providing care to custody children as a jointly approved CW regular or kinship foster resource home must complete BCMT training within six months of the date of approval as a jointly approved home.~~

~~(4) **Training equivalent to Foster PRIDE and BCMT.** When these training programs are not available, other training may substitute for the requirements if the training information is consistent with Department policy.~~

~~(5) **Exemptions from mandatory in-service training.** There are no annual in-service training requirements for foster parents providing care for custody children through the Interstate Compact on the Placement of Children (ICPC). The training is available to them if they wish to participate.~~

340:75-7-70. Foster care associations [REVOKED]

~~The Department cooperates with and helps promote the development of foster care associations in each county. To obtain more information foster parents contact the Child Welfare foster parent liaison at 1-800-376-9729.~~

PART 8. CONTINUOUS QUALITY ASSESSMENT OF A RESOURCE HOME

340:75-7-86. Resource family assessment [REVOKED]

~~Assessment of resource family homes is a continuing process. The Department of Human Services (DHS) provides clarification as needed on Department policies and the resource family's roles and responsibilities.~~

340:75-7-87. Investigative protocol for abuse or neglect of a child in foster resource family care [REVOKED]

~~The Department of Human Services (DHS) investigates a child abuse or neglect report alleging maltreatment of a custody child in a foster resource placement in the same manner as all other abuse or neglect complaints. The investigative protocol for addressing reports regarding foster resource homes is the same as the protocol for conducting an investigation or assessment in the child's own home.~~

340:75-7-88. Appeals process for foster home investigation findings [REVOKED]

~~If a foster home investigation results in a finding of confirmed court intervention or confirmed service recommended, the foster parent may appeal the finding. The appeals process is identical to the process of appeal findings in investigations in non-foster homes. [OAC 340:75-1-12.2]~~

340:75-7-89. Time frames for decision making regarding continued use or closure of the foster home [REVOKED]

~~If the Department of Human Services makes a decision regarding the continued use or closure of the foster home based on the findings of an abuse or neglect investigation, action is taken within 15 calendar days of the completed investigation if the foster resource parent does not file an appeal. If the foster parent appeals the findings within 15 calendar days, the Children and Family Services Division (CFSD) Appeals Section reviews the findings and notifies the foster home of the determination of the findings. Action is taken immediately to proceed with notice of closure if Child Welfare staff bases the decision to close on policy violation or non-compliance.~~

340:75-7-90. Evaluation of foster home rule violations or concerns [REVOKED]

~~When DHS receives allegations of or observes rule violations at foster resource homes, an evaluation is required. An initial evaluation must first rule out the involvement of abuse or neglect, particularly if policy violations or concerns have to do with discipline practices or issues of judgment or supervision. This may require examining and interviewing the child to make an adequate evaluation as to whether or not an investigation of abuse or neglect is conducted.~~

340:75-7-91. Written plan of compliance (WPC) [REVOKED]

~~If a Child Protective Services (CPS) investigation and assessment of abuse or neglect in a foster resource home or an evaluation reveals that rule violations have occurred in the resource family home, and the issues require remediation, a WPC is initiated unless the home is closed immediately. The WPC is implemented utilizing Form DCFS-FH-1, Written Plan of Compliance. The plan is a joint effort between Department staff and resource parents to systematically identify and address needs in the home, insure the provision of necessary services to the home and children placed, and state recommendations about the use of the home.~~

340:75-7-92. Closure of a resource home [REVOKED]

~~Regardless of the reason for closing a resource home, the procedures outlined in this Section are followed. Closure of a resource home may be due to:~~

~~(1) the resource parents' request;~~

~~(2) a joint decision made by DHS and the resource parents;~~

~~(3) a review with the family and consultation with the Child Welfare field liaison (CWFL) of the findings of the Oklahoma State Bureau of Investigation (OSBI) records search and Federal Bureau of Investigation (FBI) national criminal history records search or other record searches which contain questionable information; or~~

~~(4) a decision made solely by DHS.~~

340:75-7-93. Re-application to provide foster care [REVOKED]

~~Persons who desire to re-open their foster resource home must re-apply.~~

340:75-7-94. Foster care reviews

(a) **Concerns in a foster home.** Child Welfare (CW) staff evaluates concerns with discipline practices or other issues including, but not limited to, foster parent's judgment or supervision, at the time of observation or upon receipt of the information. CW staff evaluates and determines the need for a referral, per OAC 340:75-3-8.1. When the situation does not meet the criteria for abuse, neglect, or both, per OAC 340:75-3, the resource specialist documents the information on Form DCFS-117, Report of Violation of Rules in an OKDHS Resource Home.

(b) **Non-compliance issues.** When non-compliance issues or rule violations in the foster home require remediation for continued use of the home, Form DCFS-115, Written Plan of Compliance, is initiated. Form DCFS-115 is a joint effort between OKDHS and the foster family to identify the action steps for the foster family and OKDHS to ensure continued compliance of the foster home.

(1) The resource specialist initiates Form DCFS-115:

(A) with the foster family to address issues identified as a result of an assessment or investigation, per OAC 340:75-3, or a rule violation and concern, per OAC 340:75-7-94(a); and

(B) within ten working days of the completed investigation, if no appeal is requested, per OAC 340:75-1-12.2, or, if appealed, within ten working days after a final determination of the findings is made by Children and Family Services Division (CFSD) Appeals Section.

(2) When new non-compliance issues are identified, Form DCFS-115 is reviewed to determine whether additional action is warranted. If so, the action steps are added to the current Form DCFS-115.

(3) If the foster family disputes the identified issues and refuses to sign Form DCFS-115, the CW supervisor forwards Form DCFS-115 to CFSD Foster Care Section for review. The Foster Care Section reviews and responds in writing to the CW supervisor within ten working days.

(c) **Yearly re-assessments.** The foster parent's performance is formally assessed yearly to evaluate accomplishments and to identify areas needing improvement. The resource remains approved, regardless of the timeliness or findings of assessments, until there is a specific action by either party to terminate the foster care contract or close the home.

(1) **Re-assessments.** Resource reviews:

(A) are conducted yearly by the assigned resource specialist following initial approval of the home using Form DCFS-9, Resource Home Annual Assessment, via KIDS Resource Re-Assess screen;

(B) are arranged at a time of convenience to foster families and conducted in the foster home. The resource specialist:

(i) reviews the resource record;

(ii) completes Form DCFS-11, House Assessment, with the foster family;

(iii) reviews with the foster family OKDHS Publication No. 99-17, Foster Parent Handbook, and Form DCFS-116, Verification of Receipt of OKDHS Rules;

(iv) explains Form OCA-GR-4, Notice of Grievance Rights - Foster Parents. The foster parent verifies the review of Form OCA-GR-4 by signing;

(v) asks the foster parent to complete, every three years, Forms:

(I) DCFS-20, Resource Family Financial Assessment; and

(II) ADM-130, Request for Background Check; and

(vi) provides Form DCFS-38, Medical Examination Report, every three years or more often if circumstances warrant; and

(C) conform to rules per OAC 340:75-7.

(2) **Review results.**

(A) The resource specialist and CW supervisor discuss any concerns identified in Form DCFS-9.

(B) The resource specialist and the foster family review Form DCFS-9, and the foster parent signs.

(C) The CW supervisor signs and approves Form DCFS-9.

(D) Signed copies of Forms DCFS-9 and OCA-GR-4 are provided to the foster family.

(E) A signed copy of Form DCFS-9 and attachments are filed in the resource record.

(3) **Placement of children.** CW workers and resource specialists:

(A) do not place additional children until Form DCFS-9 is completed;

(B) do not move children currently placed in the home, even when the foster family fails to submit the required forms timely, per OAC 340:75-7-94(c)(1); and

(C) suspend or close the home until the forms per OAC 340:75-7-94(c)(1) are received, if there are no children currently placed.

(d) **Closure of a foster home.**

(1) The foster home is closed when services are no longer needed, including a:

(A) kinship home when kinship children are no longer placed in the home; or

(B) jointly approved foster home for a specific child when the child leaves the home.

(2) The resource specialist contacts the foster family in person or by phone to discuss closure of the foster home and provides a copy of Form DCFS-17, Notice of Closure to OKDHS Foster Parents, that explains the reason for closure.

(3) Foster parents retain the right to appeal closure of the home through the fair hearing process, per OAC 340:75-1-12.6. When the local OKDHS office receives a copy of the appointment letter for the fair hearing, the resource specialist distributes one copy of Form H-1-A, Hearing Summary, with attachments, to the appellant and authorized representative, if any, prior to the hearing date.

(4) The foster care contract is either cancelled or terminated per OAC 340:75-7-52.

PART 25. EMERGENCY FOSTER CARE PROGRAM

340:75-7-260. Mission statement [REVOKED]

~~The mission of the Emergency Foster Care Program is to provide children ages birth through five years of age with a substitute family home placement which, supported by the contract agency and the Department in service coordination and delivery, meets the child's total care needs. The program offers Emergency Foster Care (EFC) on an emergency basis following the child's removal from the child's own home or disruption of the child's out-of-home placement prior to replacement of the child. The program is based on the knowledge that young children, especially those whose lives have been disrupted by family dysfunction resulting in the need to remove the child for the child's own protection, require direct, consistent care from a single person or family to assure the child's physical, emotional and mental well-being and the fewest disruptions possible.~~

340:75-7-261. Population to be served [REVOKED]

~~Children to be served include those in the lawful or protective custody of the Department ages birth through five years of age. Children served are primarily those removed from their homes due to allegations of physical, sexual or emotional abuse or neglect and those whose out-of-home placement has been disrupted or who are in need of foster family care pending reunification, adoption or other permanent placement. Children whose parents or guardians have requested voluntary foster care for a short time pending return to the parents or guardians or subsequent legal intervention, are also served. Children served include those admitted to the Pauline E. Mayer Shelter in Oklahoma City, the Laura Dester Shelter in Tulsa and the J. Roy Dunning Children's Shelter in Lawton. Foster homes generally serve the child within 40 miles of the child's family's home.~~

340:75-7-262. ~~Admissions to emergency~~ Emergency foster care

(a) ~~**Emergency foster home admission from shelters**~~ **Admissions.**

(1) **Shelters.** The Pauline E. Mayer Shelter, Laura Dester Shelter, and J. Roy Dunning Children's Shelter are the primary points of admission to emergency foster care ~~and admission is coordinated by shelter staff with the contract agency~~ (EFC).

(A) **Children eligible for EFC.**

(i) ~~Children under the age of~~ A child younger than six years of age may not remain in ~~DHS~~ an Oklahoma Department of Human Services (OKDHS) operated shelter ~~care~~ longer than 24 hours. ~~After the child is admitted into emergency foster care (EFC), the Child Welfare (CW) worker determines the needs of the child and the type of placement that best serves the child.~~ A child who reaches age six while in EFC remains eligible for the service.

(ii) When it is appropriate, per OAC 340:75-6-30, and in the best interests of the child younger than six years of age to have his or her sibling between the ages of six through nine years or minor parent placed in the same placement, a plan is negotiated with the contractor and OKDHS.

(iii) The placement of a child older than six years of age occurs only after written approval from Children and Family Services Division (CFSD) Foster Care Section.

(B) **Admission from shelter.** Shelter staff contacts the contract agency by phone and provides available information about the child's medical, educational, social, routine, and special care needs as required to select an appropriate placement. This information is provided to the contract agency upon discharge from the shelter and includes:

(i) the shelter intake sheet with all available information;

(ii) all personal possessions;

(iii) medications and equipment;

(iv) Form DCFS-EFC-11, Authorization for Foster Parent Consent for Medical Services - Emergency Custody, or Form DCFS-EFC-12, Authorization for Foster Parent Consent for Medical Services; and

(v) Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody. Shelter and contract agency staff coordinate admission.

(~~b~~2) **~~Emergency foster home admissions from hospitals~~ Hospitals.** ~~Occasionally children~~ When a child in inpatient hospital care for treatment of medical conditions related to abuse, ~~or~~ neglect, or illness ~~may require EFC placement. When no regular Department of Human Services (DHS) foster home or other appropriate placement is available, the CW worker notifies the DHS liaison of the need for~~ requires EFC placement, ~~providing all~~ relevant background and care information~~. The information~~ is provided to the contract ~~social worker~~ agency to assist ~~them~~ in identifying an appropriate ~~EFC~~ placement. Priority for placement into EFC is given to children discharged from hospitals. The contract agency identifies an appropriate EFC placement and coordinates the hospital discharge date, time, and any special training required with the provider and notifies OKDHS.

(~~c~~3) **Other ~~emergency foster home~~ EFC admissions.** ~~Children~~ A child who ~~have been~~ is diverted to a ~~non-DHS~~ non-OKDHS operated shelter or ~~who remain~~ remains in ~~their~~ current placement pending admission into EFC ~~are~~ is placed on a waiting list maintained by the ~~DHS~~ OKDHS liaison. Admissions occur as beds become available.

(b) **Roles and responsibilities.**

(1) **CW worker.** The Child Welfare (CW) worker remains the primary connection among the child, parent(s), EFC agency, EFC provider, OKDHS liaison, other service providers, and court while the child is in EFC. At the time of admission or as soon as possible after placement, the CW worker provides the necessary information about the child to the EFC provider, including:

(A) behavioral, psychological, and social history;

(B) previous medical care;

(C) legal documentation verifying OKDHS custody status;

(D) religious affiliation; and

(E) Form CWS-KIDS-7, Placement Provider Information.

(2) **OKDHS liaison.** The OKDHS liaison assists the EFC agency, staff, and providers in maintaining effective working relationships with OKDHS staff by providing support and consultation regarding respective roles and responsibilities.

(3) **EFC agency.** The EFC agency ensures the availability of qualified, trained staff and EFC providers 24 hours a day for the placement and care of eligible children. The EFC agency coordinates with the CW worker to afford the child all services that promote the child's progress and ensures that the child's total care needs are met while in placement. To facilitate movement of children from EFC to another placement, weekly staffings occur between the CW worker and the contract agency.

(c) **Discharge from EFC.**

(1) **Notice.** When discharge from EFC to another type of placement is made, the contract agency is given as much advance notice as possible, but not less than two hours.

(A) The CW worker notifies the contract agency of the planned move in writing, using the Client Movement Authorization Form provided by the contract agency, and coordinates the date and time for placement.

(B) The CW worker shares information to assist the EFC provider in preparing the child for the move.

(C) The contract agency transports the child to the county office or site designated for pick-up by the CW worker or staff responsible for completing the new placement.

(2) **Change of placement information accompanies the child.** All forms completed by the EFC provider while the child is in care assist the new provider in helping the child adjust to the new placement, provide information needed for continuity of care, and alert the new provider of the child's special needs and strengths. These forms are not given to the parent(s) if the child is returning home. Required information and items include:

(A) all medications, with instructions for dosage and use;

(B) equipment or supplies required for the child's special care;

(C) dates of any follow-up appointments;

(D) personal items, unused OKDHS clothing vouchers, and clothing purchased by OKDHS, including disposable diapers;

(E) Women, Infants and Children (WIC) vouchers, non-perishable food and other items obtained through WIC; and

(F) at least a 24-hour supply of formula, baby food, and other items for immediate use by the new provider.

340:75-7-263. Movement of children from emergency foster care [REVOKED]

~~(a) **Weekly staffings.** To facilitate movement of children from EFC to another placement, weekly staffings occur between the Child Welfare (CW) worker and the contract social worker. All efforts are made to place sibling groups together whenever feasible and timely.~~

~~(b) **Foster care search.** All known kinship resources within the state are explored immediately as potential placements for the child. A request for regular foster care is made simultaneously to assure a timely identification of a placement resource. Adjoining counties and statewide searches are initiated when local resources are not available. If a home is found outside the area after all local resources have been explored without success, the placement may not be declined based solely on distance.~~

~~(c) **Placement above foster care.** When it has been determined that a kinship or regular foster home cannot meet the child's needs, an above foster care placement is pursued.~~

340:75-7-264. Roles and responsibilities in emergency foster care program [REVOKED]

~~(a) **The Child Welfare (CW) worker's initial role.** The CW worker remains the primary connection among the child, parents, contract agency, foster care provider, Department of Human Services (DHS) liaison, other service providers and court while the child is in emergency foster care. At the time of admission or as soon as possible after placement, the emergency foster care (EFC) provider is given information about the child.~~

~~(b) **The CW worker's ongoing role.** While the child remains in EFC the CW worker's ongoing role is to manage the case, access services and coordinate services with the contract social worker and the EFC provider.~~

~~(c) **The contract foster parent's role.** The EFC foster care direct provider is responsible for meeting the child's daily care needs and for coordinating with the CW worker and contract social worker to afford the child all services which promote the child's progress while in placement.~~

~~(d) **The contract social worker's (CSW) role.** The CSW serves as a link between the CW worker, emergency foster care provider, and DHS liaison to assure that the child's total care needs are met while in placement.~~

~~(e) **The DHS liaison's role.** The DHS liaison assists the contract agency, its staff and EFC providers in maintaining effective working relationships with Department staff by providing support and consultation regarding respective roles and responsibilities. The role of the DHS liaison does not replace or diminish the responsibilities of the CW worker.~~

~~(f) **The contract agency's role.** The contract agency assures the availability of qualified, trained staff and EFC providers 24 hours a day for the placement and care of eligible children.~~

340:75-7-265. Service delivery in emergency foster care programs [REVOKED]

~~(a) **Visitation.** The child and parents have a right to regular visitation as long as there is not sufficient documentation that visitation is damaging to the child, or there has not been a court finding that efforts to reunite have failed and visitation is to cease. Denial of family visitation, and contact with siblings or exchange of letters and telephone calls is not used to reward or punish the child or family. The Child Welfare (CW) worker coordinates all visits between the parents and child and siblings with the contract social worker (CSW).~~

~~(b) **Discipline.** The contract agency discipline policy is consistent with the Department's policy, which does not allow the use of physical or corporal punishment or any act or omission that may emotionally, physically, or psychologically harm a child. The provider does not give school personnel authorization to use physical or corporal punishment. The contractor develops and implements written policy and procedure regarding acceptable and non acceptable methods of behavior management and provides documented training on same to all foster parents.~~

~~(c) **Reports of incidents.** The CSW writes up an incident report describing any injury or unusual occurrences involving the child's behavior management, such as physical confrontations or restraints, and submits it to the CW worker and DHS liaison.~~

~~(d) **Medical services and consent.** All necessary medical services for a child in emergency foster care (EFC) are accessed by the child's EFC provider using resources recommended by the CW worker or other vendors available to the EFC provider. Payment for all approved medical services for the child is made within the scope of the Department's medical programs. Contract foster care providers and CSW coordinate with the CW worker to obtain consent for medical care as per OAC 340:75-13-65. The EFC provider provides consent for routine medical care for contract temporary or permanent custody children as per OAC 340:75-13-65 and Form DCFS-EFC-12. The EFC provider provides consent for diagnostic medical examinations for protective custody children as per OAC 340:75-13-65 and Form DCFS-EFC-11. If the CW worker, supervisor, or county director is not available to give legal consent, the Statewide Child Abuse Hotline is called to access the intake supervisor, who assists in obtaining medical consent. In a medical emergency, the EFC provider consents for medical care or treatment for any child as per OAC 340:75-13-65 and Forms DCFS-EFC-11 and DCFS-EFC-12.~~

~~(e) **Education.** Children of school age in the Department's legal custody are enrolled by the EFC provider in the local public school system and attend school regularly.~~

~~(f) **Hospital-based partial day treatment.** Some children in EFC require hospital-based partial day treatment, when determined eligible for services based upon the Medical Necessity Criteria. The CSW notifies the CW worker of behaviors indicative of the need for this service and staffs the case as requested in order to assess appropriateness for the service. The CW worker is responsible for referral to the Community Mental Health Center for gatekeeping access to this service.~~

~~(g) **Changes of placement in an emergency foster care program.** Movements between EFC resources are necessary for various reasons, for example, another home is better suited to meet the child's needs, the current provider is unable to continue care due to illness or personal circumstances, allegations of mistreatment necessitates removal from the home, or similar reasons.~~

~~(h) **Child abuse or neglect referrals.** The contract agency and any of its providers, foster parents, respite or back-up care providers, babysitters, and similar providers, have equal responsibility to report suspected child abuse or neglect to the Department of Human Services in accordance with Section 7103 of Title 10 of the Oklahoma Statutes. Any referral regarding alleged abuse or neglect in EFC is investigated according to the Department's policy. The contract staff cooperates with the Department in conducting the investigation. No new placements will be made into the home until the investigation is completed and a finding has been made regarding the occurrence of abuse or neglect by the caregiver. The Foster Care~~

~~programs manager, or designee, verbally reports the findings of the investigation to the contractor for appropriate follow-up. No home in which child abuse or neglect has been confirmed or issues exist regarding appropriate care may continue to be used without successful initiation of a written plan of compliance. If the contractor continues to use homes that the Department has determined place a child at substantial risk of harm for further abuse or neglect and efforts have not been made to correct the problems in a timely manner, or have not been successful, the DCFS Foster Care staff reviews the matter and may decline consideration of the home.~~

~~(i) **Grievance procedure.** All children placed into EFC are subject to the Department's grievance procedure as per OAC 340:2-3-49. Form OCA-GR-2, Notice of Grievance Rights - Minors in DHS Custody - Youth in Voluntary Foster Care, accompanies each child into an EFC placement and is explained to the provider by the CSW or other contract staff making the placement. The CSW is responsible for assuring that the signed form copies are distributed to the CW worker, EFC provider, and child. With each subsequent move within an EFC program, a new Form OCA-GR-2 is processed.~~

~~(j) **Case records and case management.** The CW worker advises the EFC provider when the child's service case is re-assigned.~~

340:75-7-266. Substitute care [REVOKED]

~~The contract agency assures that the safety and well-being of the child are not compromised by the use of substitute caregivers. The caregivers are able to provide care consistent with the level the child's needs and level of care required. When substitute care is used the Department only makes one payment to the contract agency for each day the child is in emergency foster care.~~

~~(1) **Short-term backup care.** Short-term backup care allows the provider the flexibility to access persons who can provide short-term care when the provider is unable to provide direct care and supervision due to planned and unplanned times of absence, to run errands or conduct activities related to the child's or the family's needs.~~

~~(2) **Respite care.** The contractor assures that each provider has access to other EFC providers, persons and agencies who are trained and approved to provide respite care appropriate to the needs of the child.~~

~~(3) **Babysitting.** The contractor assures that any babysitter who is used for care of children placed in emergency foster care is no younger than 16 years of age. Babysitters are used sparingly while the foster parents run errands or are away from the home for less than two (a) hours. The use of baby sitters is not to take the place of approved backup provider.~~

340:75-7-267. Reimbursement to emergency foster care program providers [REVOKED]

~~(a) **Emergency foster care daily rate.** Contract emergency foster care agencies are reimbursed at the rate of $44 per day per child for emergency foster care services. Payment is based on the actual number of days a child is placed in the home each month. The Agency reimburses its emergency foster parents at the rates listed in this subsection, which are inclusive of all associated expenses such as travel, per diem, and audit costs.~~

~~(1) Children ages 0 - 5 are reimbursed at $15 per day.~~

~~(2) Children ages 6 - 12 are reimbursed at $17 per day.~~

~~(3) Children ages 13 - older are reimbursed at $19 per day.~~

~~(b) **Difficulty of care payments.** Difficulty of care increase is available to reimburse contract foster parents at the rate set out in OAC 340:75-7-54.~~

340:75-7-268. Discharge from emergency foster care (EFC) [REVOKED]

~~(a) **Notice.** When discharge from EFC to another type of placement is made, the provider is given as much advance notice as possible but not less than two hours notice. The Child Welfare (CW) worker notifies the contract social worker (CSW) in writing, using the Client Movement Authorization form which is provided by the contract agency, of the planned move and coordinates the date and time for placement. The CW worker shares information to assist the EFC provider in preparing the child for the move.~~

~~(b) **Change of placement information to accompany the child.** All forms completed by the EFC provider while the child was in care assist the new provider in helping the child adjust to the new placement, provide the caregiver with information needed for continuity of care, and alert the new caregiver of the child's special needs and strengths. The forms are not given to the parents if the child is returning home. Needed information and items include:~~

~~(1) all medications with instructions for dosage and use;~~

~~(2) equipment or supplies required for the child's special care;~~

~~(3) dates of follow-up appointments;~~

~~(4) personal items, unused clothing vouchers and clothing purchased by DHS, including disposable diapers;~~

~~(5) WIC vouchers, non-perishable food, and other items obtained through WIC; and~~

~~(6) at least a 24 hours supply of formula, baby food and other items for immediate use by the new provider.~~

~~(c) **Additional discharge information.** Contract staff or the EFC provider transports the child to the county office or site designated for pickup by the CW worker or staff responsible for completing the new placement. The CW worker advises the new caregiver to contact the DHS liaison for information from the EFC provider. The DHS liaison notifies the CSW of the need for additional information. The CSW gathers the needed information or provides it to the caregiver or contacts the former EFC provider to contact the new caregiver directly.~~

340:75-7-269. Standards for emergency foster care (EFC) program homes [REVOKED]

~~(a) **Basic requirements.** Emergency foster care program homes meet the requirements for foster family homes set out in OAC 340:110-5-55-63.~~

~~(b) **Additional standards.** Specific standards in addition to Licensing Requirements are outlined in the Fixed Rate Emergency Foster Care Contract.~~

~~(c) **Complete assessments.** All assessment components are completed prior to approval of the home and placement of children.~~

~~(d) **Annual reassessment.** Foster homes are reassessed on a yearly basis to evaluate the EFC provider's effectiveness in meeting children's routine and special needs, identify particular strengths and areas requiring further training, consultation and support, and specify the number, ages, sex and special needs of children for whom the home is recommended.~~

~~(e) **Denials and closures.** Denials of applications and closure of homes occur when the minimal standards are not met.~~

[OAR Docket #04-920; filed 5-17-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

[OAR Docket #04-960]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Function and Structure of the Office of Juvenile Affairs
377:1-1-3. [AMENDED]
377:1-1-11. [AMENDED]
377:1-1-12. [AMENDED]
AUTHORITY:
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ANALYSIS:
When the Office of Juvenile Affairs (OJA) reorganized four divisions were created, including the: Support Services Division, Financial Services Division, Institutional Services Division, and Community Services Division. Since the Administrative Procedures Act, Title 75 O.S., § 302(A) requires that each agency promulgate as a rule a description of the organization of the agency, OJA rules are revised to reflect its current organizational structure. OJA is also allowing the public to obtain a current copy of the organizational structure upon request from the Office of Planning and Research.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

377:1-1-3. Description of the Office of Juvenile Affairs (OJA)

(a) **History.** The Office of Juvenile Affairs was created on July 1, 1995, as a result of legislation enacting the Oklahoma Juvenile Code.

(b) **Organization.** The Office of Juvenile Affairs consists of programs providing services to juveniles involved in the juvenile justice system and administrative components which provide administrative support.

(1) **Office of the Executive Director.**

(A) Within the Office of Juvenile Affairs, programs and divisions which report directly to the Executive Director include, but are not limited to, the:

~~(i) State Advisory Group Coordinator~~
~~(ii) Media and Community Relations;~~
(i) Office of Public Integrity;
(~~iii~~ii) Division of the Advocate Defender; and
(iii) Office of General Counsel Service;
~~(iv) Finance Division~~

(B) The Executive Director of OJA is designated by the Governor as the Interstate Compact Liaison.

(C) Additional responsibilities of the Executive Director are listed in OAC 377:~~1-1-10.~~ 1-1-11.

(D) The Executive Director shall establish divisions within DJJ in addition to those required by law and may employ staff as necessary to perform the duties of the Office of Juvenile Affairs as authorized by statute. Organizational charts are available upon request from the Office of Planning and Research.

(2) **Department of Juvenile Justice.**

~~(A)~~ Title 10 O.S., § 7302-3.1 establishes the Department of Juvenile Justice (DJJ) within OJA. Responsibilities of DJJ staff include:

(~~i~~ A) serving as the state planning and coordinating agency for juvenile justice and delinquency programs;
(~~ii~~ B) providing juvenile intake, probation, and parole services; and

(~~iii~~ C) implementing programs enumerated in 10 O.S., § 7302-3.1(C) and (D).

~~(B) In order to administer programs and services, the Department of Juvenile Justice is organized in geographic zones. Organizationally, the State of Oklahoma is divided into the western, central, and eastern zones. Each zone is administered by a zone administrator who is, in turn, responsible to the OJA Deputy Director/Chief of Staff. The zone administrator is responsible for implementing and maintaining within the zone the activities listed in (I) - (iii) of this subsection, including:~~

~~(i) community services, consisting of the juvenile services unit and community based youth services;~~

~~(ii) residential services, consisting of:~~

~~(I) therapeutic foster family homes;~~

~~(II) specialized community homes;~~

~~(III) OJA operated group homes;~~

~~(IV) contract community based residential facilities; and~~

~~(V) regimented juvenile training programs; and~~

~~(iii) institutional services, consisting of the:~~

~~(I) Rader Center (eastern zone);~~

~~(II) Central Oklahoma Juvenile Center (central zone);~~

~~(III) Southwest Oklahoma Juvenile Center (western zone); and~~

~~(IV) contracted institutions.~~

(3) ~~**Division of the Advocate Defender.**~~ **Advocate Defender Division.** The ~~Division of the Advocate Defender~~ Advocate Defender Division is a Division of the Department of Juvenile Justice established by 10 O.S., §7302-3.2 (A) and (B)(1-8). Compliance with Oklahoma statutes is obtained by assignment of the Advocate Defenders to the OJA institutions. The Division of Advocate Defender shall be separate and apart from the Office of General Counsel.

~~(4) **Administrative Services Division (ASD).** The Administrative Services Division of the Office of Juvenile Affairs includes the:~~

~~(A) Office of Quality Assurance;~~

~~(B) Office of Human Resources Management;~~

~~(C) Office of Contracts, Procurement, and Support Services;~~

~~(D) Office of Information, Technology, and Research;~~

~~(E) Office of Policy; and~~

~~(F) Support and Federal Funds Development Unit.~~

(4) **Support Services Division.** The Support Services Division shall provide centralized support function for the Office of Juvenile Affairs.

(5) ~~**Finance Division.**~~ **Financial Services Division.** The ~~Finance Division is~~ Financial Services Division shall provide the centralized accounting, procurement, reporting, and budgeting ~~unit~~ for OJA. ~~The Finance Division is responsible for OJA's fiscal management.~~

(6) **Institutional Services Division.** The Institutional Services Division shall be responsible for all secure institutional services.

(7) **Community Services Division.** The Community Services Division shall be responsible for all community-based services.

(8) **Parole Board Division.** The Parole Board shall have responsibilities as set forth in 377: 30-5.

(c) **Purpose/mission.** The purpose of the Office of Juvenile Affairs as stated in Title 10, O.S., § 7301-1.2 is to promote the public safety and reduce delinquency. To execute the purpose of the statutes, OJA has developed its mission to include:

(1) protection of the public from juvenile offenders;

(2) prevention of juvenile delinquency;

(3) implementation of programs ensuring accountability of juveniles for their behavior; and

(4) involvement of the community in creating and implementing solutions to juvenile delinquency and establishing individual accountability.

377:1-1-11. Executive Director

~~(a) The Executive Director of the Office of Juvenile Affairs shall be appointed by the Board of Juvenile Affairs and shall report directly to the Board. As the administrator of the Office of Juvenile Affairs, the Executive Director is responsible for supervising OJA activities and establishing internal policy and procedures for the administration of the Office of Juvenile Affairs.~~

(b) The Executive Director shall be responsible for selecting staff or contracting with personnel capable of carrying out OJA's mission, goals, and statutory requirements.

(c) The Executive Director shall have the authority to assume all duties and responsibilities of the Deputy Director of DJJ [Title 10, O.S., § 7302-2.1 (C) (4)].

377:1-1-12. Deputy Director of DJJ

The Deputy Director of the Department of Juvenile Justice shall serve as the administrative head of the Department of Juvenile Justice. The Deputy Director shall direct activities of the Department of Juvenile Justice and ensure that all statutory mandates related to DJJ are executed. As the administrator of services to juveniles adjudicated delinquent, in need of supervision, or youthful offender the Deputy Director shall ensure the programs set forth in Title 10, O.S., § 7302-3.1(C) and §7306-2.11 are in place.

[OAR Docket #04-960; filed 5-19-04]

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

[OAR Docket #04-961]

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PERMANENT final adoption

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Subchapter 1. Office of the Executive Director

Part 3. Office of the Advocate General
377:3-1-21. [AMENDED]
377:3-1-23. [AMENDED]
377:3-1-25. [AMENDED]
377:3-1-26. [AMENDED]
377:3-1-28. [AMENDED]

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ANALYSIS:
Office of Juvenile Affairs (OJA) rules are being revised to reflect rule changes made by the Department of Human Services, Office of Client Advocacy (OCA) division. OJA will adopt the investigative findings as set forth by OCA from "Caretaker Mistreatment" to "Caretaker Misconduct." Rules are also being amended to correct the flow of information throughout the juvenile grievance system.

CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

PART 3. OFFICE OF THE ADVOCATE GENERAL

377:3-1-21. Definitions

"Abuse" means the causing or permitting of harm or threatened harm to the juvenile's health, safety, or welfare by a caretaker responsible for the juvenile's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the juvenile.

"Advocate defender" means the institutional staff member responsible for:

(A) assuring that juveniles in custody have available and understand grievance channels;

(B) monitoring and reviewing grievance procedures;

(C) conducting the tentative release date hearings with juveniles and attending parole hearings;

(D) supervising the communication of grievance procedure to staff and juveniles;

(E) facilitating resolutions and regularly reviewing informal grievances; and

(F) ensuring allegations of abuse, neglect, or mistreatment are properly reported to the Department of Human Services, Office of Client Advocacy (OCA).

"Advocate defender" means the institutional staff member responsible for:

"Caretaker" with regard to juveniles means an agent or employee of:

(A) a public or private residential home, institution, or facility above the level of foster care; or

(B) a day treatment program as defined in 10 O.S., § 175.20 or § 7001.

"Caretaker Misconduct" defined as an act or omission by a caretaker that:

(A) Violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(B) is not found to be abuse or neglect; and

(C) results in or creates the risk of injury including, but not limited to:

(i) Acts or omissions that contribute to the delinquency of a minor;

(ii) unintentional excessive or unauthorized use of force;

(iii) unintentional causing of mental anguish; and

(iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client.

"Caretaker Misconduct" defined as an act or omission by a caretaker that:

"Demonstrable injury" means clear evidence of physical injury (for example, a laceration, bruise, burn, or visible swelling), or an injury which is confirmed by a physician, dentist, or nurse.

"Grievance coordinator" means a group home staff member responsible for:

(A) assuring that juveniles in custody have available and understand grievance channels;

(B) monitoring and reviewing grievance procedures and hearings;

(C) supervising the communication of grievance procedure to staff and juveniles; and

(D) regularly reviewing informal grievances and resolutions.

~~**"Mistreatment"** means harm or threatened harm to the health, safety or welfare of a juvenile by a caretaker responsible for the juvenile's health, safety, or welfare which is caused~~

~~by any violation of statutes, regulations, written rules, procedures, directives, or accepted professional standards and practices, which is not found to be abuse or neglect, but which results in injury or creates risk of injury. It includes but is not limited to:~~

~~(A) conduct which evidences a reckless disregard for health, safety, or welfare;~~

~~(B) acts or omissions which contribute to the delinquency of a juvenile; or~~

~~(C) unintentional mental injury or mental anguish.~~

"Neglect" means:

(A) failure of a caretaker to provide adequate food, clothing, shelter, medical care, and supervision; or

(B) the failure to provide special care made necessary by the physical or mental condition of the juvenile, including the lack of appropriate supervision which results in consensual sexual activity between juveniles.

"Resident grievance clerk" means a resident of the group home or institution elected by his or her peers to assist in the grievance process.

"Serious physical injury" means any physical injury to a person's body determined to be serious by a physician, dentist, or nurse, and includes but is not limited to death, fracture, dislocation of any major joint, internal injury, concussion, or second or third degree burn.

377:3-1-23. Job duties

The job duties of the Advocate General (AG) are provided in (1)-(8) of this Section.

(1) The AG shall supervise staff assigned to juvenile facilities as advocate defenders.

(2) The AG shall inquire into and make recommendations regarding juvenile-related grievances which are not resolved at the facility level. The AG shall require that allegations of abuse, neglect, or ~~mistreatment~~ caretaker misconduct of juveniles who are in OJA custody placed in facilities operated by or under contract with OJA are reported to the OCA by the appropriate person. The AG shall ensure that immediate protection of resident issues are addressed by the facility and follow-up on OCA findings and recommendations regarding corrective action.

(3) The AG shall coordinate any hearings or meetings of administrative review committees conducted as a result of investigations or unresolved grievances.

(4) The AG shall make recommendations to the OJA Executive Director and appropriate Deputy Director pursuant to 377:3-1-25;

(5) The AG shall provide reports on grievance procedures, hearings, and investigations to the Executive Director of OJA, Office of Juvenile Systems Oversight, Board of Juvenile Affairs, and other persons or entities as necessary to assure action.

(6) The AG shall forward an abstract of grievances which are not resolved in favor of the person filing the grievance, and which have exhausted all available levels of appeal, to the Office of Juvenile Systems Oversight, the Executive Director, and the OJA Board of Juvenile Affairs.

(7) The AG shall:

(A) monitor rules and practices of OJA and its contractors to ensure compliance with juveniles' rights;

(B) report the number and types of investigations at juvenile facilities at least quarterly to the OJA Board of Juvenile Affairs in open meeting; and

(C) make additional reports to the OJA Board of Juvenile Affairs as needed.

(8) The AG shall perform other duties as required by the Executive Director.

377:3-1-25. Abuse, neglect, and ~~mistreatment~~ caretaker misconduct

(a) **Requirements for reporting incidents of abuse, neglect, or ~~mistreatment~~ caretaker misconduct.** State law requires every person with reason to believe that a child or juvenile is or has been abused or neglected to report the condition or incident to the appropriate office for investigation. Title 10 §7004-3.4(B)(2) confers on OCA the responsibility of investigating allegations of caretaker abuse and neglect of juveniles, regardless of custody, residing outside their own homes, other than the foster care level. Incidents which occur in a residence, including a foster home, shall be reported to the local child welfare office or the child abuse hotline. An employee shall make an immediate, verbal report directly to OCA [10 O.S., §7103(B)] and to the supervisor who shall ensure a report is made to OCA, law enforcement, and the OJA Office of Advocate General when:

(1) the employee has reason to believe a juvenile in OJA custody has been ~~abused~~ the victim of abuse, ~~neglected~~ neglect, or ~~mistreated~~ caretaker misconduct;

(2) a juvenile, parent, guardian, or other person makes an allegation of abuse, neglect, or ~~mistreatment~~ caretaker misconduct;

(3) death of an OJA juvenile occurs;

(4) a serious or demonstrable injury to a custody juvenile occurs:

(A) as a result or in the course of the use of physical force by an employee;

(B) as a result of an assault by any person; or

(C) under unexplained, suspicious, or unusual circumstances including where the presence of alcohol or a controlled dangerous substance is detected on either the juvenile or staff; or

(~~6~~5) a custody juvenile is the apparent victim of, or participates in, sexual activity prohibited by State Law.

(b) **Acts which are not considered to be abuse, neglect, or ~~mistreatment~~ caretaker misconduct.** Abuse, neglect, or ~~mistreatment~~ caretaker misconduct does not include the use of restraints or physical force as authorized by law, allowed by regulation or policy, and which is performed in such a manner as to be deemed acceptable by approved systems of restraint including, but not limited to, MANDT, CPI, ~~or~~ CAPE, or CCMS. Medical attention shall be provided immediately upon the juvenile's release from restraint as a result of physical force even if there is no visible evidence or complaint of injury. Medical attention shall be provided in an institution by a licensed physician, licensed practical nurse, registered

nurse, physician's assistant, or emergency medical technician; or in a group-home or private facility, staff certified in first aid and CPR may provide medical attention and are responsible for referring the juvenile to licensed medical personnel, if warranted.

(c) **Preliminary assessment procedures.** The advocate defender or grievance coordinator shall refer a report of alleged abuse, neglect, or ~~mistreatment~~ caretaker misconduct to OCA for investigation. The advocate defender or grievance coordinator is responsible for obtaining the alleged victim's, the accused's and any witnesses' written statement regarding the incident which shall then be provided to the facility or group home administrator or designee and the Advocate General. After reporting to OCA and upon their advice, the advocate defender may assist in facilitating the preliminary assessment.

(1) When a reportable situation arises and within 24-hours, each staff member, resident, or other person present during the incident shall prepare and submit to the, facility administrator, or designee a written incident report describing what the person saw or heard. The facility administrator, shall ensure a preliminary assessment is conducted to:

(A) assure the safety of any juvenile named in the referral and of other juveniles in the same placement;

(B) protect the integrity of any evidence which may be relevant to the allegation, including taking photos of potentially relevant injuries; and

(C) coordinate activities with OCA and any law enforcement authority involved in investigating the allegation.

(2) The facility administrator shall collect medical records, other documents and reports which pertain to the alleged incident, written statements and any other documentary evidence and place them in a holding file for investigative use by OCA and any other investigative authority. Employees of the facility shall not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal wrongdoing. OCA shall coordinate activities with local, state, and federal law enforcement entities.

(3) If the allegation involves ~~mistreatment~~ caretaker misconduct and the juvenile has not incurred a demonstrable injury, and is an incident which is required to be reported under 377:3-1-25 OCA may instruct the advocate defender or grievance coordinator to treat the allegation or incident as a formal ~~mistreatment~~ caretaker misconduct review, and the review will be processed as follows:

(A) The facility administrator shall be responsible for having an investigation conducted within ten working days and preparing a report of his/her findings and resolution in writing. A facility employee designated to conduct a ~~mistreatment~~ caretaker misconduct review shall:

(i) review documentation, records, and evidence collected;

(ii) view any injuries and photos of injuries;

(iii) obtain written statements and conduct interviews with:

(I) each alleged victim;

(II) each eyewitness;

(III) other persons with knowledge relevant to the allegation; and

(IV) each accused caretaker;

(iv) review any policies, directives, standards, rules, or statutes relevant to the allegation; and

(v) provide an analysis of employee actions in relation to policy, directives, standards, and rules by:

(I) reviewing written and verbal accounts from those involved;

(II) examining other documentation collected; and

(III) providing a finding.

(B) **Findings.** Findings are made based on a preponderance of the evidence. The finding options are:

(i) **Confirmed.** A finding of "confirmed" means that the available evidence establishes that it is more likely than not that the alleged caretaker misconduct occurred;

(ii) **Not confirmed.** A finding of "not confirmed" means there was insufficient evidence to find that it is more likely than not that the alleged caretaker misconduct occurred;

(iii) **Not confirmed/ruled out.** A finding of "not confirmed/ruled out" means the available evidence established that it is unlikely that the alleged caretaker misconduct occurred.

(C) A copy of the report shall be forwarded to OCA and the OJA Advocate General upon completion.

(D) If at any time during the ~~mistreatment~~ caretaker misconduct review process it is determined that abuse, neglect, or ~~mistreatment~~ caretaker misconduct involving a demonstrable injury to a juvenile may have occurred, the ~~mistreatment~~ caretaker misconduct review process will be terminated by the facility and the matter referred to OCA for investigation. The Advocate General or facility administrator may, at his/her discretion, request OCA to conduct a formal investigation of any ~~mistreatment~~ caretaker misconduct review.

(3) When OCA initiates an investigation, the assigned OCA investigator shall conduct a prompt investigation of the allegation. The investigator shall contact the facility administrator to arrange for document production, site visits, and interviews. The facility administrator who employed any accused caretaker at the time of the alleged incident shall inform that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the administrative investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (d) of OCA's Rules, 340:2-3-~~7~~36; and

(D) the nature of any allegation against the caretaker.

(4) The administrator shall not provide the accused caretaker with the details of the referral or the substance of the evidence. The facility administrator shall arrange for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a resident of the facility.

(5) **Educational employees.** If the alleged abuse, neglect, or ~~mistreatment~~ caretaker misconduct involves an employee of a school district which provides contract educational services to OJA, either as a witness or as an accused caretaker, the facility administrator shall notify the principal of the school of the nature of the allegation, the name of the assigned investigator, and the nature of the allegation. The principal shall then be responsible for advising the employee accordingly and coordinating with OCA.

(6) Supervisory staff who have been informed of alleged or possible abuse, neglect, or ~~mistreatment~~ caretaker misconduct shall report such allegations as required by this subsection.

(d) **Protection or medical treatment.** In the event of alleged abuse, neglect, or ~~mistreatment~~ caretaker misconduct in a facility, the facility administrator or designee shall assure protection of the juvenile and obtain medical attention for the juvenile.

(e) **Referral to law enforcement agency.** If the reportable situation could result in criminal charges, the superintendent, facility director, JSU district supervisor, or an OJA employee having direct knowledge shall also immediately report the matter to the appropriate law enforcement agency. If there is a question as to whether the reportable situation could result in possible criminal charges, the superintendent, facility director, or JSU district supervisor shall immediately consult with the Advocate General or a representative of the OJA Office of General Counsel. The advocate defender or Advocate General shall ensure that the referral was made.

(f) **Failure to report.** Any employee who fails to report abuse, neglect, or ~~mistreatment~~ caretaker misconduct as required by this Section, is subject to disciplinary action under OJA's personnel rules. If it is determined the employee failed to report as required, the Advocate General of OJA shall make a referral to the appropriate law enforcement agency for criminal prosecution.

(g) **Interference prohibition.** Any employee who interferes with an abuse, neglect, or ~~mistreatment~~ caretaker misconduct investigation, or attempts to intimidate or harass a witness, victim, or employee accused of alleged abuse, neglect, or ~~mistreatment~~ caretaker misconduct through force or fear, or by threatening physical or mental harm to a witness, victim or others, is subject to disciplinary action under OJA's personnel policy.

(h) **Contract termination.** A contractor shall be subject to immediate termination of the contractor's contract with OJA for failure to adhere to this subchapter or knowingly allowing an employee to:

(1) interfere with an abuse, neglect, or ~~mistreatment~~ caretaker misconduct investigation;

(2) to interfere or retaliate against any employee for reporting or cooperating in such investigation; or

(3) deny the assigned investigator immediate and direct access to contractor employees, facilities, clients, places or records of any type with OJA.

377:3-1-26. Advocate General procedures during an abuse, neglect, or ~~mistreatment~~ caretaker misconduct investigation

(a) Upon receiving a report from OCA concerning an investigation of abuse, neglect, or ~~mistreatment~~ caretaker misconduct, the Advocate General shall send a copy of the report to the facility administrator and notify the Executive Director or appropriate Deputy Director. If a facility administrator is named as an accused caretaker in the allegation, the report shall be forwarded to the Chair of the Board of Directors of the facility or to the Director of the state agency operating the facility.

(b) If OCA finds that abuse, neglect, or mistreatment did not occur, further action by the OJA Advocate General is not necessary.

(c) If OCA confirms findings of abuse, neglect, or ~~mistreatment~~ caretaker misconduct, the Advocate General shall request appropriate corrective action within 21 days of the Advocate General's receipt of OCA's report. In cases of confirmed abuse or neglect, the appropriate District Attorney will be notified and asked to advise whether or not criminal charges will be filed.

(d) Even if abuse, neglect, or ~~mistreatment~~ caretaker misconduct is not confirmed by OCA, the Advocate General may recommend to the Executive Director appropriate measures to address systemic or individual concerns raised during the course of the OCA investigation.

(e) Upon receipt of OCA's report, the facility administrator, OJA administration, or Advocate General on behalf of a juvenile who is the subject of the report may request that the DHS Grievance Abuse Review Committee (GARC) review its findings and return a different result.

(f) OCA investigative reports, records, files, and audio tapes are considered confidential under Title 10 O.S. § 7005-1.2 and § 7101 *et seq*.

377:3-1-28. General grievance procedure

(a) **Informal grievances.**

(1) Informal grievances are issues relating to daily life at the juvenile's placement which can be resolved at the facility or local level. Informal grievances include, but are not limited to:

(A) grooming and hygiene;

(B) clothing;

(C) cottage cleanliness;

(D) food;

(E) disrespect not involving threats of harm;

(F) restrictions; or

(G) routine problems with the JSU; i.e., complaints against a JSU worker.

(2) A juvenile shall try to informally resolve his or her grievance by writing a brief description of the problem and the name of the person or group with whom the juvenile wants to discuss the problem. The juvenile may put the written information in a designated grievance box or give the grievance to any staff member.

(3) The grievance must be numbered and logged in a grievance log on the day the grievance is received and distributed to the appropriate staff for processing and possible resolution.

(4) The assigned staff shall ~~shall~~ review each grievance and attempt to resolve the grievance with the juvenile.

(5) If the grievance is not resolved within three working days, the juvenile may appeal to the supervisor.

(6) The supervisor shall have five days from receipt of the grievance to resolve the grievance.

(7) The grievance log must also indicate the disposition of the grievance and the date of the resolution or appeal. OJA Form OJA-AG-2 may be used to facilitate the grievance resolution process.

(b) **Formal Grievances.**

(1) Formal grievances are those grievances which are appeals of informal grievances or those which cannot otherwise be resolved at the facility or local level. Issues which cannot be resolved at the facility or local level include but are not limited to:

(A) placement;

(B) treatment;

(C) psychological services;

(D) social services;

(E) educational services;

(F) recreation;

(G) denial of parole; or

(H) abuse, neglect, ~~mistreatment,~~ or caretaker misconduct.

(2) Grievances which contain allegations of abuse, neglect, or ~~mistreatment~~ caretaker misconduct shall be processed in accordance with 377:3-1-25 and 377:3-1-26.

(3) Formal grievances may be filed with any staff member but shall be routed to the Advocate General for appropriate distribution and resolution by OJA State Office as set forth in paragraph (c) of this section. Form OJA-AG-3 may be used to facilitate the formal grievance process.

(c) **Grievances received by Advocate General.** Upon receipt of an appeal of an informal grievance or formal grievance, the Advocate General's Office shall post the date of receipt. The Advocate General shall review the grievance and the accompanying documentation to determine what additional information is necessary for disposition of the grievance within five working days and set deadlines for receipt of required information. If the Advocate General finds that an appeal or formal grievance was prematurely filed, the Advocate General shall send a reply containing suggestions regarding the proper procedure to the person that sent the grievance. The Advocate General shall review the applicable OJA rules, policy, and/or Oklahoma law to determine if the appeal or formal grievance is appropriate and provide an opinion regarding possible resolution. The Advocate General shall prepare a cover worksheet or memorandum for the appeal or formal grievance and forward a copy to the appropriate Deputy Director for response. The response shall be completed within seven working days (extension may be granted by the Advocate General where a formal, legal opinion or policy decision is necessary). Upon receipt of the proposed resolution, the Advocate General shall forward a copy to the juvenile and/or to other appropriate person named in the grievance and to the appropriate advocate defender or grievance coordinator.

(d) **Appeal to the Executive Director/final decision.** If the juvenile affected by the appeal does not accept the proposed resolution as submitted by the Deputy Director, the juvenile may appeal through the Advocate General to the Executive Director of OJA. The appeal to the Executive Director must be filed within ten (10) days of the date the proposed resolution is received by the juvenile. The Advocate General shall prepare the appeal and route it to the Executive Director who shall render a final, written decision within ten (10) days of receipt of the appeal, unless otherwise agreed to by both parties. The decision shall be delivered to the Advocate General's Office who shall distribute it as established by procedure. A copy of the resolution shall be inserted in the juvenile's master file. Resolutions which will change or create OJA rules are submitted to the appropriate division responsible for drafting new or revised rules. The Advocate General shall ensure that resolutions containing directives for specific action are completed.

(e) **Board notification.** All matters referred to the Executive Director for final decision shall be placed on the agenda for the next, regularly scheduled meeting of the Board of Juvenile Affairs. The Executive Director shall review any such grievance with the Board during Executive Session. At that time, the Advocate General will be allowed to voice concerns, the wishes of the juvenile, or such other matters as are relevant to the Board's understanding of the issues presented in the appeal.

(f) **Review by juvenile.** The grievance coordinator, advocate defender, or Advocate General (whoever filed the last grievance), shall review the Executive Director's resolution with the juvenile and notify the juvenile that his or her administrative remedies have been exhausted. If the juvenile does not accept the resolution, a copy of the grievance, appeals, and proposed resolutions shall be forwarded to the Office of Juvenile Systems Oversight.

(g) **Grievances originated by the Advocate General.** The Advocate General may, on behalf of all or part of the juveniles committed to OJA, originate a grievance at the State Office level concerning:

(1) the substance or application of any written or unwritten policy, rule, or regulation of:

(A) OJA;

(B) an agent of OJA; or

(C) an OJA contractor; or

(2) any decision, behavior, or action of

(A) an OJA employee;

(B) an agent of OJA;

(C) an OJA-contractor; or

(D) any other person committed to OJA.

(h) The Advocate General may write the grievance by way of a detailed memorandum.

[OAR Docket #04-961; filed 5-19-04]

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

[OAR Docket #04-1054]

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Subchapter 5. Office of Human Resources Management
Part 3. Office of Human Resources Management - Personnel Programs
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ANALYSIS:
The rule (377:3-5-12) is being republished in the Oklahoma Register due to a publishing error in the May 17, 2004 issue (Volume 21 Number 14, Page 1402-1403). The Office of Human Resources Management rule was revised to reflect legislative changes from previous years. The rule was also amended to minimize the restating of Oklahoma Statutes and Merit Protection Rules in the OJA Administrative Rules.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004:

SUBCHAPTER 5. OFFICE OF HUMAN RESOURCES MANAGEMENT-PERSONNEL PROGRAMS

PART 3. OFFICE OF HUMAN RESOURCES MANAGEMENT - PERSONNEL PROGRAMS

377:3-5-12. The Office Of Juvenile Affairs promotional plan

(a) **Promotional policy.** The Office of Personnel Management (OPM) requires that each state agency shall post vacancies in a particular job family in accordance with a promotional plan filed by the agency with OPM (530:10-11-51). The Office of Juvenile Affairs (OJA) shall follow this plan when posting and filling classified positions. The OJA promotional plan is designed to provide employees with opportunities for career growth and advancement. No person shall be discriminated against because of race, sex, age, color, creed, religion, political affiliation, national origin, or disability [74 O.S. §840-2.9(A)].

(b) **Posting decision.** The Executive Director or designee shall make the decision to fill a vacancy, whether classified or unclassified, and post a notice. When continuous, multiple vacancies are anticipated, general promotional opportunities may be posted. [74 O.S. §840- 4.15(B)].

~~(c) **Posting notices.** A notice of a vacancy within OJA shall be posted conspicuously in a prominent, designated location of the location in which the vacancy occurs. Specific information included on a posting does not limit the Executive Director's continuing authority to define or change the duties, responsibilities, and working conditions of positions. Notices must be posted for at least five working days. Notices shall include [74 O.S. §840-4.15(A) and 530:10-11-51(a) & (b)]:~~

~~(1) a copy of the job family descriptor;~~

~~(2) identification of the job family level of the vacancy or vacancies;~~

~~(3) the pay band and range;~~

~~(4) the anticipated number of vacancies;~~

~~(5) the specific location of work;~~

~~(6) the time limits and procedure for filing an application; and~~

~~(7) additional factors the agency will consider in filling the vacancy or vacancies, [74 O.S. §840-4.15(A) and 530:10-11-51(a) & (b)].~~

(c) **Agency Selection Process.** The Office of Juvenile Affairs shall conduct the selection process of applicants in accordance with (OPM) requirements, state and federal laws. Applicants may be required to participate in other selection and assessment procedures.

(1) A personal background investigation shall be conducted, which may include civilian and military court records. Background investigations will be conducted in compliance with DHS Residential Child Care Facilities Licensing requirements [340:110-3-145 through 340:110-3-169].

(2) Applicant drug testing may be required in accordance with 377:3-11-1 though 377:3-11-12.

~~(d) **Method of application.** Applicants, who are permanent classified employees or former permanent classified state employees eligible for reinstatement to the classified service, shall submit a completed Office of Personnel Management (OPM) personal data summary sheet form for the position to the OJA~~

~~Office of Human Resources Management or other designated location no later than the closing date and time stated in the posted notice. OJA does not carry over completed personal data summary sheets from one posting to the next unless specified on the posting. All other applicants for classified positions must apply through the open competitive procedure at the Office of Personnel Management (OPM) and shall be required to complete an OPM employment application form if selected for interview.~~

~~(e)~~ **~~Eligibility for consideration.~~** ~~The agency may consider external applicants concurrently with internal applicants following closing of the announcement. To be eligible for consideration, applicants must meet the requirements set forth in paragraphs (1) or (2) of this subsection.~~

~~(1) A permanent classified employee or a former state employee who is eligible for reinstatement must:~~

~~(A) submit two copies of a completed OPM personal data summary sheet form (OPM-4-B) and a cover memo for the position to the OJA Office of Human Resources Management or other designated location no later than the closing date and time specified on the posting notice; and~~

~~(B) be certified by the OPM Recruitment Division as meeting the minimum qualifications and pass any required examination for the position.~~

~~(2) All other applicants for employment may be eligible for consideration through:~~

~~(A) an open competitive certificate from OPM;~~

~~(B) certification as a person with a severe disability under 74 O.S., §840-4.12(H);~~

~~(C) Special Disabled Veterans Certification; or~~

~~(D) Fair Employment Practices provisions of Merit Rules or 74 O.S., §840-4.12(I).~~

~~(f)~~ **~~Factors for consideration.~~** ~~Paragraphs (1) through (4) of this subsection establish factors for consideration.~~

~~(1) In filling vacancies, OJA shall consider factors such as performance appraisals, education, experience, and other qualifications related to the expected ability of an individual to perform the work successfully.~~

~~(2) The agency may also post and consider special additional factors such as limiting consideration to permanent classified employees of the OJA, special working conditions that an applicant must be willing to accept, and selective qualifications required for a position.~~

~~(3) A qualified, permanent, classified OJA employee is given preference when the merit, ability, and capacity of that employee is relatively equal to that of applicants from outside OJA as determined by the selection process.~~

~~(4) Consideration may be given to redress under utilization of targeted minority groups. To meet Affirmative Action goals, applicants on the Fair Employment Practices Act (FEPA) certificate may be considered.~~

~~(g)~~ **~~Methods for consideration.~~** ~~Paragraphs (1) through (3) of this subsection establish methods for consideration.~~

~~(1) The methods for consideration may include review of:~~

~~(A) personnel records;~~

~~(B) applications;~~

~~(C) ratings;~~

~~(D) work histories;~~

~~(E) attendance records;~~

~~(F) test results;~~

~~(G) references; and~~

~~(H) other documents and information relating to a person's eligibility or qualifications.~~

~~(2) Applicants may be required to participate in interviews and in other selection procedures.~~

~~(3) A personal background investigation, including any civilian and military court records, may be conducted.~~

~~(h)~~ **~~Final selection.~~** ~~While others may recruit, screen, consider, and make recommendations, the decision on all appointments and changes in classification is tentative until written approval by the Executive Director or designee. If job applicant drug screening is conducted, no offer of employment may be made or is valid before a negative drug test has been obtained and approved by the Executive Director or designee.~~

~~(i)~~ **~~Entrance salary~~**

~~(1) The agency has established hiring rates for jobs included in a pay band based on the work performed, the duties and responsibilities assigned, and other relevant factors.~~

~~(2) The salary of the newly appointed employee shall be set between the minimum and midpoint of the pay band for the job family level to which the employee is appointed, unless due to recruitment and retention issues or market rates, the Office of Personnel Management has approved an salary administration plan that includes a hiring rate for a job family which is above the mid point of the pay band, [530:10-7-3].~~

~~(j)~~ **~~Rate of pay upon reinstatement to the classified service.~~**

~~(1) When the agency reinstates a person to the classified service after at least a 30 day break in service, the agency may set the person's salary at any point within the pay band for the job to which the person is reinstated which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors.~~

~~(2) When the agency reinstates a person to the classified service to a job having the same pay band assignment as the employee's previous job after less than a 30 day break in service, the agency shall set the employee's salary at any rate within the pay band that does not exceed the employee's previous salary, [530:10-7-4].~~

~~(k)~~ **~~Cancellation and correction of postings.~~** ~~The Executive Director or designee may cancel at any time or correct a posting of a vacancy by posting such cancellation or correction.~~

~~(l)~~ **~~Reposting.~~** ~~If a notice is canceled, a position is reposted before it is filled, except as provided in (n) (m) of this section. After the closing date and time specified in a notice, the agency may fill a position within ninety days. If a position is not filled within that time period, the OJA Office of Human Resources Management shall advise the Division Administrator, to determine the need to extend the length of time to complete the selection process, repost the posting, or cancel the posting.~~

~~(m) **Actions not subject to the provisions of this plan.** The appointments and changes in employee job family or level assignment listed in this section do not require posting or reposting and are not otherwise subject to this plan. However, at the discretion of the Executive Director, posting in accordance with this plan may occur. Actions not subject to the provisions of this plan include: 530:10-11-51(a)~~

~~(1) unclassified/exempt appointments;~~

~~(2) temporary appointments;~~

~~(3) non-competitive appointments;~~

~~(4) details to special duty;~~

~~(5) lateral or in-class, intra-agency transfers;~~

~~(6) voluntary or involuntary demotions within OJA;~~

~~(7) career progressions within a job family except those levels within a job family which are supervisory, managerial or identified as vacant positions;~~

~~(8) promotion of an employee when the position occupied by the employee is reallocated by the OPM; and~~

~~(9) direct reclassification made in accordance with merit rule 530:10-5-90.~~

~~(n) **Probation.** Paragraphs (1) through (4) of this subsection establish conditions of probation and trial period. 530:10-11-30(a)~~

~~(1) All original appointments to classified positions shall be for a probationary period of one year. At any time after the probationary employee has served 6 months and based on agency business needs, the Executive Director or designee may waive the remainder of the probationary period by notifying the employee and the Office of Personnel Management in writing as to the waiver and the reasons for it. The probationary period may not be extended beyond one year. The end of the final working day of the probationary period hall be made known to the employee at the time of entry on duty and at the time of any adjustment or waiver of the probationary period.~~

~~(2) Interagency transfers to OJA may serve a six month trial period. Employees having to serve a trial period shall be informed in writing prior to the effective date of the transfer.~~

~~(3) An employee on an original probationary appointment or any adjustment of the original probationary appointment may be discharged in accordance with 530:10-11-32 and agency procedures.~~

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

[OAR Docket #04-962]

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Subchapter 7. Finance Division
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Rules are being amended to reflect changes in the requirements by the State Auditor & Inspector and Office of State Finance to ensure the Office of Juvenile Affairs is in compliance with all provisions and regulations.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 7. FINANCE DIVISION

377:3-7-4. OJA financial system

~~The financial system established and maintained by the Office of Juvenile Affairs complies with the following standards:~~

~~(1) The Finance Division shall develop a schedule for budget preparation which allows for the timely preparation and submittal of the budget.~~

~~(2) The Finance Division shall establish and maintain procedures for disbursing funds, depositing funds, and fiscal reporting.~~

~~(3) The Executive Director's authority for emergency purchases is in accordance with state laws and procedures. When such authority is exercised, the Board of Juvenile Affairs, the President Pro Tempore of the State Senate, and the Speaker of the House of Representatives shall be notified within ten days.~~

~~(4) All accounts are audited annually by an independent source.~~

~~(5) The Finance Division shall maintain complete documentation of all financial transactions.~~

~~(6) The Finance Division shall establish and maintain procedures for routine inspection and inventory of state~~

~~property.~~ The financial system established and maintained by the Office of Juvenile Affairs shall comply with state statutes and guidelines or requirements established by the Office of State Finance, State Treasurer, State Auditor and Inspector, and federal grantor agencies. Changes to OJA procedures related to financial matters shall be provided to the Finance Subcommittee of the Board of Juvenile Affairs for review, and then subsequently to the full Board of Juveniles Affairs.

[OAR Docket #04-962; filed 5-19-04]

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

[OAR Docket #04-963]

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ANALYSIS:
Rules are being amended to outline the OJA's contract requirements and standardize the process. Information was added requiring sole source contracts comply with all relevant state and federal laws. Rule also requires that the Executive Director provide notification to the OJA Board upon the approval of any sole source contract. Rule established a signature authority process and board notification of any changes to said process.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 19. CONTRACT, PROCUREMENT, AND SUPPORT SERVICES

377:3-19-2. Property management responsibilities

Designated staff shall:

(1) properly ~~manage the OJA annual budgeting process and~~ account for ~~OJA funds and other~~ assets pertaining to facilities and materials, in accordance with state laws and procedures;

(2) establish and maintain procedures for routine inspection and inventory of state property; and

(3) maintain a space management program which ensures adequate facilities for all field agency operations.

377:3-19-3. Contracting

(a) In accordance with the Central Purchasing Act, 74 O.S., as amended, OJA shall develop internal procurement procedures, including procedures to ensure that sole source contracts comply with all relevant state and federal laws and the OJA Board will be notified of any approved contracts at the next Board meeting.

(b) In accordance with 10 O.S., §7302-1.1(7), OJA shall develop internal contracting procedures.

(c) The Executive Director shall establish final signature authority for all OJA acquisition forms and will notify the OJA Board when changes are made to the signature authority.

[OAR Docket #04-963; filed 5-19-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. DEPARTMENT OF JUVENILE JUSTICE

[OAR Docket #04-964]

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RULES:
Subchapter 11. Child in need of Mental Health Treatment
377:10-11-1. [AMENDED]
377:10-11-2. [REVOKED]
377:10-11-3. [REVOKED]
377:10-11-4. [REVOKED]
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ANALYSIS:
The rule updates OJA Mental Health Gatekeeping process for custody youth. The rules are being amended to reflect legislative changes from the previous years. The revisions minimize the restating of statutes and other agencies rules/protocols.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES\ ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004:

SUBCHAPTER 11. CHILD IN NEED OF MENTAL HEALTH TREATMENT

377:10-11-1. ~~Purpose~~ Child in Need of Mental Health Treatment

~~The purpose of this subchapter is to set forth rules about the role of the JSU worker in relation to a juvenile in need of mental health treatment.~~ The Department of Juvenile Justice may provide for the care of a child who is in the custody of the Office of Juvenile Affairs and found by a court to be a child in need of mental health or substance abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Children Act, [Title 43A. § 5-501 through 5-513] as required by 10 O.S., § 7303-8.4, as amended. For Medicaid eligible juveniles who are wards of the court and in the custody of, or under, the supervision of the Office of Juvenile Affairs, OJA employees shall follow applicable rules as promulgated by the Oklahoma Health Care Authority that govern Medicaid reimbursement for inpatient care.

377:10-11-2. Role of the JSU worker for non-adjudicated juveniles in need of mental health treatment [REVOKED]

~~(a) When a parent or guardian refers a non-adjudicated ward of the court requiring mental health services to the JSU worker, the JSU worker shall refer the juvenile to the Department of Mental Health and Substance Abuse's (DMHSAS) community mental health center. Department of Juvenile Justice (DJJ) staff shall not conduct mental health intakes.~~

~~(b) If the juvenile is not a ward of the court, the JSU worker shall refer the juvenile and family to the community mental health center.~~

377:10-11-3. Role of the JSU worker for non-custody wards of the court requiring mental health services [REVOKED]

~~(a) In an emergency, the custodial parent of a juvenile who is a ward of the court may arrange for an emergency psychiatric admission. If DJJ has been court ordered to provide supervision, the juvenile's parent should immediately notify the person assigned to the case of the said admission. No action is required of the facilities are subject to the Medicaid gatekeeping processes, parents of juveniles are responsible for the juvenile's entire cost of treatment. Parents are responsible for contacting the community mental health center prior to admission, even in emergency cases.~~

~~(b) It remains the parent's responsibility to ensure that all processes, including the Medicaid gatekeeping processes, are followed.~~

377:10-11-4. Role of the JSU worker for DJJ-custody juveniles requiring mental health services [REVOKED]

~~The role of the JSU worker in relation to a custody juvenile who is in need of mental health services is set forth in this section.~~

~~(1) If a juvenile in DJJ custody appears to be in need of emergency psychological crisis intervention/stabilization, the JSU worker shall refer the juvenile to the DMHSAS gatekeeper. No intake is necessary.~~

~~(2) If a DJJ custody juvenile residing in an out-of-home placement appears to be in need of mental health services, the JSU worker and substitute care provider shall ensure that the juvenile is screened by a designated community mental health center gatekeeper prior to admission.~~

~~(3) If the JSU worker, believes the gatekeeper's decision to be adverse to the custody juvenile's interests, the JSU worker shall contact the gatekeeper immediately. The JSU worker shall present facts that may not have been considered by the gatekeeper. If the gatekeeper's opinion is unchanged after the presentation, the JSU worker may initiate the appeal process.~~

~~(A) Within 24 hours of the gatekeeper's adverse decision, the JSU worker shall contact the supervisor to fully inform the supervisor of the situation and complete the appeal. A DJJ staff member shall hand deliver the appeal to the administrator of the local Community Mental Health Center. The JSU worker shall hold a meeting with the appropriate DJJ and mental health staff within one working day of the delivery of the appeal.~~

~~(B) If an agreement is not reached during the meeting, the JSU worker may continue the appeal process by forwarding the appeal to the Central Office, DMHSAS, attention: Community Mental Health Center Program Director. Within ten days of receipt of the appeal, the clinical social worker shall review materials provided by the gatekeeper and the JSU worker, and, if warranted, a Board certified child psychologist may be involved in the review. The results of this~~

~~appeal shall be sent to the JSU worker. If an agreement cannot be reached at that level, the appropriate zone division administrator or designee shall review the appeal. If the zone division administrator or designee agrees with the JSU worker's recommendation, the zone division administrator or designee and the designated DMHSAS staff shall request that the Oklahoma Health Care authority make the final decision.~~

~~(4) If the gatekeeper recommends admission for crisis stabilization, the JSU worker shall:~~

~~(A) notify the court;~~

~~(B) notify the juvenile's attorney within 24 hours of admission;~~

~~(C) notify the juvenile's parents prior to the admission, if possible; or~~

~~(D) if the JSU worker is unable to locate the parents prior to admission, notify the family within 24 hours of admission.~~

~~(5) The JSU worker shall contact the facility the next working day after the juvenile's admission to initiate discharge planning. The JSU worker shall provide the facility staff with all pertinent information within 48 hours of admission, excluding weekends and holidays.~~

~~(6) Upon completion of the civil commitment process, the JSU worker shall submit a JOLTS Placement Worksheet to the placement unit, including the following information:~~

~~(A) the date the juvenile was civilly committed;~~

~~(B) the type of facility in which the juvenile was placed, i.e., inpatient, acute, or residential facility;~~

~~(C) the name of the facility;~~

~~(D) the estimate length of stay; and~~

~~(E) the projected placement upon the juvenile's completing treatment.~~

~~(7) Within ten days of admission, the treating facility shall prepare an inpatient mental health treatment plan. The JSU worker shall be involved to the maximum extent consistent with the treatment needs of the juvenile.~~

~~(8) The JSU worker shall personally meet with the juvenile at the facility every 30 days and contact the facility every two weeks to inquire how the juvenile is progressing toward the discharge plan.~~

~~(9) Upon the juvenile's discharge from the psychiatric facility, the JSU worker shall work with the DMHSAS case manager to arrange appropriate outpatient services for the juvenile's aftercare.~~

[OAR Docket #04-964; filed 5-19-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #04-965]

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Subchapter 3. Pre-Court
Part 3. Intake/Preliminary Inquiry
377:25-3-15. [AMENDED]
377:25-3-16. [REVOKED]
377:25-3-18. [REVOKED]
377:25-3-19. [REVOKED]
377:25-3-20. [REVOKED]
377:25-3-21. [REVOKED]
377:25-3-23. [REVOKED]
377:25-3-24. [REVOKED]
377:25-3-25. [REVOKED]
377:25-3-26. [REVOKED]
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ANALYSIS:
Rules are being amended to outline the use of a comprehensive intake assessment during this process. Rules are also being amended to remove all information that is procedure at nature and/or currently established in state statutes.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 3. PRE-COURT

PART 3. INTAKE/PRELIMINARY INQUIRY

377:25-3-15. Legal basis for intake/preliminary inquiry

The Office of Juvenile Affairs, through its Department of Juvenile Justice, is mandated to provide intake and probation services ~~in every county in Oklahoma except those counties with juvenile bureaus and parole services in all counties [10 O.S., §7302-3.1(A)(2)]. JSU shall provide services on a referral alleging a juvenile to be delinquent, in need of supervision, or a youthful offender.~~ as required by 10 O.S. § 7302-3.1.

377:25-3-16. Intake referral sources [REVOKED]

~~Intake referral sources include:~~

~~(1) law enforcement;~~

~~(2) public agencies; and~~

~~(3) private agencies; and~~

~~(4) self-referral (parent/guardian/juvenile).~~

377:25-3-18. Initiating an intake/preliminary inquiry [REVOKED]

~~(a) The intake process is initiated by verbal request of the parent or guardian of a juvenile or a written referral signed by the person (e.g., school official, law enforcement personnel, etc.) providing the information. A referral must include:~~

~~(1) one or more allegations concerning delinquent, in need of supervision (INS), or youthful offender acts;~~

~~(2) supporting information such as time, date, and circumstances; and~~

~~(3) names and addresses of the victims and witnesses.~~

~~(b) The JSU worker shall review the referral information to confirm that:~~

~~(1) the person being referred appears to be a juvenile or youthful offender;~~

~~(2) the court has jurisdiction; and~~

~~(3) one or more allegations concerning delinquent, INS, or youthful offender acts appear to conform with the statutory definition of "Delinquent," "In Need of Supervision," or "Youthful Offender".~~

~~(c) The JSU worker may request additional information from the referral source at any time.~~

377:25-3-19. Intake procedures [REVOKED]

~~(a) Intake procedures are designed to:~~

~~(1) advise the juvenile and his or her parent, guardian, attorney, adult relative, adult caretaker, or legal custodian of the juvenile's rights, including a:~~

~~(A) Notice of Constitutional and Legal Rights (JSU-1), which is read and explained to the juvenile and includes the following statements:~~

~~(i) You have the right to remain silent;~~

~~(ii) Anything you say can and will be used against you in a court of law, including for adult prosecution if you are certified as an adult;~~

~~(iii) You have the right to talk to a lawyer and have one present while you are being questioned;~~

~~(iv) If you cannot afford to hire a lawyer, one will be appointed to represent you;~~

~~(v) If you decide to answer questions, you have the right to stop answering at any time; and~~

~~(vi) You have the right to confer in private with your parent(s) before being questioned;~~

~~(B) Waiver of Constitutional and Legal Rights, which is read and explained and includes the following statements:~~

~~(i) I have read and have been advised of my rights;~~

~~(ii) I fully understand each of these rights;~~

~~(iii) I do not want a lawyer at this time;~~

~~(iv) I am willing to answer questions and make a statement;~~

~~(v) I fully understand and know what I am doing;~~

~~(vi) No promises or threats have been made to me nor has pressure of any kind been used against me;~~

~~(vii) I have been given the opportunity to confer in private with my parent(s) before being questioned;~~

~~(viii) I, as parent, guardian, attorney, adult relative, adult caretaker, or legal custodian, understand the consequences of this juvenile's waiver of these constitutional and legal rights; and~~

~~(ix) I (the parent, guardian, attorney, adult relative, adult caretaker, or legal custodian) understand that if I have financial means and do not obtain a lawyer to represent my child, legal counsel may be appointed by the Judge and I may be ordered to pay an attorney's fee.~~

~~(C) If the juvenile and parents, guardian, attorney, adult relative, adult caretaker, or legal custodian do not wish to waive rights or make a statement, the JSU worker shall sign a statement to that effect;~~

~~(2) determine whether the juvenile is considered a child under 10 O.S., § 7301-1.3(4), as amended, or a youthful offender under 10 O.S., § 7306-2.5 in accordance with 10 O.S. §7310-1.3;~~

~~(3) collect information to determine intake disposition recommendation in accordance with 10 O.S. §7310-1.3;~~

~~(4) protect the public; and~~

~~(5) hold juveniles and their parents accountable for the juvenile's behavior.~~

~~(b) The JSU worker shall serve as a screening agent for the juvenile court and shall help the juvenile and family access services.~~

377:25-3-20. Systems checks [REVOKED]

~~The JSU worker shall check with other components of the juvenile services system to determine if services are being provided to the juvenile or family.~~

377:25-3-21. The Uniform Child Custody Jurisdiction Act and the Indian Child Welfare Act [REVOKED]

~~The JSU worker shall collect information to determine whether a juvenile comes within the purview of either the Uniform Child Custody Jurisdiction Act (43 O.S., § 501 et seq.) or the Indian Child Welfare Act (10 O.S., § 40.1 et seq.).~~

377:25-3-23. Scheduling the intake conference/preliminary inquiry [REVOKED]

~~(a) Upon receipt of a referral, the JSU worker shall advise the juvenile and the parent, guardian, or legal custodian of the date, time, and location of the intake conference. Notification may be verbal or in writing.~~

~~(b) When scheduling intake conferences, the JSU worker shall give priority to a juvenile who has been apprehended and detained for the alleged offense.~~

~~(c) If the juvenile and parent fail to appear, the JSU worker shall attempt to determine why. If the juvenile and parent were notified of the intake conference, but failed to appear, the JSU worker shall contact the district attorney to determine appropriate action.~~

377:25-3-24. Intake conference [REVOKED]

~~The intake conference includes the procedures in (1)-(6) of this Section.~~

~~(1) The JSU worker shall explain to the juvenile and parent or guardian the formal intake process and the possible outcomes.~~

~~(2) The JSU worker shall advise the juvenile and parent or guardian that any information gained during the conference may be presented to the district attorney with a recommendation.~~

~~(3) The JSU worker shall advise the juvenile and parent or guardian of their rights to:~~

~~(A) obtain counsel;~~

~~(B) have a formal hearing;~~

~~(C) terminate the conference at any time; and~~

~~(D) confer privately prior to proceeding with the conference.~~

~~(4) The JSU worker shall give the juvenile and parent or guardian a Notice of and Acknowledgment of Constitutional and Legal Rights (JSU-1). If the juvenile and parent, after being given the opportunity to talk in private, refuse to waive their rights and do not sign the JSU-1, the intake conference ends.~~

~~(5) If the juvenile and parent agree to waive their rights and sign the JSU-1, the JSU worker shall provide them with a copy of the signed form. The JSU worker shall discuss the referral allegation with the juvenile and parent and obtain information necessary to complete a computer-generated intake face sheet.~~

377:25-3-25. Intake recommendations [REVOKED]

~~(a) Intake recommendation options - Delinquent and INS~~

~~(1) When determining the intake recommendation he or she will make to the district attorney, the JSU worker shall consider:~~

~~(A) the seriousness of the alleged offense as determined by the nature and extent of harm to the victim or the degree of dangerousness or threat imposed;~~

~~(B) the nature and number of the juvenile's prior contacts with the court and the results of those contacts;~~

~~(C) the attitude of the juvenile toward the offense, the victim(s), law enforcement, and juvenile court authorities;~~

~~(D) whether the juvenile admits guilt or involvement in the offense;~~

~~(E) the time of day the offense occurred;~~

~~(F) the age of the juvenile; and~~

~~(G) the circumstances surrounding the offense and the juvenile's role in the offense, including any relevant gang and/or drug involvement.~~

~~(2) The JSU worker shall recommend the referral be declined when it appears that the evidence is insufficient or there is lack of jurisdiction.~~

~~(3) The JSU worker shall recommend a nonjudicial disposition when it appears that:~~

~~(A) jurisdictional standards have been met;~~

~~(B) there is prosecutive merit;~~

~~(C) the major facts of the case are not in dispute; and~~

~~(D) either~~

~~(i) no services outside the juvenile's own family are required to protect the community or correct the juvenile; or~~

~~(ii) the juvenile is not a threat to the community with appropriate services or corrective measures which are available and the juvenile and parents are willing to accept and participate in these services.~~

~~(4) The JSU worker shall recommend filing a petition when it appears that jurisdictional standards have been met, there appears to be prosecutive merit, and:~~

~~(A) the juvenile, parents, and attorney desire a hearing before the court;~~

~~(B) services or corrective measures appear necessary to protect the community and the juvenile and parents are unwilling to accept or participate in such services voluntarily;~~

~~(C) there is dispute over the major facts of a case alleging behavior that would constitute a third misdemeanor, a second felony act, or a first felony seriously assaultive act;~~

~~(D) the alleged behavior would constitute a felony and the juvenile was, at the time of occurrence, under an agreement to defer prosecution with the district attorney's office or under the jurisdiction of the court as a delinquent; or~~

~~(E) the juvenile is under 16 years of age and the alleged behavior would constitute a serious act as defined by 10 O.S., §7302-9.2.~~

~~(5) The JSU worker shall provide written justification if he or she does not recommend filing a petition when all the conditions outlined in 377:25-3-15(4) are met.~~

~~(6) Under the conditions prescribed in 10 O.S., §7303-4.6(B), the JSU worker may recommend that a juvenile's delinquent adjudication be deferred for 90 days in order for the juvenile to participate in one of the programs listed in (A)-(C) of this subsection.~~

~~(A) First Time Offender programs are for juveniles who have been identified by law enforcement personnel, the district attorney, or the court as having committed acts which are not severe enough to warrant adjudication through the juvenile court process but indicate a need for intervention to prevent further development toward juvenile delinquency.~~

~~(B) Teen Court programs provide an alternative judicial forum for cases involving juvenile offenders.~~

~~(C) Military Mentor programs are administered by the Oklahoma Military Department. Military mentor screening and training standards are set forth in Part 13 of this Chapter.~~

~~(7) When the court orders a juvenile to attend one of the programs described in (6) (A) (C) of this Section, the JSU worker shall make the referral.~~

~~(b) Intake recommendation options youthful offender.~~

~~(1) The JSU worker shall recommend the referral be declined when it appears that the evidence is insufficient or there is lack of jurisdiction.~~

~~(2) When a juvenile meets the youthful offender criteria, the JSU worker shall either:~~

~~(A) recommend that the district attorney file an information charging the juvenile as a youthful offender; or~~

~~(B) provide the district attorney with any evidence of exceptional circumstances which might override this recommendation.~~

377:25-3-26. Recommendation to district attorney [REVOKED]

~~(a) The JSU worker shall submit the intake face sheet and all relevant information to the district attorney for a decision as to disposition of the referral.~~

~~(b) If it is recommended to or decided by the district attorney that a petition be filed, the JSU worker shall request that support payments be addressed. The JSU worker shall request the family's financial information necessary to complete the statutory Child Support Computation form for consideration by the court. If the family fails to provide this information voluntarily prior to the adjudicatory hearing, the JSU worker shall request the district attorney to seek an order compelling the parents to provide the financial information necessary to complete the computation form.~~

~~(c) The JSU worker who conducted the intake shall verify the contents of the petition to the best of the worker's knowledge and belief. A JSU worker is not authorized to file a juvenile petition or sign as the petitioner.~~

[OAR Docket #04-965; filed 5-19-04]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #04-966]

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Subchapter 9. Casework Services
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377:25-9-2. [AMENDED]
377:25-9-2.1. [REVOKED]
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Rules are amended to reflect the current case planning system: Individual Treatment and Services Plan (ITSP). The ITSP is an automated system for use by the Office of Juvenile Affairs (OJA) workers in developing and maintaining treatment plans for juveniles.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 9. CASEWORK SERVICES

PART 1. SERVICES PROVIDED BY THE JSU WORKER

377:25-9-2. Case plan/Individual treatment and service plan (ITSP)

~~(a)~~ The assigned JSU worker shall begin the ~~service planning process~~ case planning assessment and treatment plan development with the juvenile and parent/guardian/legal custodian after a juvenile has been placed on Deferred Prosecution, Deferred Adjudication, is an Interstate Compact case supervised in Oklahoma, or has been adjudicated. The JSU worker shall conduct a ~~thorough needs~~ comprehensive assessment of the juvenile and family and file it with the Court as ~~provided by~~ per 10 O.S., § 7303-5.2, as amended. Casework and other services provided to a juvenile are determined by the individual needs of the juvenile and family, and services shall be provided by either the JSU worker, contract service providers, or other service agencies.

~~(b) The JSU worker shall develop the treatment and service plan based on the assessment of the juvenile and family as required by Title 10 O.S. §7303-5.2, as amended.~~

~~(c) The JSU worker or designee shall review the ITSP with the juvenile and, when appropriate, the family on an as needed basis, but, at a minimum, quarterly. Exceptions are made only when family members are unavailable because of uncontrollable circumstances.~~

~~(d) When a major change in the ITSP is expected, the JSU worker shall notify the parent or guardian in advance and request their participation. Exceptions to advance notification are made only when the JSU worker, in consultation with the supervisor, concludes that a delay would affect public safety or the safety of the juvenile.~~

377:25-9-2.1. Casework services [REVOKED]

~~(a) **Counseling/Services.** (a) The assigned JSU worker shall begin the assessment and service case planning process with the juvenile and parent after a juvenile has been placed on Deferred Prosecution, Deferred Adjudication, is an Interstate Compact case being supervised in Oklahoma, or has been adjudicated. Counseling and other services provided to a juvenile are determined by the individual needs of the juvenile and family and Services may be provided by the JSU worker, contract service provider or other service agencies.~~

~~(1) When a juvenile or family is referred to a community resource or agency which is not covered under the provisions listed in 377:10-1-7 through 377:10-1-10, the JSU worker shall obtain a signed release of information form from the juvenile and family prior to referral.~~

~~(2) When necessary, a JSU worker may initiate the placement of an OJA custody juvenile in a Youth Service Emergency Shelter.~~

~~(b) **Community Supervision.** Casework services include supervision and surveillance of the juvenile. The JSU worker shall monitor the juvenile's compliance with rules and court ordered conditions.~~

~~(1) The level of supervision refers to the frequency of in person contacts with a juvenile and family by the JSU worker, contract service provider, or by electronic monitoring.~~

~~(2) The level of supervision is determined by the JSU Risk Assessment (JSU-17)a validated risk assessment instrument. Risk factors include the:~~

~~(A) juvenile's age when first referred;~~
~~(B) number of prior referrals received on the juvenile;~~
~~(C) number of prior adjudications;~~
~~(D) number of prior stays in secure detention;~~
~~(E) educational tract;~~
~~(F) delinquent classification sub-type;~~
~~(G) number of out of home placements;~~
~~(H) juvenile's involvement in substance abuse;~~
~~(I) juvenile's relationship with parents;~~
~~(J) school discipline/attendance; and~~
~~(K) juvenile's peer relationships.~~

~~(3) The JSU worker shall complete the JSU Reassessment of Risk (JSU-18) at least every three months to ensure the juvenile is receiving the appropriate level of supervision. In addition to the risk factors on the JSU-17, the JSU-18 includes the juvenile's~~

~~(A) response to supervision requirements; and~~
~~(B) use of community resources/treatment programs.~~

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TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

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Subchapter 11. Case Records and Reports
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Rules are being amended to remove duplication of information. Information regarding the case planning process will be moved to 377:25-09-02, as amended.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2004.

SUBCHAPTER 11. CASE RECORDS AND REPORTS

377:25-11-2. Dispositional study [REVOKED]

~~(a) Prior to the dispositional hearing, staff shall prepare a dispositional study for the court. The JSU worker shall complete the dispositional study as part of the ITSP or as a separate document. The JSU worker shall provide the court with timely, relevant, and accurate data which will assist the court in determining the disposition best serving the interests of the juvenile, family, and community.~~

~~(b) The JSU worker may not begin a dispositional study until the juvenile has been adjudicated, unless the juvenile, with advice of counsel, has consented to allow the study to proceed before adjudication and adequate precautions have been taken to ensure that information from the study will not be disclosed to the court prior to adjudication. JSU staff can use student interns, volunteers, clerical workers, and professionals from other agencies to gather information for the study.~~

~~(c) A dispositional study is prepared anytime a juvenile is placed on formal probation or in OJA custody and a study has not recently been done. When the interim between bifurcated hearings is 30 days or more, the JSU worker shall submit the dispositional study to the court prior to the dispositional hearing.~~

~~(d) The dispositional study contains a financial report of the juvenile's parent and a recommendation regarding support payments.~~

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TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITUTIONAL SERVICES

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Subchapter 3. Security and Control
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Rules are being amended to outline the use of search techniques of juveniles, visitors, and employees in the institutional setting. Rules will outline currently approved techniques to reduce the risk of contraband being brought into OJA institutions.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

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SUBCHAPTER 3. SECURITY AND CONTROL

377:35-3-8. ~~Search procedures~~ Searches and control of contraband/evidence

~~(a) The control of contraband and weapons shall be a valid basis for authorization of searches.~~

~~(1) A staff member conducting a search shall conduct the search in a manner which avoids undue or unnecessary:~~

~~(A) force;~~
~~(B) embarrassment; or~~
~~(C) indignity.~~

~~(2) Staff shall conduct searches no more often than necessary to:~~

~~(A) control contraband in the institution; or~~
~~(B) recover missing or stolen property.~~

~~(3) Staff shall not have general authority to search the juvenile's person or property except as authorized by this section.~~

~~(4) Staff shall be trained in effective and safe search techniques, including narcotic detection identification capability.~~

~~(5) Policies regarding searches shall be reviewed annually and updated as necessary.~~

~~(b) **Property searches.** The superintendent or administrator on duty (AOD) may, without specific cause, authorize a thorough search of any area, including the juvenile's living quarters and possessions.~~

~~(1) Staff shall conduct unannounced and irregularly timed searches. Any area of the institution, except the juvenile's living quarters (cubicle, drawers, etc.), may be searched by any institutional employee without specific information or cause at any time. Staff shall conduct a complete search of each room or cubicle area prior to occupancy of a new juvenile.~~

~~(2) Except as authorized by the superintendent, staff shall search juvenile's living quarters or property only on the reasonable belief that the juvenile possesses contraband.~~

~~(3) All other room, cubicle, or dormitory searches must be conducted by two staff persons.~~

~~(4) Staff shall conduct regulatory searches of the juvenile's person and property any time a juvenile enters the institution.~~

~~(5) Institutional employees may conduct routine visual inspections of personal living quarters without prior authorization. The purpose of the search is to determine whether the living quarters are being maintained in accord with health, safety and security regulations. Staff shall not move or look through any of the juvenile's personal items. Moving or looking through a juvenile's personal items constitutes a search, not a visual inspection. Routine visual inspections include, but are not limited to:~~

~~(A) opening drawers;~~

~~(B) opening closet doors; and~~

~~(C) looking under beds.~~

~~(6) Other searches of a juvenile's living quarters or possessions must be based on a reasonable belief that contraband is present. Except when the staff has reasonable fear that the juvenile will dispose of the contraband in the interval, written permission from the supervisor on duty/campus life supervisor, institutional program supervisor, or other administrative staff is required.~~

~~(7) The juvenile whose living quarters or possessions are being searched shall be present when the search is made, except in an emergency.~~

~~(c) **Body searches.** A body search includes any pat down, disrobing, or cavity search. In conducting body searches, staff shall strive to preserve the dignity and integrity of the juvenile. Searches are conducted to preserve the security and safety of the institution.~~

~~(1) A staff person may pat down the juvenile only if there is a reasonable suspicion that the juvenile is carrying contraband.~~

~~(2) Any search requiring a juvenile to disrobe must be authorized by the superintendent, deputy superintendent, or the administrator on duty. The search is justifiable only when staff have a reasonable belief that the juvenile is carrying contraband. Juvenile specialist staff who have had specific training in search procedures may be requested to assist authorized staff in conducting such searches. In addition to certain juvenile specialist, the following staff may conduct body searches:~~

~~(A) superintendent;~~

~~(B) deputy superintendent;~~

~~(C) administrator on duty;~~

~~(D) security chief;~~

~~(E) security shift supervisor;~~

~~(F) other designated security officer; or~~

~~(G) shift supervisor of juvenile specialists.~~

~~(3) Staff shall search only juveniles of the same sex. The designated staff member shall conduct the search out of the sight of other juveniles. The juvenile may request the presence of the advocate defender or a supervisory staff person.~~

~~(4) Only a medically trained person (nurse or physician) shall conduct a visual or manual inspection of the anal or vaginal cavities. The search may be conducted only when there is strong reason to believe that the juvenile is carrying contraband there. Any body cavity search must be authorized by the administrator on duty, deputy superintendent, or superintendent. Authorized staff shall conduct the search in the institutional clinic or other private area of the facility, without windows, affording the greatest possible privacy and dignity to the juvenile. A supervisory witness of the same sex as the juvenile shall be present during the body cavity search.~~

~~(d) **Reporting requirements.** After any search, staff shall make a full report of the scope of the search, detailing any item confiscated. The juvenile owner shall be given a receipt for any item confiscated. Immediately following a body search, the staff member who requested the search shall file a report with the superintendent. The superintendent or designee shall give a copy of the report to the juvenile. The staff member shall document the reason for the search in the written report of the search.~~ The control of contraband and weapons shall be valid basis for authorization of searches. Searches shall be conducted in a manner which avoids undue or unnecessary force, embarrassment, or indignity. Each institution shall have written policy and procedure that govern searches and control of contraband/evidence, and will include, but not be limited to:

(1) Search authorization requirements will include the title of approving authority and the designee authority.

(2) Training requirements will encompass all aspects of searches and control of contraband, specific training time and annual requirements.

(3) Control of contraband will include items deemed illegal by statute or disallowed by the agency/facility.

(4) Staffing requirements: All property searches will be conducted with a minimum of two trained staff members, except in emergency situations. Body searches, with the exception of pat-downs, will be conducted by a trained staff member of the same sex, and a witness. Pat searches may be conducted by one trained staff member of the same sex, and a witness.

(5) The Juvenile whose property is being searched shall be present when the search is conducted, except in an emergency. The juvenile may request the presence of the Advocate Defender or a supervisory staff person.

(6) Searches for contraband will include:

(A) Body searches: Which include pat searches, disrobement searches, and cavity searches.

(i) Staff members shall strive to preserve the dignity and integrity of the juvenile.

(ii) Body searches will only be conducted upon a reasonable suspicion that the juvenile is carrying contraband.

(iii) The superintendent or designee must authorize any search requiring a juvenile to disrobe. The search is justifiable only when there is a reasonable belief that the juvenile is carrying contraband. The search will be conducted only by staff members who have been appropriately trained.

(iv) Searches will be conducted by staff members of the same sex. The search will be conducted out of the sight of other juveniles. The juvenile

may request the presence of the advocate defender or a supervisory staff person.

(v) Cavity searches will only be conducted with the approval of the Superintendent or designee. Cavity searches will be conducted only when there is a strong reason to believe that the juvenile is carrying contraband in a body cavity. The juvenile will be sent to the local hospital emergency room, unless there is a physician at the facility, where experienced medical personnel will perform the search.

(B) Property searches: Which include juvenile living quarters and juvenile personal property.

(C) Search of the facility: Which will include all areas of the facility, excluding the juvenile living quarters and personal property.

(D) Search of visitors/employees: Which include personal belongings, and body searches; **consequences for a visitor's refusal to submit to a search will be denial of visit; employees who refuse to submit to a search may be subject to disciplinary action.**

(E) Use of canines: Which will include employees, visitors, juveniles, facility grounds, parking lots, vehicles, juvenile living quarters, buildings, and offices.

(7) Storage and disposal of contraband/evidence will include specific storage area, containers, and accessibility.

(8) Drug identification shall be conducted to confirm suspect illegal substances.

(9) Contraband/evidence tags/chain of custody, and logs will include format, intended use, and length of time retained.

(10) Reporting requirements: Staff will document all non-routine searches. Non-Routine searches include, but are not limited to, searches of a juvenile or juvenile's cubical for contraband when the juvenile is suspected of possessing contraband. Routine searches include pat-down search when leaving the kitchen or maintenance area after completing a work assignment, pat-down searches after visitation, etc. The report will include the scope of the search, detailing any item confiscated. The juvenile-owner shall be given a receipt for any item confiscated. If the confiscated contraband is determined to be a statutorily defined controlled or dangerous item, the Superintendent/Facility Head/Designee will contact the appropriate law enforcement authorities, and notify the Deputy Director/Designee.

(11) Policies regarding searches and control of contraband/evidence shall be reviewed annually and updated as necessary.

[OAR Docket #04-968; filed 5-19-04]

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

[OAR Docket #04-984]

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PERMANENT final adoption
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390:1-1-3 [AMENDED]
390:1-1-4 [AMENDED]
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Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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ANALYSIS:
Amended sections would establish the procedure of selecting a chairman and vice-chairman of the Council; establish terms of office for the Chairman and Vice-Chairman of the Council; establish procedures for the appointment and establish duties of the Drug Dog Advisory Council and the Bomb Dog Advisory Council; and provide for the process of appointment and removal of members from all advisory councils appointed by the CLEET Council.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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:

390:1-1-3. Organization

(a) Composition of the Council is established in 70 O.S., Section 3311. Members shall meet at least quarterly or more often as the business of the Council demands. The members shall serve until their successors have been appointed.

(b) The Council shall elect a Chairman and Vice-Chairman from among its members during the last regularly scheduled meeting of odd numbered years.

(1) The Chairman and Vice-Chairman shall serve a term of two (2) years, beginning on January 1st of the calendar year immediately following an election.

(2) Vacancies in the position of Chairman or Vice-Chairman shall be filled by election. The elected member shall assume the duties of the vacant position immediately, for the remainder of the unexpired term.

(3) Members may serve two (2) consecutive terms in each office, not including any unexpired terms for which the member was elected.

390:1-1-4. Objectives of the Council

The objectives of the Council are:

(1) To raise the level of professional competence and integrity of law enforcement by:

(A) Establishing and administering minimum standards for the training and certification of law enforcement officers, to include physical, mental, and moral standards.

(B) Establishing and administering minimum curriculum and instructional standards for law enforcement training at a variety of levels.

(C) Providing these and other services to law enforcement officers as directed by law.

(D) Recommending legislation necessary to upgrade Oklahoma law enforcement to professional status.

(E) Appointing a larger Advisory Council.

(i) The Advisory Council shall be composed of seventeen (17) members who are certified full-time peace officers employed by a campus, city, county, state or federal law enforcement agency. At least one member shall be appointed from each of the ten (10) geographic CLEET training regions.

(ii) Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) An Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(iv) When a vacancy occurs on the Advisory Council, the Advisory Council shall recommend an individual to the Council for the vacant position.

(F) Appointing a Drug Dog Advisory Council.

(i) The Drug Dog Advisory Council shall be composed of members as provided in 70 O.S. §3311(K).

(ii) Drug Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Drug Dog Advisory Council shall meet as the business of the Drug Dog Advisory Council demands.

(iv) A Drug Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Drug Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect controlled dangerous substances to the larger Advisory Council for review prior to submission to the Council for final action.

(vi) When a vacancy occurs on the Drug Dog Advisory Council, the Drug Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(G) Appointing a Bomb Dog Advisory Council

(i) The Bomb Dog Advisory Council shall be composed of members as provided in 70 O.S. §3311(L).

(ii) Bomb Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Bomb Dog Advisory Council shall meet as the business of the Bomb Dog Advisory Council demands.

(iv) A Bomb Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Bomb Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect explosives, explosive materials, explosive devices, and materials which could be used to construct an explosive device to the larger Advisory Council for review prior to submission to the Council for final action.

(vi) When a vacancy occurs on the Bomb Dog Advisory Council, the Bomb Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(2) To raise the level of professional competence and integrity of the private security industry by:

(A) Establishing and administering minimum standards for the employment of security guards and private investigators, and the establishment of private security and investigative agencies, through a licensing program based on physical, mental, and moral standards.

(B) Establishing and supervising a validated training program for security guards and private investigators.

(C) Enforcing the provisions for the Oklahoma Security Guard and Private Investigator Act (Title 59, Sections 1750.1 - 1750.13).

(D) Appointing an Advisory Committee comprised of representatives from security guard and investigative agencies.

(i) The Committee shall be comprised of seven (7) representatives from licensed security guard and private investigative agencies as follows: One (1) from each quadrant of the state, one (1) at large, one (1) selected by the American Society for Industrial Security (ASIS) and one (1) selected by the Oklahoma Private Investigators Association (OPIA).

(ii) Committee representatives shall serve for a term of three years and may be reappointed for additional terms unless removed by the Council.

(iii) A Committee representative may be removed and that position declared vacant by the Council for any reason.

(iv) When a vacancy occurs on the Advisory Committee, the Advisory Committee shall recommend an individual to the Council for the vacant position.

(~~iii~~v) Committee representatives shall meet at least quarterly or more often as the business of the Committee demands.

(~~vi~~vi) The Committee shall report research, recommendations and other matters related to licensure of security guards, security agencies, private investigators and private investigative agencies to the Advisory Council for review prior to submission to the Council for final action.

[OAR Docket #04-984; filed 5-20-04]

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

[OAR Docket #04-985]

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PERMANENT final adoption
RULES:
390:10-1-6 [AMENDED]
390:10-1-7 [AMENDED]
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Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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ANALYSIS:
Amended sections would establish a required duration of out-of-state law enforcement employment to obtain Oklahoma peace officer certification by reciprocity; and would require CLEET to notify the District Attorney when a peace officer's certification has been suspended or revoked.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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:

390:10-1-6. Certification by reciprocity

Any officer seeking Oklahoma Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law.

(2) The officer must have been employed as a full time peace officer for at least three (3) months within the two (2) year period immediately preceding the request for Oklahoma certification.

(3) The officer must attend the Legal Block of the CLEET Basic Academy and successfully pass the Legal Block examination.

(4) The officer must successfully pass a certification examination which is designed to be scored by functional area blocks, with the exception of skills training functional areas which shall not be tested. Officers must pass every functional area block tested at a standard prescribed by the Council. Officers may have one retest for each functional area block which they fail.

(5) If an officer fails both a block test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Academy, to include successfully passing the block examination(s). Any retest would follow the guidelines listed in OAC 390:15-1-13.

390:10-1-7. Withdrawal, suspension and reinstatement of certification

(a) **"Withdrawal" defined.** A withdrawal of certification is the voluntary surrender of peace officer certification by an officer that has been certified pursuant to the provisions of 70 O.S. 3311 et seq.

(1) An officer requesting a withdrawal of certification must notify CLEET of his intent to voluntarily surrender peace officer certification and have his name withdrawn from the list of Oklahoma certified peace officers. The notification shall be on forms provided by CLEET.

(2) If an officer is requesting withdrawal by voluntary surrender of peace officer certification based upon completed, pending or contemplated criminal proceedings, the officer must include in the notice to withdraw certification, a certified copy of the charges, sentencing agreement or other information to support the action. This would include any deferred sentencing agreement.

(3) When a request for withdrawal of certification has been received by CLEET, the supporting documents will be verified and an investigation conducted to determine the facts for the stated underlying purpose of the withdrawal of certification.

(4) CLEET will enter a Final Order of Withdrawal which must be signed by the officer requesting the voluntary surrender of peace officer certification and the Director. The Final Order of Withdrawal must include:

(A) A statement by the officer that the withdrawal and surrender of peace officer certification is voluntary; and

(B) Acknowledgment of the underlying facts for the withdrawal; and

(C) Acknowledgment that the information gathered during the investigation of the request for withdrawal may be submitted as evidence at a hearing upon the request of the officer for reinstatement of certification;

(b) **Suspension.** The certification of a peace officer may be suspended pursuant to the provisions of 70 O.S. §3311 et seq.

(1) If any action against a peace officer results in the suspension of peace officer certification, the suspended officer shall not engage in law enforcement activities of any type during the period of suspension.

(2) When permitted by law, the officer and CLEET may enter an agreement for the suspension of peace officer certification. The Agreed Final Order of Suspension must include the length of the suspension.

(3) Administrative actions involving actions against a peace officer in which suspension of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq. and this chapter.

(4) A suspension ordered after administrative hearing shall state the term of the suspension. Unless otherwise provided by law, the Hearing Examiner may establish a reasonable length of suspension.

(c) **Reinstatement.**

(1) After five years, an officer who has had peace officer certification suspended or who has voluntarily withdrawn his certification, may have peace officer certification reinstated through the following procedures:

(A) The officer shall file an application for reinstatement on forms provided by CLEET, submitted in writing, under oath.

(B) The application shall require the applicant to furnish information reasonably required to enable the Council to determine the fitness of the applicant for certification.

(2) The application for reinstatement shall be referred to the Standards Division for processing of the application.

(3) The application will be reviewed by the Assistant Director, Standards Division Manager and General Counsel to approve or deny the request. The following factors will be considered during the review:

(A) Circumstances surrounding the suspension or voluntary withdrawal of certification;

(B) Successful completion of the terms for suspension or voluntary withdrawal of certification;

(C) Any pending charges or actions in this state or any other state; and

(D) Activities of applicant during the period of suspension.

(4) If a request is denied, the Administrative Procedures found in OAC 390:2-1 et. seq. will govern the hearing.

(5) Individuals who have had their certification reinstated must meet the continuing education requirements described in 70 O.S. 3311.4.

(d) **Notification.** Upon the suspension, withdrawal or revocation of peace officer certification pursuant to 70 O.S. 3311 et seq. or these rules, CLEET shall provide written notification of such action to the head of the employing law enforcement agency and the district attorney in the jurisdiction where the officer is or was last employed.

[OAR Docket #04-985; filed 5-20-04]

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

[OAR Docket #04-986]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Basic Academy Programs
390:15-1-6 [AMENDED]
390:15-1-11 [AMENDED]

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Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

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ANALYSIS:
The proposed amendments would remove provisions of the rules relating to mandatory physical assessments for participation in the Basic Academy; would allow for dismissal from the academy if a student refuses to submit to testing for determination of whether the student is under the influence of drugs or alcohol; and would allow for removal from participation in the academy of a student who appears to be impaired by prescription medications or substances.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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. BASIC ACADEMY PROGRAMS

390:15-1-6. Basic Academy participation

(a) All trainees shall be capable of full participation in all Basic Academy activities.

(b) Until implementation of the pre-academy physical training assessment as provided in paragraph (e) of this section, trainees will be administered a physical training assessment by CLEET staff during the Basic Academy at the agency administrator's request.

(c) The physical training assessment will be used to compile statistical data indicating the level of general fitness required to satisfy the physical demands of the Academy without undo risk of injury.

(d) Upon request, an employing agency will be provided information as to whether or not the trainee participated in the voluntary physical training assessment and the results of the assessment.

(e) Beginning July 1, 2006, or as soon thereafter as CLEET occupies the training facility in Ada, Oklahoma, every candidate for the Basic Academy must participate in a pre-academy physical training assessment.

(1) The pre-academy physical training assessment will be conducted by CLEET staff, or their designee, at the CLEET training facility in Ada, Oklahoma prior to admission in the Basic Academy. Provided, entities authorized by the Council to provide Peace Officer Certification training pursuant to OAC 390:15-1-19 shall complete the requirements of this section through use of their own personnel and at a location of their choosing. The results of all physical training assessments conducted by approved academy entities shall be reported to CLEET.

(2) No candidate will be permitted to attend the Basic Academy without first participating in the pre-academy physical training assessment.

(3) No candidate will be denied admittance to the Basic Academy based upon performance in the pre-academy physical training assessment, except for failure or refusal to participate in the pre-academy physical training assessment.

(4) Prior to participation in the pre-academy physical training assessment, the candidate and the employing agency head or a licensed physician must submit a statement in writing that the candidate is capable of safe participation in pre-academy physical training assessment.

(5) The results of each candidates' participation in the pre-academy physical training assessment shall be reported by CLEET to the employing agency or governing body, together with suggestions for general fitness improvement, if indicated by the results.

(6) The pre-academy physical training assessment will be used to compile statistical data indicating the level of general fitness required to satisfy the physical demands of the Academy without undo risk of injury, while optimizing training retention.

~~(b) Every Basic Academy candidate shall be administered a pre-academy physical training assessment by their employing department or agency to ensure that each candidate can undergo the physical demands of the Academy without undo risk of injury and with a level of fatigue tolerance to meet all academy requirements.~~

~~(c) The Council shall provide departments and agencies a physical assessment reporting form with minimum standards for each assessment. Training assessment standards shall be established by the Council based on aerobic research data and shall be age and gender based.~~

~~(d) Information or rationale, purpose, testing procedures, standards of performance and fitness activities to prepare for the assessment will be provided by the Council to departments and agencies prior to the implementation of the assessment program.~~

~~(e) Effective July 1, 2004, no person shall participate in a Council basic academy without passing the pre-academy physical training assessment administered by Council staff or their designee.~~

~~(f) Academy candidates who are unable to pass the physical training assessment shall be able to retest for entry into the next available academy, however, they must satisfy the requirements of 70 O. S., Section 3311 (D)(3) and 70 O. S., 3311 (D)(5) by completing certification within the allowable time limits.~~

390:15-1-11. General rules of Academy conduct

(a) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.

(b) Trainees shall conscientiously, and in a timely manner, carry out all proper and lawful instructions of authorized personnel while enrolled in the Basic Academy. Violations of any general rules of academy conduct or basic academy rules may result in disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1

(c) Trainees shall bring no firearms or ammunition into the basic training facility or its associated parts, unless directed by the instructional staff.

(d) Reckless handling, unauthorized brandishing, or other unauthorized display of any firearms will not be tolerated.

(e) Trainees who are lodging or visiting facilities owned, operated, or rented by CLEET may not use or bring any alcoholic beverages, intoxicants, or any controlled dangerous substances, onto the property, grounds, or into the facilities.

(1) It shall be prohibited for any trainee to attend any training session while under the influence of any of the above named substances.

(2) Trainees who arrive at lodging, eating, ~~or~~ classroom, or training facilities, who appear impaired, may be subject to standard field sobriety testing, or other tests, and to disciplinary action. Refusal to submit to any such tests requested by CLEET staff shall result in disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1

(f) Trainees who are taking medications or controlled substances as prescribed by a physician shall advise the Basic Academy Coordinator immediately as to the type of medication, the prescribing physician, and purpose of the medication. All such substances shall be kept in the prescribed container. Trainees who appear to be impaired by prescribed substances may be subject to disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1

(g) The use of tobacco in any form shall be in accordance with State law, local rules, facility rules or as directed by CLEET staff.

(h) Trainees shall avoid the excessive use of profanity.

(i) Trainees shall not gamble in or around training, housing, or eating facilities provided by CLEET.

(j) Trainees shall avoid intentionally marking, defacing, or damaging any state property, the property of the owner of any state-provided facility, or the property of another.

(k) Trainees shall avoid the continual disruption of instructional activities, by conversation or otherwise, in and around any training classroom or facility.

(l) Cheating on examinations, or any other manner of dishonest conduct will not be tolerated.

(m) Trainees will exhibit behavior which is in keeping with the Law Enforcement Code of Ethics, CLEET guidelines and departmental guidelines when working with and socializing with officers of the same or opposite sex. Situations involving issues of moral turpitude may result in administrative discipline.

(n) Trainees shall avoid any disruptive behavior at any CLEET provided facility that may be injurious or distracting to other trainees or people in close proximity.

(o) The Council on Law Enforcement Education and Training will not tolerate harassment of students, trainees, staff or participants, on the basis of race, color, creed, national origin, or sex.

[OAR Docket #04-986; filed 5-20-04]

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

[OAR Docket #04-987]

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PERMANENT final adoption
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390:30-1-5 [AMENDED]
390:30-1-7 [AMENDED]
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ANALYSIS:
Amended sections would remove reference to the U.S. Customs Service as the standard criteria for conducting trials and testing of CDS detector dog teams.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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:

390:30-1-5. Standards for certification

(a) Based on demand and the availability of staff, CLEET will conduct certification trials at designated sites across the state. Known dates and locations of certification trials shall be published annually in January.

(b) Testing for certification of CDS detector canine teams shall be conducted by qualified agents of the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD), and/or their designees, who have successfully completed an appropriate course of instruction, or who are currently certified in the training and handling of CDS Detector Dogs by the United State Custom Service.

(c) Certification trials and testing criteria shall be consistent with the standards currently utilized for the certification of CDS detector dogs ~~by the United States Custom Service~~.

(d) CDS detector canine teams shall be certified only in the detection of controlled dangerous substances for which the dog scores an eighty per cent (80%) higher "find" rate, and not more than a twenty per cent (20%) "false response" rate.

390:30-1-7. Denial of certification

(a) Canine teams may be denied certification for any of the following reasons:

(1) Incomplete application

(2) Fraudulent application

(3) Failure to satisfy certification standards as utilized for the certification of CDS detector dogs ~~by the United States Custom Service~~.

(4) Failure to remit the proper certification fees.

(b) Any dog or handler denied certification shall be entitled to an administrative appeal pursuant to 390:2.

(c) CLEET may investigate any complaints involving the use of a canine team certified or required to be certified by 70 O.S. 3311 (L) (1) (2).

[OAR Docket #04-987; filed 5-20-04]

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

[OAR Docket #04-988]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. License Requirements
390:35-5-2 [AMENDED]
Subchapter 13. Use of Firearms
390:35-13-2 [AMENDED]

AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

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n/a

ANALYSIS:
Amended sections would increase the number of continuing education hours required annually for private investigators from four (4) hours per year to eight (8) hours per year; and would clarify language making a licensee responsible for submitting a written report of a firearm discharge to CLEET.

CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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. LICENSE REQUIREMENTS

390:35-5-2. Security guard, armed security guard, and private investigator licenses

(a) Applicants for security guard, private investigator, or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.5.

(b) Applicants for Armed Security Guard or firearms authorized licenses must further:

(1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.

(2) Successfully complete the firearms phase of private security training;

(3) Be twenty-one (21) years of age, and

(4) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.

(c) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

(d) No licensee shall brandish, point, exhibit, or otherwise display a firearm at any time, except as authorized by law, and the rules of this Chapter.

(e) Private Investigators must complete ~~four (4)~~ eight (8) hours of continuing education training from an approved source, each year to maintain their license. This training will be reported to CLEET at the time of license renewal. Firearms requalification courses will not count towards mandate training. Approved sources are:

(1) College credit hours, fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report;

(2) Established Entities (Recognized county, state, and federal associations, vo-techs), one hour of training will be granted for each hour attended. Proof of attendance needed is a copy of a certificate or sign-in roster from the sponsor; or

(3) CLEET Accredited Schools, Seminars, and Conferences, one hour of mandate training credit will be granted for each hour of instruction (minimum four (4) hour course). For approval to conduct mandate training, sponsors must:

(A) Submit a written request for program accreditation to CLEET;

(B) Provide course outline, and course objectives;

(C) Provide Resume for Instructors; and

(D) After training, submit a roster of attendees completing the training to CLEET.

(f) Any person seeking an Oklahoma Security Guard or Private Investigators license, who has been licensed by a state whose training and standards have been deemed comparable to and approved by the Oklahoma Council on Law Enforcement Education and Training may obtain a license by reciprocity, under the following conditions:

(1) The applicant must meet the minimum license requirement standards set forth by Oklahoma Law including fingerprint requirements. Such fingerprints requirement may be waived by CLEET where a verified records check has been made within a reasonable period of time in the context of existing law requiring fingerprint checks.

(2) The applicant must have an active license in the original licensing state, and not be subject to any administrative action regarding the active status in the licensing state.

(3) The applicant receiving a license by reciprocity in Oklahoma shall at all times while working as a security guard or private investigator in Oklahoma be subject to all laws regarding security guards and private investigators including all applicable fees for such license.

(4) Reciprocity may be granted only from the state in which the applicant was originally licensed and not from any intervening state by reciprocity to the original licensing state.

(5) The applicant must sign a statement of irrevocable consent that service of process, in any complaint or disciplinary action filed against the applicant, arising out of the applicant's private investigative activities in the reciprocating state, may be made by the delivery of such process on the administrator of the private investigation regulatory agency in his/her/its state of residence.

(6) An armored car employee who is primarily employed by an armored car company in another state, and is properly licensed by that state to carry a weapon while acting in the services of that company in the home state, and meets the minimum home state requirements, would be exempt from other requirements of 59 O. S. Section 1750.1 et seq. during such time as the armored vehicle from that state is actively engaged in interstate commerce within Oklahoma pursuant to 15 U.S.C. Section 5901, the "Armored Car Industry Reciprocity Act of 1993."

SUBCHAPTER 13. USE OF FIREARMS

390:35-13-2. Reporting the discharge of firearms

(a) The discharge of a firearm by a licensee, pursuant to Section l750.9 (C) of the Act, shall be reported by phone immediately by the licensee to CLEET, Private Security Division, P. O. Box 11476, Oklahoma City, Oklahoma 73136-0476, telephone number (405) 425-2775 during working hours (8:00 a.m. to 4:30 p.m. Mon-Fri). If other than during working hours, calls and reports shall be made the next working day to CLEET. The telephonic report shall include:

(1) Name of licensee discharging firearm;

(2) Name of employer;

(3) Location of incident;

(4) A brief narrative of what happened;

(5) Whether death, personal injury or property damage resulted; and

(6) Whether the incident is being or was investigated by a law enforcement agency.

(b) CLEET, when deemed appropriate, shall immediately proceed to the scene of the incident and the investigation shall include, but not be limited to:

(1) Name, address, telephone number and license number of licensee discharging firearm;

(2) Name, address and telephone number of employing agency, if employed by an agency;

(3) Name of person making the report;

(4) Exact location, date and time of the incident and indicate if the location was residential, business or rural;

(5) A detailed description of what happened;

(6) Name of any person(s) killed or injured and the extent of any property damage;

(7) Name, address and telephone number of any witnesses;

(8) If incident was investigated by a law enforcement agency, the name of the investigating officer and employing agency;

(9) Whether criminal charges were filed or anticipated against the licensee; and

(10) Any disciplinary action taken by the employer.

(c) The employing agency shall assure that the involved licensee completes a "Report of Firearm Discharge", to be forwarded by the licensee to CLEET.

(d) Within twenty-four (24) hours after the firearms discharge incident, a separate written report shall be made to CLEET by each, the licensee who discharged a firearm and the employing agency. If the licensee is self-employed, he shall be personally responsible for reporting any discharge of firearms.

[OAR Docket #04-988; filed 5-20-04]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 45. RETIRED PEACE OFFICER FIREARMS PERMIT

[OAR Docket #04-989]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:45-1-3 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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ANALYSIS:
Amended section includes "fire marshal inspector" in the definition of "Retired" to comply with the legislative change made in 2003 Session Laws, c.54.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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:

390:45-1-3. Definitions

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

"Act" means the Oklahoma Firearms Act Title 21 O.S., Section 1289.8. and applicable sections of the Oklahoma Self-Defense Act Title 21 O.S., Sections 1290.1 et seq.

"Applicant" means a person applying for a retired peace officer's firearms permit under the provisions of the Act.

"CLEET" means the Council on Law Enforcement Education and Training, and its administrative officers and personnel.

"Concealed handgun" means a loaded or unloaded pistol carried hidden from the detection and view of another person either upon or about the person, in a purse or other container belonging to the person, or in a vehicle which is operated by the person or in which the person is riding as a passenger.

"Council" means the appointed members of the Council on Law Enforcement Education and Training, as defined in Title 70 O.S., Section 3311.

"Director" means the Director of the Council on Law Enforcement Education and Training, or his designated agent.

"Peace Officer" means any peace officer as defined in 21 O.S. Section 99, and who is authorized to carry a firearm in the performance of official duties. The term does not include reserve officers, auxiliary, private security, private investigators or military police.

"Pistol" means any derringer, revolver, or semi-automatic firearm which:

(A) has an overall length of less than sixteen (16) inches and is able to be fully concealed from detection and view,

(B) is capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury,

(C) is designed to be held and fired by the use of a single hand, and

(D) uses either gunpowder, gas or any means of rocket propulsion to discharge the projectile.

"Retired" means any fire marshal inspector, state, county, or municipal peace officer of this state or any federal law enforcement officer who meets the criteria and definition in 21 O.S. Section 1289.8.

"SDA" means the Oklahoma Self-Defense Act.

"State" means the State of Oklahoma.

[OAR Docket #04-989; filed 5-20-04]

TITLE 395. OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM CHAPTER 10. RETIREMENT AND PENSION BENEFITS PROGRAM

[OAR Docket #04-918]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
395:10-1-9.1. Purchase price payments/transfer of credit service [AMENDED]
395:10-1-11. Deferred Option Plan [AMENDED]
395:10-1-11.1. Direct Rollovers [AMENDED]
395:10-1-12. Physical and psychological testing requirements [AMENDED]
AUTHORITY:
47 O. S. Section 2-300 et seq. Oklahoma Law Enforcement Retirement System Board
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ANALYSIS:
The proposed amended rules are designed to clarify procedures and practice requirements of the agency with regard to the Deferred Option Plan, forward DROP, and to add the procedures and practice requirements for the Back Drop Plan. Amendments provide information regarding eligible rollover distribution options.
CONTACT PERSON:
Lawrence F. McCullock, Executive Director, Law Enforcement Retirement System, 4545 N. Lincoln Blvd., Suite 257, Oklahoma City, Oklahoma 73105-3414, (405) 522-4932

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 25, 2004:

395:10-1-9.1. Purchase price payments/transfer of credited service

(a) An active member of the System may elect the payment of the actuarial purchase price, repayment of a previous withdrawal or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments though payroll deductions by the member's employer if the employer agrees to make the deductions and remit payment to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly increments. The minimum total monthly payment is $25.00. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. Any installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial ~~cost~~ purchase price with interest due through date of payment or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) If the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or his beneficiary will have the option of paying the remaining balance within the original contract period. In the event the actuarial purchase price is paid prior to the end of the contract period, the amount to be paid shall be the balance of the actuarial purchase price with interest due through the date of payment. If the balance is not paid, the member will receive credit for service prorated for only the ~~principal amount~~ actuarial purchase price paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance, during the original contract period provided for in subsection (4) of this section, no benefits will be payable until the completion of the original contract period,—or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member, or beneficiary of the member who is in an unpaid leave status, in the following circumstances:

(A) if payroll is insufficient to handle the entire payment,

(B) in the event of payroll error where employer fails to withhold the proper amount, or

(C) during the original contract period referred to in subsection (4) of this section.

(7) If the purchase is terminated for any reason, the purchase cannot be made at anytime in the future, following the original contract period referred to in subsection (4) of this section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(b) In lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer from a qualified plan described in Section 401(a) of the Internal Revenue Code of 1986, as amended.

(c) Effective January 1, 2002, in lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing ~~the System~~ OLERS by use of a direct trustee-to-trustee transfer from an eligible 457(b) plan and/or a 403(b) tax sheltered annuity program.

(d) Notwithstanding (b) and (c) of this subsection above, purchases may be made by a cash lump sum payment of the actuarial purchase price with interest due through the date of payment, installment payments (where otherwise allowed by Oklahoma state statutes), and/or by trustee-to-trustee transfer as described in (b) and (c) above.

(e) ~~The System~~ OLERS will transfer credited service to another state retirement system upon request of a former member. Upon transfer, the former member will have forfeited all rights in ~~the System~~ OLERS.

(f) The purchase of service or transfer of credited service shall be completed in the time and manner prescribed by the Board.

395:10-1-11. Deferred Option Plan

(a) **Forward DROP**

(~~a~~1) **Purpose.** The Oklahoma Law Enforcement Deferred Option Plan allows an active participating member of OLERS who has not less than twenty (20) years of ~~creditable~~ participating service, who is eligible to receive a service retirement pension, to make an election to participate in the OLERS Deferred Option Plan. In lieu of terminating employment and accepting a service retirement pension, the eligible member defers the receipt of benefits in accordance with 47 O.S., 2-305.2A, B, C, D, E and F and the provisions of this section.

(~~b~~2) **Definitions.** Reserved.

(~~c~~3) **Application.**

(~~1~~A) The applicant must have twenty (20) years or more of ~~credited~~ participating service with ~~the~~ OLERS to be eligible.

(~~2~~B) The applicant must submit his/her completed application to ~~the~~ OLERS ~~Deferred Option Plan~~ on forms provided by OLERS.

(~~3~~C) OLERS must receive the application a minimum of thirty (30) days prior to the effective date.

(~~4~~D) The effective date of membership will be the first day of the month.

(~~5~~E) Once the Board has approved a member's application and the member's option account has been credited with the first contribution or benefit, the member's participation in the OLERS Deferred Option Plan is irrevocable as long as the member remains employed.

(~~6~~F) ~~The System~~ OLERS will provide the applicant a Plan Summary. In addition, the applicant will be asked to sign a statement acknowledging receipt and understanding of the Plan Summary.

(~~d~~4) **Contributions.**

(~~1~~A) The final member contribution made to OLERS shall be for the last pay period prior to the first of the month in which the member becomes a participant in the OLERS Deferred Option Plan.

(~~2~~B) The employer's contribution will continue to OLERS.

(~~3~~C) The employer's contribution shall be credited as follows:

(~~A~~i) fifty percent (50%) to the member's option account. The credit to the member's option account shall be made the same day as the monthly retirement benefit credit is made; and

(~~B~~ii) ~~50%~~fifty percent (50%) to OLERS.

(~~4~~D) Neither the member nor anyone on his behalf may make any other contribution to the member's option account. Only the employer's contribution will be added to the member's option account.

(~~5~~E) When a member has participated in the OLERS Deferred Option Plan for five (5) years, or if the member terminates employment prior to the end of five (5) years, contributions will no longer be credited to the member's option account.

(~~e~~5) **Benefits.**

(~~1~~A) The monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be credited into the member's option account.

(~~2~~B) The formula for calculating the pension benefit is two and one-half percent (2 1/2%) of the final average salary multiplied by the years of creditable service including partial years of service (based on

completed months of service). Final average salary is the average paid base salary of the member for the highest salaried thirty (30) consecutive months, excluding pay for any accumulated leave or uniform allowance.

(~~3~~C) The amount of the member's service retirement benefit is frozen at the inception of his participation in the OLERS Deferred Option Plan. No increase will be made to that benefit due to any changes in the member's salary whether for cost of living increases, promotions or otherwise, while still actively employed with the agency. The pension benefit may be increased, however, by cost of living increases as provided by the legislature for all retired members of OLERS.

(~~4~~D) The monthly retirement benefit will be credited to the member's option account the last day of the month.

(~~f~~6) **Interest.**

(~~1~~A) The member's option account shall earn interest at a rate of two percentage (2%) points below the rate of return of the total investment portfolio of ~~the System~~ OLERS, but no less than the actuarial assumed interest rate established at the beginning of the fiscal year as certified by the actuary and approved by the Board in the yearly evaluation report of the actuary. This report is on a fiscal year basis ending on June 30.

(~~2~~B) The Fund's rate of return shall be calculated monthly and certified by the Fund's Executive Director.

(~~A~~i) For the purpose of calculating earnings for a member's account, deposits and withdrawals will be deemed to have occurred at the close of business on the last day of the month in which the transaction occurred in the system.

(~~B~~ii) Earnings on a member's account will be calculated on a monthly basis using two methods.

(~~i~~I) Method I Earnings I = Account balance ~~@~~ at beginning of month ~~x Fund~~ times (the fund actual internal rate of return ~~for month (2% divided by 12)).~~(less one twelfth (1/12) of 2%)).

(~~ii~~II) Method II Earnings II = Account balance ~~@ beginning of month x (Actuarial assumed interest rate divided by 12).~~ at beginning of month times (Actuarial assumed earnings rate (divided by three hundred sixty-five days) times (the number of days in the month)).

(~~C~~iii) Earnings credited to a member's account as of the fiscal year end shall be the greater of the sum of Method I or the sum of Method II calculated earnings.

(~~3~~C) The interest shall be credited to the member's option account on an annual basis which is defined as fiscal year ending June 30. The amount of the interest credited shall be calculated at simple interest. The formula for calculating the interest shall be the amount of the deposit, times the applicable interest rate, less two percentage (2%) points, divided by 365 days, times the number of days the deposit was credited to the member's option account for the fiscal year.

(~~4~~D) Each member shall receive an itemized statement on an annual basis each fiscal year.

(~~5~~E) If a member terminates employment, interest calculated and certified by the Fund's Executive Director will be credited~~,~~ no later than the end of the following month~~,~~ to the member's option account for the partial year, provided~~,~~ the rate of return is greater than the actuarial assumed interest rate. If the rate of return is less than the actuarial assumed rate, then the member's option account will be credited at the assumed interest rate of the last actuarial report.

(~~6~~F) When a member has participated in the OLERS Deferred Option Plan for five (5) years, or if the member terminates employment prior to the end of the five (5) years, the member's option account ceases to earn interest.

(~~7~~G) At the conclusion of a member's participation in the OLERS Deferred Option Plan, the member must terminate employment and shall start receiving the member's accrued monthly retirement benefit from OLERS. ~~Such termination has at all times included reemployment of a member~~ A member who terminates employment pursuant to the Deferred Option Plan will not be eligible for active participation in OLERS; provided, however that a member may be reemployed by a state agency ~~but only~~ in a position not covered under OLERS. ~~Thus, such a member would~~ and receive in-service distributions of such member's accrued monthly retirement benefit from OLERS.

(~~g~~7) **Payment.**

(~~1~~A) The member must make payment selection in writing a minimum of thirty (30) days prior to termination of employment.

(~~2~~B) The member may select a lump sum payment, equal to the member's option account, which will be paid directly to the member by ~~the~~ OLERS. This payment will be made no later than the end of the month following the month the last contribution has been received following termination of employment.

(~~3~~C) The member may select a direct rollover of his or her distribution in accordance with Chapter 395:10-1-11.1. If the member does not select an Eligible Retirement Plan as described in Chapter 395:10-1-11.1, or a true annuity, the member shall receive a lump-sum payment equal to the member's option account balance.

(~~4~~D) The member may select a true annuity to be provided by a third party selected by the participant. OLERS shall not be subject to any fees or charges from the annuity provider.

(~~5~~E) Once the member's option account has been paid to the member as a Direct Rollover or to the member's annuity provider, the member shall not

have any recourse against OLERS its Executive Director (and his/her staff) and/or the OLERS Board.

(~~h~~8) **Beneficiaries.**

(~~1~~A) Upon the death of ~~the~~ a participant, a lump sum payment equal to the member's option account balance shall be paid to the designated beneficiary of the participant or if there is no designated beneficiary or if the designated beneficiary ~~predeceased~~ predeceases the participant, the payment shall be paid to the estate of the participant. ~~A~~ If the member's spouse is not designated as the sole primary beneficiary, the member's spouse must sign a consent. A designated beneficiary who is a surviving spouse of a member may elect a Direct Rollover of the account balance in accordance with Chapter 395:10-1-11.1.

(b) **Back DROP.**

(1) **Purpose.** In lieu of participating in the Oklahoma Law Enforcement Deferred Option Plan pursuant to 47 O.S. § 2-305.2 A, B, C, D and E, a member may elect to participate in the Oklahoma Law Enforcement Deferred Option Plan pursuant to 47 O.S. § 2-305.2H ("Back DROP") and the provisions of this subsection.

(2) **Definitions.** For purposes of this subsection, the definitions as stated in 47 O.S. § 2-305.2(H)(1) shall apply.

(3) **Application for Back DROP / Conversion from Forward DROP.**

(A) The applicant must have twenty (20) years or more of participating service with OLERS to be eligible.

(B) The applicant must submit his/her completed application to OLERS on forms provided by OLERS.

(C) OLERS must receive the application a minimum of thirty (30) days prior to the effective date.

(D) The effective date of membership will be the first day of the month.

(E) Once the Board has approved a member's application, the member's participation in the OLERS Back DROP is irrevocable.

(F) OLERS will provide the applicant a Plan Summary. In addition, the applicant will be asked to sign a statement acknowledging receipt and understanding of the Plan Summary.

(4) **Contributions and Benefits.**

(A) At the termination date, a member's monthly pension benefit will be determined based on the earlier attained participating service and on the final average salary as of the back drop date.

(B) The member's individual deferred option account will be credited with an amount equal to the deferred benefit balance, the member will terminate employment and will start receiving the member's accrued monthly retirement benefit from OLERS.

(C) The member will, upon application filed with the Board, be refunded from the fund an amount equal to the accumulated contributions the member made to the fund from the back drop date to the termination date, but excluding any interest.

(D) Such member will not be eligible for active participation in OLERS. Termination has at all times included reemployment of a member by a state agency but only in a position not covered under OLERS.

(E) The provisions of 47 O.S. § 2-305.2B, C, E, F and G apply to the Back DROP.

(5) **Conversion to Back DROP from Deferred Option Plan.**

(A) A member may participate in the Back DROP even if the member has elected to participate in the Oklahoma Law Enforcement Deferred Option Plan pursuant to 47 O.S. § 2-305.2A, B, C, D, E and F.

(B) Such a member may select a back drop date which is up to five (5) years prior to the termination date but not before the date at which the member completes 20 years of participating service. Such a member's participation in the Oklahoma Law Enforcement Deferred Option Plan may not exceed five (5) years when combined with such a member's prior period of participation in the Oklahoma Law Enforcement Deferred Option Plan.

(C) The provisions of 47 O.S. § 2-305.2B, C, E, F and G apply to a member who converts from the Oklahoma Law Enforcement Deferred Option Plan to Back DROP.

(6) **Interest.** The methodology for computing interest described in Chapter 395:10-1-11(a)(6) applies with regard to this subsection.\

395:10-1-11.1. Direct Rollovers

(a) A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions:

(1) "Eligible Rollover Distribution" is generally a lump sum distribution except that an Eligible Rollover Distribution does not include monthly retirement benefits and minimum distribution payments. Eligible Rollover Distribution may consist of after-tax member contributions which are not includible in gross income; however, such after-tax distributions may only be paid to an IRA or qualified defined contribution plan that separately accounts for such distributions.

(2) "Eligible Retirement Plan" means an IRA (excluding a Roth IRA), a Section 403(a) annuity plan, and a 401(a) qualified plan that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan also means a 403(b) annuity and an eligible 457(b) plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from ~~the System~~ OLERS. The definition of Eligible Retirement Plan also applies to a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee pursuant to a qualified domestic order as defined in Subsection B of Section 2-303.3 of Title 47.

(3) "Distributee" means an employee or former employee. In addition, effective June 7, 1993, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic order, as defined in Subsection B of Section 2-303.3 of Title 47, are Distributees with regard to the interest of the spouse or the former spouse.

(4) "Direct Rollover" means a payment by ~~the System~~ OLERS to the Eligible Retirement Plan specified by the Distributee.

(c) At least thirty (30) days and not more than ninety (90) days before the date of distribution, the Distributee must be provided with the IRS Notice regarding rollover options and tax effects. The distribution may be paid less than thirty (30) days after the notice is given, provided that:

(1) The Board clearly informs the Distributee that the Distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution; and

(2) The Distributee, after receiving the notice, affirmatively elects a distribution.

395:10-1-12. Physical and psychological testing requirements

(a) The agency shall supply the essential job ~~junctions~~ functions of the position along with physical or psychological forms required to the applicant for submittal to the examining medical or psychological professional.

(b) All applicants and agencies shall use only the forms approved by the Board for physical and psychological testing, when seeking to obtain or maintain membership in the Oklahoma Law Enforcement Retirement System.

(c) All complete physical and psychological forms shall be provided to the Executive Director of the Board for submission to the Board's reviewing physician or medical professional.

(d) The physical and psychological testing forms shall include a release for medical/psychological information on a form approved by the Board.

(e) Incomplete physical or psychological applications as determined by the Executive Director or their designee shall be returned and shall not be processed.

(f) The Agency shall supply the Board with the essential job functions and the OPM Notice of Personnel Actions of each position seeking to be filled. The Agency shall supply the Board with amendments or changes to essential job functions within 10 days of the changes being made. Any member that transfers from one covered position to another which involves a change in job functions may be required by the Board to complete new physical or psychological testing at the discretion and expense of the Board.

(g) The Board requires successful completion of physical and psychological testing as hereinafter specified. This section shall require passing of the tests.

(h) The Board will not assume responsibility for the cost of Post Offer-Pre-Employment physical and psychological testing.

(i) The Board shall approve the process and procedure of the physical and psychological testing to be performed by the administering physician(s).

(j) The results of the physical and psychological tests will be evaluated by the physician or physicians or other professionals selected and employed by the Board for approval or disapproval for membership into the System prior to actual employment by the agency.

(k) The Executive Director or the designee shall review the completed medical or psychological forms for completeness.

(l) The Executive Director shall have the authority to approve applications for membership on an interim status after reviewing the system physician reports until the Board has the opportunity to vote.

(m) The Board will vote to approve or disapprove membership at the next regularly scheduled meeting upon receipt of completed physical or psychological examination results from the Board's reviewing medical professional.

(n) All medical and psychological records shall be sealed by the Board upon approval for membership by the reviewing physicians or medical professionals. These records are deemed confidential and shall not be made public by the Board except, the Board may use these records for the defense of the System or as otherwise required by law.

(o) Failure of agencies and/or applicants to comply with the rules specified here shall result in denial of membership into the System.

[OAR Docket #04-918; filed 5-17-04]

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

[OAR Docket #04-907]

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ANALYSIS:
Under violations of professional conduct for pharmacists the revision in 535:10-3-1.2 (6) includes a compounded product in the prohibition against billing for more than dispensed or for a name brand when a compounded product is dispensed. It also adds to violations of professional conduct in 535:10-3-1.2 (22) the use or abuse of an illegal CDS substance or a positive drug screen for such substance.
In the past the code of professional practice was enough. Now cheating and such must be specified as a violation or it is difficult to take corrective action.
By requiring honesty in billing and prohibiting the use of illegal CDS substance these rule revisions will protect public health.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

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. PHARMACISTS

535:10-3-1.2. Violations of professional conduct

Violations of the rules of professional conduct, which may also be called unprofessional conduct, include, but are not limited to, the following:

(1) The act of violating directly, indirectly, through actions of another, assisting in or abetting the violation of, or conspiring to violate, any provision or term of the Oklahoma State Board of Pharmacy, Title 59, 353 et seq., the Prescription Drug Marketing Act (21 U.S.C., Sec. 331 et seq.), the Robinson-Patman Act (15 U.S.C., Sec. 13 et seq.), or federal, state and local laws and rules governing pharmacists or pharmacies.

(2) Failure to establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(3) Making or filing a report or record which a pharmacist or pharmacy knows to be false, intentionally or negligently failing to file a report or record required by federal, state or local laws or rules, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records include only those which the pharmacist or pharmacy is required to make or file in his capacity as a licensed pharmacist or pharmacy.

(4) Practicing pharmacy without reasonable skill and safety by reason of illness, use and/or abuse of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(5) Knowingly dispensing a prescription drug after the death of a patient.

(6) Knowingly billing or charging for quantities greater than delivered, or for a brand when a generic <u>or a compounded product</u> is dispensed.

(7) Submitting fraudulent billing or reports to a third party payor of prescription drugs.

(8) Refusing to answer reasonable questions or provide information about prescriptions dispensed by the pharmacy when requested by, or for, the patient and which would aid the patient's health in the professional judgement of the pharmacist.

(9) Not attempting to resolve a possible prescription error or situation of potential harm to the patient when apparent or should have been apparent to the pharmacist.

(10) Not attempting to address the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that the patient may be dependent or addicted.

(11) The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated.

(12) The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy.

(13) Discriminating in any manner between patients or groups of patients for reasons of a particular disease, religion, race, creed, color, sex, age or national origin.

(14) Violating patient confidentiality. This does not prevent pharmacies from providing drug therapy information to physicians for their patients, nor does it prevent the provision of information as required by law.

(15) Theft of merchandise (including, but not limited to, legend drugs) while practicing pharmacy.

(16) Knowingly dispensing prescription drug refills after the death of a physician. (A limited quantity may be allowed for the patient's health and safety.)

(17) Failure to establish and maintain effective controls to prevent prescription errors or mis-fills.

(18) The misfiling of a prescription that departs from the standards of care ordinarily exercised by a pharmacist with proof of actual injury not having to be established.

(19) Providing fictitious information, fraud or misrepresentation in applying for or procuring a pharmacist license, preceptor certificate or other permit, or in connection with applying for or procuring periodic re-registration or renewal of the same.

(20) Attempting to cheat or subverting the pharmacist licensure examination, Oklahoma law examination, Oklahoma preceptor examination or any other examination required by the Board.

(21) Allowing a non-pharmacist to perform any of the duties reserved to a pharmacist.

(22) Use or abuse of an illegal CDS substance or a positive drug screen for such illegal CDS substance or its' metabolite.

[OAR Docket #04-907; filed 5-14-04]

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

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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]
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535:15-5-7.4. [AMENDED]
535:15-5-7.5. [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-1. [AMENDED]
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The revision in 535:15-3-2 (e) adds auxiliary support personnel to the identification requirement. Amended rule 535:15-3-21 adds partial fill records to the section title and Schedule II partials to the logbook or file alternate procedure.

These amendments make emergency rule 535:15-5-1 through 535:15-13-13 permanent. Amendments in 535:15-5-1 and 535:15-13-1 purpose sections add a reference to 59 O.S. Section 353.29 which these rules implement. The rule in 535:15-5-2 and 535:15-13-3 adds an auxiliary supportive personnel definition, adds to the pharmacy technician definition, and modifies the supportive personnel definition. Rule 535:15-5-7, 535:15-5-7.3, 535:15-5-7.4 and 535:15-5-7.5 adds emergency rule revisions regarding supportive personnel to permanent rules. Rule 535:15-13-4 changes the section title and adds 535:25 to the applicant requirements. Rule 535:15-13-5 clarifies that Oklahoma pharmacy technicians may only work in an Oklahoma pharmacy when supervised by an Oklahoma pharmacist. Rule 535:15-13-6 cleans up supportive and auxiliary supportive language. Amended rule 535:15-13-7 clarifies who may receive oral prescriptions. The rule revision in 535:15-13-8 clarifies technician annual permit requirements and qualifications. 535:15-13-9 corrects the section title while 535:15-13-10, 535:15-13-12 and 535:15-13-13 clarify the rules and make permanent emergency rules for supportive personnel.

The grammar corrections and cite cleanup make the rules clear. These rule revisions make the emergency technician rules permanent.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

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. PHARMACIES

535:15-3-2. Pharmacy responsibilities

(a) **Pharmacy staffing responsibility.** Each pharmacy shall employ an adequate number of pharmacists to perform the practice of pharmacy as defined by the Oklahoma Pharmacy Act with reasonable safety.

(b) **Pharmacist manager.** Each pharmacy, in order to obtain and maintain a pharmacy license, must have a registered pharmacist as the pharmacy manager.

(1) A pharmacy manager (i.e. pharmacist in charge) is designated by his signature on the original pharmacy application or by the appropriate notification to the Board as required in 535:15-3-10(a), and is responsible for all aspects of the operation related to the practice of pharmacy. These responsibilities include, but are not limited to the:

(A) supervision of all employees as they relate to the practice of pharmacy;

(B) establishment of policies and procedures for safekeeping of pharmaceuticals that satisfy Board requirements, including security provisions when the pharmacy is closed;

(C) proper record keeping system for the purchase, sale, delivery, possession, storage, and safekeeping of drugs;

(D) proper display of all licenses;

(E) annual controlled drug inventory; and,

(F) maintenance of prescription files;

(2) No pharmacist may serve as a pharmacy manager in more than one pharmacy at a time.

(3) A pharmacy manager shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the pharmacy manager.

(c) **Pharmacist manager's and pharmacy's responsibilities.** The following describe responsibilities of the pharmacy and pharmacist manager.

(1) Where the actual identity of the filler of a prescription is not determinable, the manager of the pharmacy and the pharmacy where the prescription was filled will be the subject of any charges filed by the Board of Pharmacy.

(2) The pharmacy and the pharmacy manager are responsible to establish and maintain effective controls against prescription errors or misfills.

(d) **Responsibility for automated pharmacy systems.** This subsection describes the responsibilities of the pharmacy and the pharmacist manager for automated pharmacy systems.

(1) Prior written notice must be provided to the Board of the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to the:

(A) name and address of the pharmacy,

(B) name of pharmacy manager,

(C) name of the manufacturer & model of system.

(2) The system being implemented should conform to Board automated pharmacy system guidelines.

(3) The pharmacy shall monitor the automated pharmacy system with a quality assurance program.

(e) **Responsibilities for personnel identification.** The pharmacist manager and the pharmacy are responsible to assure that the public be able to distinguish pharmacy technicians, auxiliary support personnel, and/or interns from any pharmacist in the pharmacy.

(1) All pharmacy technicians, auxiliary support personnel, and/or interns must wear a designation tag and be distinctly identifiable from a practicing pharmacist.

(2) Designation tags must be clear, readable and lettered with "Rx Tech", "Tech", "Clerk", or "Intern".

(3) All pharmacy interns, technicians or clerks must identify themselves as such on any phone calls initiated or received while performing pharmacy functions.

535:15-3-21. Prescription fill, refill and partial fill records and reports

(a) **Dangerous drugs.**

(1) Refills may be entered on the back of each original prescription.

(2) Refills may be kept by using an automated data processing system to maintain the refill information.

(b) **Controlled dangerous Substances (CDS) - Schedule II.** No refills are allowed on Schedule II CDS.

(c) **Controlled dangerous Substances (CDS) - Schedule III, IV and V Hard copy method.** The refills are entered on the back of the original (hard copy) prescription according to Oklahoma Bureau of Narcotics and Dangerous Drugs' rules in OAC 475:30-1-11 et seq.

(d) **CDS automated data processing method.** A pharmacy may elect to use an automated data processing system to maintain the prescription files including the original information the refill information. **Caution**: The pharmacy must maintain complete and retrievable prescription records for five years whether you use logbooks, nightly reports, or a manual system. If the pharmacy elects the automated system certain compliance reports will be required.

(1) **Nightly reports.** Nightly reports will be required for Schedule II's and for Schedule III, IV and V's. These reports will include but are not limited to:

(A) Schedule II reports will include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports (e.g run date, run by, Rx #, drug name, dose form, quantity, date written, date dispensed; pharmacist, patient and prescriber names, DEA number, and patient and prescriber addresses.)

(B) Schedule III, IV and V's reports will include the same information as in (A) above, except patient and prescriber address are not required. These reports may be mixed or be Schedule III, IV or V specific.

(C) These nightly reports shall be verified, signed and dated by the pharmacist as required. (See CFR 1306.22(3), et seq.)

(D) These reports must be kept for five years.

(2) **Logbook or file alternate procedure.** In lieu of the nightly reports procedure for Schedule II, III, IV & V's provided in 535:15-3-21, the pharmacy may choose to use the following method:

(A) The pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in such refill dispensing shall sign a statement (in the manner described in CFR 1306.22 (b)) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by them and is correct as shown.

(B) Such a book or file must be maintained at the pharmacy employing such a system for a period of five years after the date of dispensing the appropriately authorized refill.

(3) **Refill reports.** Any pharmacy using an automated data processing system to track refills shall be able to print such reports as required in CFR 1306.22 (b) et seq.

(4) **Audit reports.** If an automated data processing system is used to maintain refill information, the ability to print upon request the following Controlled Dangerous

Substance (CDS) audit reports is required. The following required audit reports must include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports:

(A) CDS Audit Report by Drug
(B) CDS Audit Report by Prescriber
(C) CDS Audit Report by Pharmacist
(D) Patient Profile Report

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-1. Purpose

The rules of this Subchapter are to accomplish the purposes of the Oklahoma Pharmacy Act, as specified in 59 O.S., Section 353.18(A) ~~thereof~~, by implementing the rules and regulations of a licensed hospital pharmacy and a drug room, and as specified in 59 O.S., Section 353.29 by implementing rules regarding supportive personnel.

535:15-5-2. Definitions

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

"Automated dispensing systems" means a mechanical system controlled by a computer that perform operations or activities, relative to the storage, packaging, compounding, labeling, dispensing, administration, or distribution of medications, and which collects, controls, and maintains all transaction information.

"Auxiliary supportive personnel" or "auxiliary supportive person" means all persons, other than pharmacists, interns and techs, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy that do not require a permit or license (e.g. clerk, typist, delivery or data entry person, etc.).

"Certified medication order" means a filled prescription that has been reviewed and certified by a pharmacist.

"Certified pharmacy technician" means a pharmacy technician who has a current Board approved pharmacy technician certification in addition to a current Oklahoma pharmacy technician permit.

"Director of Pharmacy" means a pharmacist licensed to engage in the practice of pharmacy in Oklahoma who is thoroughly familiar with the specialized functions of a hospital pharmacy and directs the activities of a hospital pharmacy.

"Drug room" means a secured room where drug inventories are maintained for use in a facility licensed and regulated by the Oklahoma Health Department, and that which may be inspected by the Board.

"Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital.

"Hospital facility" or "Hospital" means any institution licensed as a hospital by this state for the care and treatment of patients.

"Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are stored, controlled and prepared for distribution and administration for the use and/or benefit of patients in a hospital facility. Hospital pharmacy shall also mean the place or places in which drugs, chemicals, medicines, prescriptions or poisons are compounded and prepared for dispensing to the members of the medical staff, hospital employees, and the members of their immediate families, patients being discharged, and for other persons in emergency situations.

"Medical staff" means a medical practitioner who has privileges to practice in the hospital facility.

"Medication order" means a prescription as defined in Title 59 O.S. Section 353.1(7).

"Pharmacist" means any person licensed to practice pharmacy by the Oklahoma State Board of Pharmacy.

"Pharmacy technician", "Tech", "Technician", or "RxTech" means a person who has been issued a permit by the Board to assist the pharmacist and performs non-judgmental, technical, manipulative, non-discretionary functions in the prescription department under the pharmacist's immediate supervision.

"Supportive personnel" ~~**or "support person"**~~ means technicians and auxiliary supportive ~~all~~ persons~~, other than pharmacists, interns and techs~~, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy ~~that do not require a permit or license (e.g. clerk, typist, delivery or data entry person, etc.)~~.

535:15-5-7. ~~Pharmacy technicians and supportive~~ Supportive personnel

The rules from 535:15-5-7.1 through 535:15-5-7.12, et seq. describe the rules for pharmacy supportive personnel ~~technicians~~ in a licensed hospital pharmacy facility and may include references to the rules in 535:15-13, and other rules of this Title.

535:15-5-7.3. ~~Supportive~~ Auxiliary supportive personnel tasks

~~Supportive~~ Auxiliary supportive personnel may perform the following tasks:

(1) Retrieve prescriptions or files as necessary;
(2) Clerical tasks such as data entry, typing labels and maintaining patient profiles;
(3) Secretarial tasks such as telephoning, filing, and typing;
(4) Accounting tasks such as record keeping, maintaining accounts receivables, third party billing and posting;
(5) Inventory control tasks including monitoring, pricing, dating, invoicing, stocking pharmacy, and preparation of purchase orders; and,
(6) Help maintain a clean and orderly pharmacy.

535:15-5-7.4. Pharmacy technician tasks

Pharmacy technicians may perform the following tasks in a licensed hospital pharmacy facility in accordance with 535:15-7.2:

(1) any tasks auxiliary supportive personnel are allowed to perform;
(2) count and/or pour medications;
(3) affix the prescription label to the final container;
(4) affix auxiliary labels to the container as directed by the pharmacist;
(5) assist the pharmacist in the management of the controlled dangerous substance (CDS) inventory. The pharmacist remains responsible for completeness and accuracy;
(6) fill "Modified unit dose distribution systems", "Automated dispensing systems" and/or "Unit dose distributions systems";
(7) prepackage and label multi-dose and unit-dose packages of medication as directed by pharmacist-established procedures for such, including selection of containers, labels and lot numbers, with provisions for the pharmacist to check the finished task prior to dispensing to the patient. (While a pharmacy technician may package and label the drug, the certification is the responsibility of the pharmacist.)
(8) perform bulk reconstitution of prefabricated non-injectable medication utilizing a pharmacist established procedure for the bulk reconstitution of prefabricated non-injectable medications.
(9) perform bulk compounding, including such items as sterile bulk solutions for small-volume injectables, sterile irrigation solutions, products prepared in relatively large volume for internal or external use by patients, and reagents or other products for other departments of the hospital facility. Such intermediate and large scale compounding may be done by a pharmacy technician through the use of a procedural manual and a system of in-process and final checks and controls developed or approved by the pharmacist and which are carefully and systematically enforced.
(10) prepare parenteral products utilizing a policy and procedure that addresses the verification of the pharmaceutical constituents, the prepared label and the final product by the pharmacist.
(A) Pharmacy technicians may perform functions involving the:
(i) reconstitution of single dosage units that are to be administered to a given patient as a unit; and/or
(ii) addition of one manufacturer's prepared unit (whole or in part) to another manufacturer's prepared unit if the unit is to be administered as one dose to a patient.
(B) Pharmacy technicians may add a single ingredient in preparing parenteral products.
(C) Certified pharmacy technicians as defined in 535:15-5-2 may prepare chemotherapy and add multiple ingredients when preparing sterile products only following documented demonstration of appropriate competency to the Director of Pharmacy or his designated pharmacist on an annual basis.
(11) record patient or medication information for later validation by the pharmacist pursuant to procedures which prevent the information from being utilized in any way until it is validated by the pharmacist. Exempt from the necessity of pharmacist validation shall be records, such as financial, inventory control, etc., which can in no way affect the safety and accuracy of medication administration to patients.
(12) select prepackaged and pre-labeled doses of medication from storage areas and place and transport to the patient area such doses in containers bearing a patient's name in a unit dose distribution system or a modified unit dose distribution system if the pharmacist personally checks and verifies by signature or initial all patient medication before it is administered to the patient.

535:15-5-7.5. Prohibited duties

These prohibited duties shall be performed by a pharmacist and shall not be performed by ~~pharmacy technicians or~~ supportive personnel:
(1) Final interpretation of the prescriber's original order.
(2) Performance of the prospective drug utilization review and determination of action to be taken when there is an indication of a drug interaction.
(3) Receipt of new phone-in prescriptions from prescribers or their agents.
(4) Determination of product selection if substitution is requested or approved.
(5) Certification of the completed prescription or medication order for accuracy and completeness before dispensing from the pharmacy department.
(6) Provision of patient counseling or drug information as necessary.

SUBCHAPTER 13. PHARMACY ~~TECHNICIANS AND~~ SUPPORTIVE PERSONNEL

535:15-13-1. Purpose

In an effort to assist the pharmacist with regular, routine, non-judgmental, mechanical and non-discretionary tasks so that the pharmacist may counsel patients and improve pharmaceutical care and therapeutic outcomes, this Subchapter allows certain tasks to be performed by and describes the role of pharmacy ~~technicians and describes the role of~~ supportive personnel as authorized at 59 O.S. Section 353.29.

535:15-13-3. Definitions

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

"Auxiliary supportive personnel" or "auxiliary supportive person" means all persons, other than pharmacists, interns and techs, who are regularly paid employees of the pharmacy and who work or perform tasks in the pharmacy that do

not require a permit or license (e.g. clerk, typist, delivery or data entry person, etc.).

"Certify a prescription" means the confirmation by the supervising pharmacist of the accuracy and completeness of the acts, tasks or functions undertaken by ~~pharmacy technicians or~~ supportive personnel to assist the pharmacist in the practice of pharmacy. This process shall be completed before the prescription is given to the patient.

"Pharmacy technician", "Technician" , "Tech", or "Rx Tech" means a person who has been issued a permit by the Board to assist the pharmacist and perform non-judgmental, technical, manipulative, non-discretionary functions in the prescription department under the pharmacist's immediate and direct supervision.

"Supportive personnel" ~~**or "support person"**~~ means technicians and auxiliary supportive ~~all~~ persons~~, other than pharmacists, interns and techs~~, who are regularly paid employees of the pharmacy and who work or perform tasks in the pharmacy ~~that do not require a permit or license (e.g. clerk, typist, delivery or data entry person, etc.)~~.

535:15-13-4. Pharmacy technician qualifications and training~~Qualifications~~

(a) A pharmacy technician must have completed a high school education or G.E.D. equivalence, be of good moral character, be non-impaired (e.g. alcohol or drugs) and have adequate education to perform assigned duties.

(b) A pharmacy manager employing a currently permitted technician must document training of that technician within 10 days of hire.

(c) The pharmacy technician must, at a minimum, satisfactorily complete a pharmacy technician on-the-job training (OJT) program described in 535:15-13-13.

(d) To be eligible for a pharmacy technician permit, an applicant must maintain compliance with the requirements in this Title, 535.25 and 535:15.

535:15-13-5. Supervision of pharmacy technicians

(a) All tasks performed by pharmacy technicians must be in a licensed ~~the~~ pharmacy in Oklahoma and must be accomplished under the immediate and direct supervision of a pharmacist who is currently licensed by the Board ~~pharmacist~~.

(b) A pharmacy technician may perform certain non-judgmental functions of dispensing as enumerated in this Subchapter, provided that whenever the pharmacist leaves the prescription department, other than for in-pharmacy counseling of a patient, all dispensing functions listed shall cease.

(c) A ratio of no more than two pharmacy technicians per supervising pharmacist on duty shall be maintained.

(d) A pharmacy intern working in the pharmacy will not affect or change this ratio.

(e) The pharmacist must certify, by reviewing, the completed prescription for accuracy and completeness before the prescription is released from the prescription department.

535:15-13-6. Duties

(a) The following tasks may be performed by ~~supportive~~ auxiliary supportive personnel:

(1) retrieve prescriptions or files as necessary;

(2) clerical tasks such as data entry, typing labels and maintaining patient profiles;

(3) secretarial tasks such as telephoning, filing, and typing;

(4) accounting tasks such as record keeping, maintaining accounts receivables, third party billing and posting;

(5) inventory control tasks including monitoring, pricing, dating, invoicing, stocking pharmacy, and preparation of purchase orders; and

(6) help maintain a clean and orderly pharmacy.

(b) The following tasks may be performed by pharmacy technicians:

(1) count and/or pour medications;

(2) prepackage (e.g. unit dose) and properly label medications;

(3) affix the prescription label to the proper container;

(4) affix auxiliary labels to the container as directed by the pharmacist;

(5) reconstitution of medications (i.e. liquid antibiotics);

(6) bulk compounding, including such items as non-sterile topical compounds, sterile bulk solutions for small volume injectables, sterile irrigation solutions and products prepared in relatively large volume for internal or external use. Documentation of a system of in-process and final checks and controls must be developed or approved by the certifying pharmacist and carefully and systematically enforced;

(7) functions involving reconstitution of single dose units of parenteral products that are to be administered to a given patient as a unit, and functions involving the addition of one manufacturer's prepared unit (whole or in part) to another manufacturer's prepared unit if the unit is to be administered as one dose to a patient. The pharmacist must establish the procedures for parenteral products and certify the ingredients, label and finished product;

(8) any duties auxiliary supportive personnel are allowed to perform; and

(9) assist the pharmacist in the annual CDS inventory. The pharmacist remains responsible for completeness and accuracy.

535:15-13-7. Prohibited duties

These duties may not be performed by ~~pharmacy technicians or~~ supportive personnel:

(1) The pharmacist must interpret the original prescription.

(2) The pharmacist must perform the prospective drug utilization review and determine action to be taken when there is an indication of a drug interaction.

(3) The pharmacist must receive new orally communicated ~~phone in~~ prescriptions from prescribers or their agents.

(4) The pharmacist must determine product selection if substitution is requested or approved.

(5) The pharmacist must prepare multi-ingredient, non-repetitive, cytotoxic or experimental drug I.V.'s, enteral or other sterile multi-ingredient medications and be responsible for weighing, measuring and calculating ingredients for compounding.

(6) The pharmacist must certify, by reviewing, the completed prescription for accuracy and completeness before the prescription is released from the prescription department.

(7) The pharmacist must provide patient counseling or drug information as necessary.

535:15-13-8. Technician annual ~~Annual~~ permit requirement

(a) Each pharmacy technician in Oklahoma shall obtain a permit annually before practicing as such.

(1) Upon meeting the qualifications listed in 535:15-13-4 and 535:25, applicants shall apply for a pharmacy technician permit on the form provided by the Board accompanied by such ~~a~~ fee authorized by the legislature and in the agency fee schedule ~~of twenty five dollars ($25~~).

(2) After the pharmacy technician has completed their portion of the application they must submit it to the pharmacy manager or designated pharmacist who has conducted the technician training for review and signature.

(3 ~~2~~) The pharmacy manager or designated pharmacist must first verify the applicant's completion of Phase I of the Board approved pharmacy technician training program. The signature by the pharmacist verifying technician training indicates that there is written training verification in the pharmacy available for Board inspection.

(4 ~~3~~) Each pharmacy technician who desires to continue to work as a tech shall annually, on or before the 1st of February each year, send to the Board of Pharmacy such ~~a~~ fee authorized by the legislature and in the agency fee schedule, ~~of twenty five dollars ($25)~~ with a completed Board application signed by the supervising pharmacist and the technician. Renewal applications will be sent to the technician's address on file in the Board office.

(b) The Board shall, at a minimum, consider the following factors in reviewing qualifications of persons who apply for a pharmacy technician permit within the state:

(1) any drug or alcohol related convictions of the applicant under any federal, state, or local laws;

(2) the furnishing of any false or fraudulent material in any application made to the Board;

(3) suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the distribution of any drugs, including controlled substances;

(4) compliance with permitting requirements under previously granted permits, if any;

(5) any use or abuse of an illegal CDS substance or a positive drug screen for such CDS substance or its' metabolite; and,

(6) any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(c) The Board shall have the right to deny a permit to an applicant if it determines that the granting of such a permit would not be consistent with the public health and safety.

535:15-13-9. Technician permit ~~Permit~~ display

(a) Each pharmacy technician shall conspicuously display a current original permit issued by the Board in the pharmacy where the tech is actively engaged as a pharmacy technician.

(b) A current 2 x 2 photo shall be attached in the upper right hand corner of the permit while on display in the pharmacy.

535:15-13-10. Technician address ~~Address~~ and employment change, and training at change

(a) A pharmacy technician must notify the Board, in writing, within ten days of change of employment.

(b) A pharmacy manager employing a currently permitted technician must document training of that technician at the new pharmacy as required in 535:15-13-13 (d).

(c) A pharmacy shall notify the Board, in writing, within ten days of the employment or termination of a pharmacy technician. The pharmacist must share any concern about public safety relating to the technician with the Board. (No Board action shall be taken without due process.)

(d) A pharmacy technician must notify the Board in writing, within ten days, of a change of address.

535:15-13-12. Work schedule display

(a) A ~~pharmacy shall display a~~ work schedule shall be conspicuously displayed in the pharmacy when both a tech and ~~a~~ an auxiliary supportive ~~support~~ person are working. The schedule shall indicate who is working as a tech and hours worked and who is working as ~~a~~ an auxiliary supportive ~~support~~ person and hours worked.

(b) The schedule shall indicate the proper ratio of technicians to supervising pharmacists.

(c) If a ~~tech or support~~ supportive person is found to be performing duties not listed on the schedule (e.g. ~~a~~ an auxiliary supportive ~~support~~ person working as a technician), the auxiliary supportive ~~support~~ person, the technician, the pharmacy, and the supervising pharmacist will be considered to be in violation of this Chapter.

535:15-13-13. Pharmacy technician training

(a) The pharmacy manager shall be responsible for the development and/or implementation of a pharmacy technician training program.

(1) The instructional text of the training program shall be kept in the pharmacy and only upon request submitted to the Board for approval.

(2) The program shall be designed to train personnel to perform allowed non-professional functions, as described in OAC 535:15-5 and 535:15-13.

(3) Minimum standards for technician training programs shall be those set out in the Board approved "Pharmacy Technician Training Guidelines".

(A) Pharmacy technician applicants shall complete Phase I training before they may apply for an Oklahoma Pharmacy Technician permit. A pharmacy technician permit must be received before performing any of the duties of pharmacy technicians authorized in OAC 535:15-5 and 535:15-13.

(B) A technician shall not have met Board requirements until they have successfully completed Phase II of pharmacy technician training.

(C) A pharmacy technician must complete Phase II within ninety (90) days after issuance of a pharmacy technician permit.

(D) Pharmacy technician applicants shall not have fully received their permits until they have completed Phase II of pharmacy technician training.

(E) If the pharmacy technician fails to complete Phase II within 90 days, the pharmacist manager shall notify the Board in writing. ~~and the permit will be cancelled~~.

(i) If the pharmacy technician fails to complete Phase II within 90 days,

(I) the pharmacy technician permit is automatically void; and,

(II) the pharmacy technician shall return such permit to the Board.

(ii) Such pharmacy technician may apply for a new pharmacy technician permit when they have again satisfactorily completed Phase I training with an employing pharmacy, provided the provisions of these rules have not been violated by the pharmacy technician.

(b) The pharmacist manager, or another pharmacist in the pharmacy whom the pharmacist manager may designate, shall conduct the training and attest to its successful completion.

(c) The pharmacist manager shall assure that the pharmacy technician remains competent through continuing on-the-job training.

(d) A pharmacy manager employing a currently permitted technician must document training of that technician within 10 days of hire at such pharmacy. Documentation of this training must be kept in the pharmacy and available for Board inspection.

(e) The pharmacist manager shall be responsible for assuring proof of technician training is maintained in the pharmacy and such proof is available for Board inspection.

[OAR Docket #04-908; filed 5-14-04]

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

[OAR Docket #04-909]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-2. [AMENDED]
535:20-9-3. [AMENDED]
535:20-9-4. [AMENDED]

AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, and 353.24 - 353.26, 353.29 and 364.

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SUPERCEDED EMERGENCY ACTION:
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INCORPORATED BY REFERENCE:
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ANALYSIS:
The revised 535:20-9-2 clarifies that a drug order means a prescription drug order. The amended rules 535:20-9-3 and 535:20-9-4 describe minimum qualifications as including the same as those in 535:20-7-6 and cleans up cites to 535:20-7-7.3 and 535:20-7-7.4. They describe in plain language the requirements for maintaining and storing prescription records for medical gas suppliers. Rule 535:20-9-4 additionally describes the records a medical gas distributor must maintain as well as prescription records.

Medical gas supplier and medical gas distributor rules referred to wholesaler rules that had been moved to a new cite, these corrected cites match them up again.

Medical gas suppliers and medical gas distributors wanted clear guidance on what is required regarding maintenance of prescription records.

CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

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 9. MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

535:20-9-2. Definitions

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

"Drug order" means ~~an~~ a prescription drug order issued by a licensed medical practitioner for medical gas.

"Medical gas" means those gases and liquid oxygen upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed one of several cautions, such as: "RX Only" that replaces "Caution - Federal Law prohibits dispensing without prescription".

"Medical gas distributor" means a person licensed to distribute medical gases on drug orders and to suppliers or other entities licensed to use, administer, or distribute medical gases.

"Medical gas supplier" means a person licensed to supply medical gases only on drug orders.

535:20-9-3. Medical gas suppliers

(a) **Licensing requirement.** Before conducting interstate and/or intrastate transactions in Oklahoma, a medical gas supplier must be licensed by the Board.

(1) A medical gas supplier permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new medical gas supplier permit.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas supplier permit.

(b) **Minimum required information for licensure.** The minimum required information for medical gas supplier licensure shall be the same as that information required by 535:20-7-4 regarding wholesalers.

(c) **Minimum qualifications.** Medical gas suppliers must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(1) Medical gas suppliers must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:20-7-5 regarding wholesalers.

(d) **Personnel.** Personnel employed by medical gas suppliers shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements. The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-7-5 and 535:20-7-6 for personnel employed in wholesale distribution.

(e) **Minimum requirements.** Medical gas suppliers must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) These minimum requirements shall be the same as those set forth in 535:20-7-7.3 regarding wholesalers security, except for (a) Paragraph (2) and (3) ~~of Subsection (d)~~ and 535:20-7-7.4 regarding storage except for (a) Paragraphs (1) and ~~,~~ (2) ~~and (3) of Subsection (e)~~.

(2) Medical gases housed by a medical gas supplier shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(f) **Requirements.** Medical gas suppliers shall not supply medical gas without a drug order. Drug orders may be issued for institutional or licensed medical practitioner office use as well as to a patient.

(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

535:20-9-4. Medical gas distributors

(a) **Licensing requirement.** Before conducting interstate and or intrastate transactions in Oklahoma, a medical gas distributor must be licensed by the Board.

(1) A medical gas distributor permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new medical gas distributor permit.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas distributor permit.

(b) **Minimum required information for licensure.** The minimum required information for medical gas distributors licensure shall be the same as that information required by 535:20-7-4 regarding wholesalers.

(c) **Minimum qualifications.** Medical gas distributors must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(1) Medical gas distributors must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:20-7-5 regarding wholesalers.

(d) **Personnel.** Personnel employed by medical gas distributors shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements. The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-7-5 and 535:20-7-6 for personnel employed in wholesale distribution.

(e) **Minimum requirements.** Medical gas distributors must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) These minimum requirements shall be the same as those set forth in 535:20-7-7.3 regarding wholesalers

security, except for Paragraphs (2) and (3) of Subsection (a) ~~(d)~~ and 535:20-7-7.4 regarding storage except for Paragraphs (1) and ~~,~~ (2) ~~and (3)~~ of Subsection (a) ~~(e)~~.

(2) Medical gases housed by a medical gas distributor shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(f) **Requirements.** Medical gas distributors shall distribute only to an entity licensed to receive medical gas or upon a practitioner's drug order. A pharmacy, dentist, or licensed practitioner's practice license verifies their authority to receive Rx Only medical gases.

(1) An original or copy of a prescription drug order must be kept at the licensed location distributing the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

(3) Distributors that sell to licensed suppliers must keep an updated copy of each supplier's license on file.

[OAR Docket #04-909; filed 5-14-04]

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

[OAR Docket #04-910]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, 354, and 364.
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ANALYSIS:
The revision in 535:25-3-3 adds deferred sentence, or deferred prosecution, or pleading no contest, abuse of alcohol, use of illegal or habit forming drugs, practicing without reasonable skill to consideration factors for licensure applicants. They add to registrant conduct requirements in 535:25-7-3 and correct punctuation in 535:25-9-3.

These rules allow the board to consider additional safety factors in licensure decisions. They allow the Board to take corrective action for violations of conduct and fix a punctuation error.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

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. APPLICANTS, REGISTRANTS, AND APPLICATIONS

535:25-3-3. Qualifications and requirements for registrant applicants

(a) The Board shall consider at least the following factors in reviewing the qualifications of registrants or applicants, license e.g.:

(1) Any ~~any~~ charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under any federal, state, or local laws relating to drug samples, drug distribution, or distribution of controlled substances;

(2) Any ~~any~~ felony charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under federal, state, or local laws;

(3) The ~~the~~ applicant's or registrant's past experience with prescription drugs, including controlled substances;

(4) The ~~the~~ furnishing by the applicant or registrant of fictitious, false, misleading, or fraudulent material in any application (original, new or renewal) or failing to provide information relevant to this application;

(5) The ~~the~~ suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant or registrant;

(6) Compliance ~~compliance~~ with licensing requirements under previously granted licenses, if any;

(7) Compliance ~~compliance~~ with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section;

(8) Abuse of alcohol or habit-forming drugs, or use of illegal CDS drugs or positive drug screen for such illegal substance or its' metabolite;

(9) Practicing as a registrant without reasonable skill and safety by reason of use and/or abuse of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition; and,

(10) Any ~~any~~ other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(b) The applicant shall be forthright and open in the provision of information to the Board in the application process. No license, permit or certificate shall be awarded to an applicant who does not provide the Board with complete open and honest responses to all requests for information.

(c) The applicant shall be candid in regards to providing information related to any academic misconduct, malpractice, legal, or disciplinary action.

(d) The Board shall have the right to deny a license to an applicant or registrant if it determines that the granting of such a license would not be consistent with the public health and safety.

SUBCHAPTER 7. RULES OF REGISTRANT CONDUCT

535:25-7-3. Registrant conduct ~~Compliance with laws~~

(a) Registrants will at all times conduct business in conformity with all federal, state and municipal laws.

(b) Registrants shall conduct themselves at all times in a manner which will entitle them to the respect and confidence of the community in which they practice.

(c) Registrants shall not abuse alcohol or drugs, nor shall they use an illegal CDS substance, nor test positive for such substance or its' metabolite.

SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT

535:25-9-3. Violating laws or rules

A registrant shall not violate directly, (or indirectly, through actions of another), assist or abet in the violation of, or conspire to violate, any provision of the Oklahoma Pharmacy Act, Title 59, 353 et seq., the Prescription Drug Marketing Act (21 U.S.C., Sec. 331 et seq.), the Robinson-Patman Act (15 U.S.C., Sec. 13 et seq.), or federal, state and local laws and rules. ~~Governing registrants;~~

[OAR Docket #04-910; filed 5-14-04]

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

[OAR Docket #04-905]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Rules
570:1-1-2. Definitions [AMENDED]
AUTHORITY:
State Board For Property & Casualty Rates, 36 O.S. §§ 901.1, 902.2 and 907
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ANALYSIS:
The proposed amendments to Rule 570:1-1-2 change the definition of the term "automatic rate revision" due to changes to 36 O.S. § 902.1.
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.

570:1-1-2. Definitions

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

"Act" means the Oklahoma Insurance Rating Act.

"Advisory organization" means every group, association or other organization of insurers, whether located inside or outside this State, which makes no filings but assists insurers who make their own filings, by collecting and furnishing of loss expense statistics and other data.

"Appeal" means the process of obtaining judicial review of any Order or decision of the Board. Appeals from the Board

are to the Supreme Court of Oklahoma and may be brought upon completion of all Board Proceedings.

"Attorney" means any person licensed and/or authorized to engage in the practice of law by the Rules and Orders of the Supreme Court of Oklahoma.

"Automatic rate revisions" means rate adjustments as provided in the rules of this Chapter which permit an insurer, upon proper notice, to use a rate up to 15% above or any amount below their last filed rate.

"Board" means the State Board for Property and Casualty Rates of Oklahoma.

"Board action" means any action taken, within the powers of the Board, by majority vote of the members.

"Board Proceedings" shall be conducted in accordance with the applicable provisions of the Insurance Code (Title 36, Oklahoma Statutes) and the Administrative Procedures Act (Title 75, Oklahoma Statutes, Section 301 et seq).

"Certification" means the certification of a filing as complete when used in this Chapter.

"Commissioner" means the Insurance Commissioner of the State of Oklahoma or his designee.

"Department" means the Insurance Department of the State of Oklahoma.

"Deviations" means adjustments upward or downward in the approved rating organization rate or loss cost level or rule. Such deviations require Board approval as provided under the rules of this Chapter.

"Excessive rate" means any rate which is unreasonably high for the insurance provided, or is unreasonable because

(A) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable and

(B) the rate is unreasonably high for the insurance provided.

"Filed" means recognizing a submission or filing as in compliance with the Act and the rules of this Chapter by retaining it as a permanent file, as opposed to rejecting it as not in compliance with the Act and the rules.

"Filing factors" means the factors set forth in the Act for the Board to consider and weigh when reviewing a filing.

"Hearing" means any quasi-judicial proceeding conducted by the Board for a specific purpose or purposes, with a finding of fact and a decision rendered therefrom, whether called by motion of the Board or set upon motion of a party.

"Inadequate rate" means any rate which

(A) is unreasonably low for the insurance provided, and the continued use of such rate endangers, or if continued would endanger, the solvency of the insurer, or

(B) is unreasonably low for the insurance provided and the continued use of such rate by the insurer has, or if continued would have, the effect of destroying competition or creating a monopoly, or

(C) is insufficient to cover projected losses, expenses and a reasonable margin for profit for the line of insurance coverage to be offered in this state by the filer.

"Individual proceedings" means the process employed by the Board for the formulation of an order.

"Insurance Code" means the provisions of Title 36, Oklahoma Statutes, as amended.

"Insurance Commissioner" means the duly qualified, serving and acting Constitutional officer of the Executive branch of the State Government charged with the duties and powers created in the Insurance Code (Title 36, Oklahoma Statutes) not reserved to the State Board for Property and Casualty Rates. The Commissioner serves as Chairman of the Board.

"Insurance Commissioner's Designee" means any member of the Insurance Commissioner's staff temporarily designated by him to act in his place and under his direction, in order to fulfill his duties as a member of the Board. The Designee shall preside over Board meetings when appearing and acting for the Commissioner.

"Insurance Department" means that department of State Government created by the laws of Oklahoma to enforce the Insurance Code and shall consist of the Insurance Commissioner and the State Board for Property and Casualty Rates.

"License" means the whole or part of any Board permit, certificate, approval, registration, charter or similar form of permission required by law.

"Licensing" means the Board process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

"Meetings" means all other sessions of the Board whether regularly scheduled or specially called in accordance with the rules of this Chapter.

"Order" means all or part of the final or intermediate decision (whether affirmative, negative, injunctive, or declaratory in form) by the Board in any matter other than rulemaking, or rulings on motions or objections made during the course of a hearing, or the exceptions made during the course of a hearing or the exclusions described in subparagraphs (C) and (D) under the definition of RULE in this Section.

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

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

"Prohibited expenses" means expenses prohibited by the Act and Board Rules from inclusion in the factors to be given due consideration by the Board in reviewing a filing. [See 570:10-1-22 and 36 O.S. §902.2 (Supp.1988).]

"Quorum" means a majority (three members) of the duly constituted Board and is the number of members required to conduct the official business of the Board.

"Rate filing" means any filing made for the purpose of establishing or changing a rate, whether the filing addresses the rate as a single number or if it individually addresses only the prospective loss cost component or the component which accounts for expenses, profit and variations in loss experience.

"Rating organization" means a corporation, an unincorporated association, a partnership or an individual, whether located within or without the state, organized and licensed for

the purpose of making rates, loss costs, rating plans or rating systems. No insurer shall be deemed to be a rating organization.

"Rule" means any Board statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the Board. The term includes the amendment or repeal of a prior rule but does not include:

(A) the issuance, renewal or denial of licenses;

(B) the approval or disapproval of rates;

(C) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public;

(D) interagency memoranda; or

(E) declaratory rulings issued pursuant to these Rules.

"Rule making" means the process employed by the Board for formulation of a rule.

"State Board For Property and Casualty Rates of Oklahoma" is composed of the Insurance Commissioner, who is Chairman and four (4) Board Members who are appointed to the Board by the Governor with the advice and consent of the Senate.

"Stay" means the suspension of the execution or decision of the Board.

"Technicians" means the independent consultant the Commissioner or Board retains to review rate filings.

"Unfairly discriminatory rate" means:

(A) A rate is not unfairly discriminatory because it is based in part upon the establishment or modification of classifications of risks based upon:

(i) the size of the risk,

(ii) the expense or difficulty in management of the risk,

(iii) the individual experience of the risk,

(iv) the location or dispersion of the risk, or

(v) any other reasonable consideration attributable to the risk.

(B) A rate is not unfairly discriminatory in relation to another in the same class of business if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures, if the rates reflect the differences with reasonable accuracy.

(C) A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks do not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(D) A rate shall never be based upon race, color, creed or national origin.

[OAR Docket #04-905; filed 5-13-04]

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

[OAR Docket #04-906]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
State Board For Property & Casualty Rates, 36 O.S. §§ 901.1, 902.2 and 907

DATES:
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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The proposed amendments to Rule 570:10-1-2 change the definition of "automatic rate revision" due to amendments to 36 O.S. § 902.1. The proposed amendments to Rule 570:10-1-3 provide for form filings by line of business for ease and timeliness of the review of filings; provide for the inclusion of the Insurance Department's assigned filing number with a filing for a change in rates; and delete the wording requiring filing fees for "rules of application only," because amendments to 36 O.S. § 348.1(A)(3) clarifies that the filing fees are now required; remove "filing memorandum," because filing memorandum are now part of the NAIC Uniform Transmittal document, thus making a separate document unnecessary; provide 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; add a provision allowing withdrawal of pending filings before approval or disapproval in the same manner as Insurance Department Rule 365:15-1-3(b)(9)(H) which applies to all property and casualty filings; and set out the documentation that is to be submitted with a filing for commercial loss costs, manual rules and rates in a similar fashion to Insurance Department Rule 365:15-1-3(b)(9) which outlines the requirements for a filing for manual rule or rates. The proposed amendments to Rule 570:10-1-7 reflect the changes to 36 O.S. § 902.1 and to 36 O.S. § 929, both of which were effective on November 1, 2003. The revocation of Rule 570:10-1-10 is proposed, because fidelity, surety and guaranty bonds are exempt from rate and manual rule filing pursuant to 36 O.S. § 997(A)(4)(f). Proposed new Rule 570:10-1-38 is currently applicable

to property and casualty filings pursuant to Insurance Department Rule 365:15-7-23 for filings under the Insurance Commissioner's jurisdiction and should be applicable to filings under the Board's jurisdiction. Proposed new Rule 570:10-1-39 provides for the submission of eligibility requirements for each tier of a multi tiered filing. Proposed new Rule 570:10-1-40 clarifies the procedure for resubmission of filings.

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.

570:10-1-2. Definitions

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

"Act" means the Oklahoma Insurance Rating Act.

"Advisory organization" means every group, association or other organization of insurers, whether located inside or outside this State, which makes no filings but assists insurers who make their own filings, by collecting and furnishing of loss expense statistics and other data.

"Appeal" means the process of obtaining judicial review of any Order or decision of the Board. Appeals from the Board are to the Supreme Court of Oklahoma and may be brought upon completion of all Board Proceedings.

"Attorney" means any person licensed and/or authorized to engage in the practice of law by the Rules and Orders of the Supreme Court of Oklahoma.

"Automatic rate revisions" means rate adjustments as provided in the rules of this Chapter which permit an insurer, upon proper notice, to use a rate up to 15% above or <u>any amount</u> below their last filed rate.

"Board" means the State Board for Property and Casualty Rates of Oklahoma.

"Board action" means any action taken, within the powers of the Board, by majority vote of the members.

"Board Proceedings" shall be conducted in accordance with the applicable provisions of the Insurance Code (Title 36, Oklahoma Statutes) and the Administrative Procedures Act (Title 75, Oklahoma Statutes, Section 301 et seq).

"Certification" means the certification of a filing as complete when used in this Chapter.

"Commissioner" means the Insurance Commissioner of the State of Oklahoma or his designee.

"Department" means the Insurance Department of the State of Oklahoma.

"Deviations" means adjustments upward or downward in the approved rating organization rate or loss cost level or rule. Such deviations require Board approval as provided under the rules of this Chapter.

"Excessive rate" means any rate which is unreasonably high for the insurance provided, or is unreasonable because

(A) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable and

(B) the rate is unreasonably high for the insurance provided.

"Filed" means recognizing a submission or filing as in compliance with the Act and the rules of this Chapter by retaining it as a permanent file, as opposed to rejecting it as not in compliance with the Act and the rules.

"Filing factors" means the factors set forth in the Act for the Board to consider and weigh when reviewing a filing.

"Hearing" means any quasi-judicial proceeding conducted by the Board for a specific purpose or purposes, with a finding of fact and a decision rendered therefrom, whether called by motion of the Board or set upon motion of a party.

"Inadequate rate" means any rate which

(A) is unreasonably low for the insurance provided, and the continued use of such rate endangers, or if continued would endanger, the solvency of the insurer, or

(B) is unreasonably low for the insurance provided and the continued use of such rate by the insurer has, or if continued would have, the effect of destroying competition or creating a monopoly, or

(C) is insufficient to cover projected losses, expenses and a reasonable margin for profit for the line of insurance coverage to be offered in this state by the filer.

"Individual proceedings" means the process employed by the Board for the formulation of an order.

"Insurance Code" means the provisions of Title 36, Oklahoma Statutes, as amended.

"Insurance Commissioner" means the duly qualified, serving and acting Constitutional officer of the Executive branch of the State Government charged with the duties and powers created in the Insurance Code (Title 36, Oklahoma Statutes) not reserved to the State Board for Property and Casualty Rates. The Commissioner serves as Chairman of the Board.

"Insurance Commissioner's Designee" means any member of the Insurance Commissioner's staff temporarily designated by him to act in his place and under his direction, in order to fulfill his duties as a member of the Board. The Designee shall preside over Board meetings when appearing and acting for the Commissioner.

"Insurance Department" means that department of State Government created by the laws of Oklahoma to enforce the Insurance Code and shall consist of the Insurance Commissioner and the State Board for Property and Casualty Rates.

"License" means the whole or part of any Board permit, certificate, approval, registration, charter or similar form of permission required by law.

"Licensing" means the Board process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

"Meetings" means all other sessions of the Board whether regularly scheduled or specially called in accordance with the rules of this Chapter.

"Order" means all or part of the final or intermediate decision (whether affirmative, negative, injunctive, or declaratory in form) by the Board in any matter other than rulemaking, or

rulings on motions or objections made during the course of a hearing, or the exceptions made during the course of a hearing or the exclusions described in subparagraphs (C) and (D) under the definition of RULE in this Section.

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

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

"Prohibited expenses" means expenses prohibited by the Act and Board Rules from inclusion in the factors to be given due consideration by the Board in reviewing a filing. [See 570:10-1-22 and 36 O.S. § 902.2~~ (Supp.1988)~~.]

"Quorum" means a majority (three members) of the duly constituted Board and is the number of members required to conduct the official business of the Board.

"Rating organization" means a corporation, an unincorporated association, a partnership or an individual, whether located within or without the state, organized and licensed for the purpose of making rates, lost costs, rating plans or rating systems. No insurer shall be deemed to be a rating organization.

"Rule" means any Board statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the Board. The term includes the amendment or repeal of a prior rule but does not include:

(A) the issuance, renewal or denial of licenses;

(B) the approval or disapproval of rates;

(C) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public;

(D) interagency memoranda; or

(E) declaratory rulings issued pursuant to these Rules.

"Rule making" means the process employed by the Board for formulation of a rule.

"State Board for Property and Casualty Rates of Oklahoma" is composed of the Insurance Commissioner, who is Chairman and four (4) Board Members who are appointed to the Board by the Governor with the advice and consent of the Senate.

"Stay" means the suspension of the execution or decision of the Board.

"Technicians" means the independent consultant the Commissioner or Board retains to review rate filings.

"Unfairly discriminatory rate" means:

(A) A rate is not unfairly discriminatory because it is based in part upon the establishment or modification of classifications of risks based upon:

(i) the size of the risk,

(ii) the expense or difficulty in management of the risk,

(iii) the individual experience of the risk,

(iv) the location or dispersion of the risk, or

(v) any other reasonable consideration attributable to the risk.

(B) A rate is not unfairly discriminatory in relation to another in the same class of business if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures, if the rates reflect the differences with reasonable accuracy.

(C) A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks do not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(D) A rate shall never be based upon race, color, creed or national origin.

570:10-1-3. Filing procedure for rates, loss costs, rating plans, schedules, manuals, and revisions thereto

(a) **Filings submitted or rejected.** In order to implement the filing requirements of 36 O.S., Article 9, rates, loss costs, rating plans, schedules, manuals and revisions thereto by insurance companies and rating organizations licensed in Oklahoma, shall be submitted in compliance with the rules of this Chapter or shall be rejected for filing with the Board by the Insurance Commissioner, subject to a hearing thereon, and the entity which made such submission shall be so notified.

(b) **Filing requirements.** The Insurance Code, Article 9, requires that each company shall make its own filings by line of business directly with the Board except that 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.

(1) Each filing, that includes a change in rates and or manual rule, received in our office after September 1, 1991 shall include the ~~previous filing's Oklahoma~~ identifying filing number of the filing containing the manual rule and/or rate to be replaced as assigned by the Insurance Department. This number is displayed in the upper right corner of the Department's "A-1" form or notice of approval. The filing letter will state that the previous filing is being superseded by the current one. This would not be required on new programs being filed for the first time.

(2) Every overall rate change filing will require one complete copy of the revised manual for each company included in the filing.

(c) **Filing fees.**

(1) Rate filing requests must be accompanied by the proper fees. Checks should be made payable to the Oklahoma Insurance Department. Filings by groups must include the proper fee for each individual insurer for which the filing is applicable.

(2) Filings by rating organizations must include a statement or list as to the number of members or subscribers if less than the maximum fee is tendered. The maximum filing fee for a rating organization is specified in the Insurance Code.

(3) Filing fees are not required for filings that are not rate request filings including but not limited to the following:

(A) Consent-to-rate filings.

(B) Individual risk submissions.

(C) Individual risk filings for excess workers' compensation.

(D) Changing the effective date for Bureau filings by Members or Subscribers.

(E) Additional information.

(F) Advising effective date for approved filing and/or submitting final printed materials.

(G) Dividend plans.

(H) Error corrections.

(I) ~~Rules of application only.~~

~~(J)~~ Informational filings (not required to be filed).

(~~K~~J) Amendments to pending filings.

(~~L~~K) Withdrawal of obsolete filings having no impact on Oklahoma policyholders.

(~~M~~L) Nonadoption of Bureau filings that would be duplication of a filing in effect for the filer.

(d) **Address requirements.** All filings shall be addressed to: State Board for Property and Casualty Rates, P.O. Box 53408, Oklahoma City, Oklahoma 73152.

(e) **Number of copies.** All filings, including the cover letter, ~~filing memorandum,~~ all exhibits, rate sheets, and additional information submitted to the Board shall be submitted with two (2) legible collated copies (sets) 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 company.

(f) **Effective date of filings.** The effective date of rate and rule filings and the dates of required action by the Board are governed by the applicable provisions of the Insurance Code.

(g) **Notice of Board action.** The Board shall indicate action taken by use of "Notice Form A-1", one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or its action may be indicated by stamp, with the individual stamping same placing his initial thereunder. The Form A-1 shall also be used to request information or to question any part of the filing or its exhibits. Responses to Board questions must be submitted in writing with ~~equal number of copies as required for any filing~~ two legible copies of all material. Nothing in the rules of this Chapter shall preclude the Board from the use of other forms of communication to secure information from the filing entity.

(h) **Life, accident and health insurance.** No filings shall be made with the Board for those forms of insurance coverages set forth in Article 9 of the Insurance Code as exempt from the Oklahoma Insurance Rating Act.

(i) **Postage requirements.** No submissions shall be accepted which arrive at the Board offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(j) **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.

(k) **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.

570:10-1-7. Automatic rate revisions

(a) **Definitions.** Automatic Rate Revisions apply to rate revisions made pursuant to Section 902.1 of the Insurance Code and the rules of this Chapter. ~~The following words or terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~(1) **"Add-ons"** means factors or relativities such as increased limits factors, classification relativities, territorial relativities or similar factors.~~

~~(2) **"Adjustments"** means any changes to the filed rate as a result of add-ons or deductibles.~~

~~(3) **"Deductibles"** means a specific dollar or percentage retention of risk by the insured, which results in a reduction of coverage provided.~~

~~(4) **"Deviations"** means upward or downward percentage departures from the filed rates of a rating organization.~~

~~(5) **"Filed rate"** means base rates, manual rates, and rating plans which establish standards for measuring variations in characteristics and/or expense not reflected in experience, rules, schedules, adjustments, add-ons, deductibles or deviations filed with the Board by an insurer or rating organization on behalf of its member and subscriber insurers that have been reviewed by the Board as a rate filing request and have been approved or stamped filed.~~

(b) ~~**Increases or decreases.** Automatic Rate Revisions are increases or decreases to filed rates by an insurer or rating organization on behalf of individual members or subscribers as an agency filing of no more than fifteen percent (15%) by line and by coverage. This Section does not apply to premium increases or decreases from:~~

~~(1) change in hazard of the insured's operations; or~~
~~(2) change in magnitude of the exposure basis for the insured (i.e. changes in payroll, sales, etc.); or~~
~~(3) "A" rates, excess consent rates, or judgment rates that are permitted by the Rating Act or application of debits or credits provided for in an individual risk rating plan previously approved by the Board.~~ **Adoption of new loss costs.** When a company adopts new loss costs either automatically or by reference, a new filed rate is established. The old filed rate is eliminated as is the flex filing based on those old rates. If a company with an already in place flex filing elects to:
(1) adopt the loss cost change, the flex based on old filed rates is eliminated and, if flex is desired, a new flex filing off current filed rates is required;
(2) delay adoption of loss cost change to a future day, furnish the Board notice and new implementation date and refile a flex filing when the change is adopted.

(c) **Revisions within 15%.** Nothing in the rules of this Chapter shall prevent an insurer from revising and using a base rate level which is either reduced by any amount or increased by no more than fifteen percent (15%) by line and by coverage of the last filed rate. The insurer shall, however, file on or before the effective date of such automatic rate revision a notice with the Board of such percentage revision in the rate, setting forth the effective date of the filed rate upon which its Automatic Rate Revision is to be applied and the percentage by which the rate level is revised. The insurer shall file with the Board one copy of the manual page in effect at the time of request for the Automatic Rate Revision.

(d) **Scope.** The scope of the review by the Board will not include a review by it, the Commissioner or staff to determine if the rates are inadequate or excessive.

570:10-1-10. Fidelity and surety filings [REVOKED]

~~Rate filings on fidelity, surety or guaranty bonds must be filed in compliance with the applicable provisions of Article 36 of the Insurance Code separately with the Insurance Commissioner.~~

570:10-1-38. Waiver of Premium

Insurers may waive additional premium due from an insured. An insurer may also waive return premium due to an insured. However, any return premium shall be returned to the insured upon request. The amount to be waived for both the additional premium and the return premiums shall be shown on a manual rule page and filed with the Insurance Commissioner.

570:10-1-39. 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.

570:10-1-40. Resubmittal of rejected filings

All resubmitted filings shall be presented to the Board in the same manner required by this subchapter for an original filing. In addition the completed transmittal form shall state the full and complete history of the filing, the reason for rejection, and the factors that distinguish the resubmittal to warrant reconsideration.

[OAR Docket #04-906; filed 5-13-04]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #04-912]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Education and Examination Requirements
605:10-3-7 [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-4 [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1 [AMENDED]
Subchapter 15. Disclosures
605:10-15-4 [AMENDED]
Appendix A. Residential Property Condition Disclosure Statement [REVOKED]
Appendix A. Residential Property Condition Disclosure Statement [NEW]
AUTHORITY:
Title 59 O.S., Section 858-208. Oklahoma Real Estate Commission
DATES:
Comment period:
February 2, 2004 through March 5, 2004
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July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
Superseded rule:
Subchapter 15. Disclosures
605:10-15-4 [AMENDED]
Appendix A. Residential Property Condition Disclosure Statement [REVOKED]
Appendix A. Residential Property Condition Disclosure Statement [NEW]
Gubernatorial approval:
October 8, 2003
Register publication:
21 Ok Reg 39
Docket number:
03-3134

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Section 605:10-3-7 was amended to allow a provisional sales associate who has received orders for active military service to request an extension of time for completion of the Provisional Postlicense Course of Real Estate, Part II of II, as the current allotted time is not enough time for completion of the course. If they do not complete the course within the required time frame, their license will lapse, and they would have to reapply for a license as a provisional sales associate.

Many amendments were made to Section 605:10-9-4. The words "real estate" were deleted so a broker, when advertising, can be identified in all ads, not just real estate advertisements. Changed the word "each" to "a", so language throughout the rules is consistent. Deleted the word "trade" in the term "franchise trade name" to clarify the distinction between a franchise trade name and the business trade name of a broker. The rule was changed to allow identification of the brokers in advertisements. Language was amended so the public, licensees, board members, and staff will either be able to identify the broker by the name or commission staff will be able to identify the broker by looking up the business trade name of the broker on the computer records, which will allow Commission staff to determine if the broker is licensed. New language does not allow a broker to use a franchise name as the complete business trade name. This was done so the broker's business trade name will be distinctively different than the franchise name. Deleted the words " by the public", so in associates advertising, the broker's reference is prominent, conspicuous and easily identifiable by the public, licensees, board members, and staff, not just the public. Amended language so an associate would be required to get a team name approved by the broker, to be consistent with the broker/associate relationship. Language was changed to delete a burdensome requirement, and still meet the goal of being able to determine who the team members of a team are. Added the word "yard" to clarify that it is the yard sign that has to contain the name or trade name and office telephone number of the broker, if a sign rider with the associate's contact information is allowed by a broker to be attached to a yard sign.

Language was added to Section 605:10-13-1 to establish minimum requirements for storage of trust account and transaction records on alternative media. This was done for protection of the public, and to implement a standard.

The amendment to Section 605:10-15-4 supercedes an emergency rule. Changed the dates to November 1, 2003, which is the latest date the Residential Property Condition Disclosure Statement was amended by emergency rule and is also the effective date of amendments to Title 60. The changes are the same as the emergency rule.

The amendment to Appendix A supercedes an emergency rule. In 2003, House Bill 1319 added an additional disclosure statement requirement for a seller of property located in this state to include a statement of whether or not the seller is aware of existence of prior manufacturing of methamphetamine. Existing language in Title 60 requires the disclosure statement to be amended by rule as necessary and appropriate. The existence of prior manufacturing of methamphetamine is more encompassing than simply knowing of residue from methamphetamine manufacturing, which was the question on the disclosure statement before the emergency rule was promulgated. The question on the disclosure statement in regard to methamphetamine is the same as the emergency rule. Added two (2) new disclosure questions in regard to mold to place the buyer on notice whether or not the property has been inspected for mold and if mold has been remediated from the property. The two (2) new disclosure questions in regard to mold are the same as the emergency rule.

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 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-7. Provisional sales associate postlicense education requirement

(a) **Purpose.** The purpose of the provisional sales associate postlicense education requirement is to provide an educational program through which real estate provisional sales associate licensees can become more competent, knowledgeable and perfect their ability to engage in real estate activities for which they are licensed. Such activities involve facts and concepts about which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(b) **Goals.** The goals of the provisional sales associate postlicense education requirements are:

(1) To provide newly licensed individuals with the opportunity to obtain current information and knowledge to enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.

(2) To assure that licensees are provided with relevant information pertaining to practices which directly relate to real estate business.

(3) To assure that the provisional sales associate is provided with information regarding new and/or changing laws and regulations which affect the real estate business.

(4) To assure that the consumers interest is protected from unknowledgeable licensees.

(c) **Objectives.** The objectives of postlicensing education are to:

(1) Assist newly licensed individuals by having available a practical educational program wherein the information attained can be put into practice.

(2) To help licensees expand and enhance their knowledge and expertise so as to continually be effective, competent, and ethical as they practice real estate.

(3) To encourage licensees to gain additional education for specialization in particular areas of real estate.

(d) **Subject content.**

(1) On and after July 1, 1993, a provisional sales associate shall be required to successfully complete prior to the first license expiration date, forty-five (45) clock hours of postlicensing education or its equivalent as determined by the Commission. Such course of study shall be referred to as the Provisional Postlicense Course of Real Estate, Part II of II and shall encompass the following areas of study:

(A) Real Estate Marketplace
(B) Marketing Real Estate
(C) Personal Marketing
(D) The Qualifying Process
(E) Prospecting and Negotiating
(F) Financing Real Estate, Investments and Exchanges
(G Financial Documents
(H) Duty to Account
(I) Title Search
(J) Risk Management
(K Broker Relationships With Parties to a Transaction
(L) Property Management

(M) Laws and Regulations Affecting Real Estate Practice

(N) Disciplinary Action.

(2) The Commission has prepared a syllabus with prescribed content for the postlicense education course encompassing the areas as listed in (1) of this subsection. However, this shall not prevent those who are specializing in a specific real estate area from requesting approval of such offering if it can be proven to meet the purpose, goals and objectives as listed in this Section.

(e) **Entities allowed to seek approval.** The Commission may approve and/or accept any offering or combination of offerings which consists of forty-five (45) clock hours or more or its equivalent as determined by the Commission provided by an entity which meets the purposes, goals and objectives of the provisional sales associate postlicense education requirement.

(f) **Offerings.**

(1) The Commission may accept the following offerings as proof of meeting the postlicense education requirement:

(A) Any offering which is approved and presented by those entities enumerated in Title 59, O.S., subsection B, of 858-307.2 of the "Code."

(B) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.

(C) Any offering in real estate, or directly related area, not accepted in paragraphs (A) or (B) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.

(2) The Commission has the authority to disapprove any offering which fails to meet the purposes, goals and objectives of this Section.

(g) **Licensee responsible for notification to Commission.** Each provisional sales associate shall be responsible to furnish evidence to the Commission of having successfully completed a Commission approved forty-five (45) clock hour postlicense education course or its equivalent as determined by the Commission. Upon successful completion of the postlicense education requirement, evidence must be submitted on or before license expiration and on a form approved by the Commission.

(h) **Failure to complete postlicense education requirement prior to license expiration.** A provisional sales associate who fails to complete the postlicense education requirement prior to the first expiration date of the provisional sales associate license, shall not be entitled to renew such license.

(i) **Evidence of completion.** As evidence of having completed the education requirement, each provisional sales associate shall present one or more of the following as required by the Commission:

(1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or

(2) A certified transcript; provided, however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(j) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements and an examination.

(k) **Successful completion of materials and examination required for distance education credit.** To complete a distance education offering, a person must successfully complete all course requirements to include all modules and an examination.

(l) **Course limitations.** The following course limitations shall apply:

(1) A provisional sales associate shall only be given credit for courses specifically approved by the Commission.

(2) Educational courses taken for disciplinary reasons shall not count towards the normal postlicense education requirement.

(m) **Extension of time for completion of postlicense course for provisional sales associate who has received orders for active military service.** A provisional sales associate who has received orders for active military service may request an extension of time to complete the postlicense education requirement if the request is received in writing prior to the expiration of the license. The request must be accompanied by a copy of the military orders for active military service. The extension of time shall be one (1) year from the date of return from active military service. In conformance with §858-309, a licensee on active military service shall request an inactive status prior to each term for which the license is to be issued. If an extension is approved, a provisional sales associate shall be allowed to renew their license by requesting an inactive status in writing prior to each term for which the license is to be issued.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising ~~real estate~~, must use his or her business trade name or the name under which the broker is licensed. The advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) ~~Each~~ A broker, when operating under a franchise ~~trade~~ name, shall clearly reveal in all office identification

and in all advertising other than institutional type advertising designed to promote a common name, ~~that he or she is the person who owns the firm using such franchise trade name.~~ the franchise name along with the name of the broker or business trade name as registered with the Commission. A franchise name shall not be the complete business trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable ~~by the public~~. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a company name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a company name.

(C) An associate's contact information.

(D) A team name, approved by the broker, so long as ~~all of the names of all of the associate team members are included near the team name reference~~ the broker's reference is prominent, conspicuous, and easily identifiable, and which cannot be construed as that of a company name~~; however, in the case of personal business cards, inclusion of all associate team members' names shall not be required; and~~.

(E) A slogan which cannot be construed as that of a company name.

(4) A sign rider with the associate's contact information may be attached to a yard sign if the yard sign contains the name or trade name and office telephone number of the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate company, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for a corporate owner is not required to indicate in the advertising that he or she is licensed.

SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

605:10-13-1. Duty to account; broker

(a) **Deposit and account of trust/escrow funds.**

(1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:

(A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate bank account and is required to be a signor on the account.

(B) Such account must be in the name of the broker as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.

(C) All escrow funds shall be deposited before the end of the next banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties.

(D) Shall maintain such funds in said bank account until the transaction involved is consummated or terminated and proper accounting made.

(E) Shall at all times, maintain an accurate and detailed record thereof.

(2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by buyer or seller for the payment of

expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the bank for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal bank charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use.

(f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.

(g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.

(h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.

(i) **Documents furnished to all parties.** A broker shall insure the delivery of a copy of all instruments to any party or parties executing the same, where such instrument has been prepared by the broker or his or her associates and relates to the agreement with his or her principal or pertains to the real estate transaction in which he or she or one of the associates has participated.

(j) Inform all parties pertaining to escrow being held. A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.

(k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.

(l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursal of funds.

(m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records on alternative media, e.g. compact disk, optical disk, microfilm, etc.:

(1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.

(2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.

(3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device.

(4) After the quality assurance check is completed, the original documents may be destroyed.

(5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.

(6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.

(7) A broker shall maintain no less than two (2) copies of the alternative media.

(~~m~~n) **Guidelines for cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:

(1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:

(A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission

and advise the Commission as to the circumstances involving any not returned.

(B) Release forms must be filed for all licensees affiliated with the firm.

(C) The broker must either transfer to a new firm or place his or her license on inactive status.

(2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.

(3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.

(4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursal of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.

(5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursal of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:

(A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.

(B) The name and address of the authorized broker, entity or legal representative.

(C) A trust account reconciliation sheet indicating ledger balance and bank balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.

(D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

SUBCHAPTER 15. DISCLOSURES

605:10-15-4. Residential Property Condition Disclosure Act forms

(a) **Development and amendment of forms.** In accordance with Oklahoma Statutes, Title 60, Section 833 the Commission shall develop and amend by rule the forms for the Residential Property Condition Disclosure Statement and Residential Property Condition Disclaimer Statement. Effective ~~July 1, 2002~~, November 1, 2003 the disclosure statement is amended and all disclosure forms executed prior to ~~July 1, 2002~~ November 1, 2003 will remain in force and valid until expiration of the 180 days from the date noted thereon.

(b) **Availability of forms.** The forms shall be available to the public upon request on and after July 1, 1995.

(c) **Copy of form format.** The Residential Property Condition Disclosure Statement as referenced in this section is set out in Appendix A at the end of this Chapter. The Residential Property Condition Disclaimer Statement as referenced in this section is set out in Appendix B at the end of this Chapter.

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [REVOKED]

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [NEW]

Oklahoma Law (the "Residential Property Condition Disclosure Act," 60 O.S. §831 et.seq., effective July 1, 1995) requires Sellers of 1 and/or 2 residential dwelling units to complete this form. A Seller must complete, sign and date this disclosure form and deliver it or cause it to be delivered to a purchaser as soon as practicable, but in any event no later than before an offer is accepted by the Seller. If you become aware of a defect after delivery of this statement, but before you accept an offer to purchase, you must deliver or cause to be delivered an amended disclosure statement disclosing the newly discovered defect to the purchaser. If the disclosure form or amendment is delivered to a purchaser after an offer to purchase has been made by the purchaser, the offer to purchase shall be accepted by you only after a purchaser has acknowledged receipt of this statement and confirmed the offer to purchase in writing.

The declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the purchaser may wish to obtain. The information contained in this disclosure statement is not intended to be a part of any contract between the purchaser and seller. The information and statements contained in this disclosure statement are declarations and representations of the seller and are not the representations of the real estate licensee.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Complete this form yourself. (4) If some items do not apply to your property, circle N/A (not applicable). If you do not know the facts, circle Unk (unknown). (5) The date of completion by you may not be more than 180 days prior to the date this form is received by a purchaser.

LOCATION OF SUBJECT PROPERTY: _____

_____

SELLER IS __ IS NOT __ OCCUPYING THE SUBJECT PROPERTY.

Appliances/Systems/Services: (The items below are in **NORMAL** working order)

	Circle below			
Sprinkler System	N/A	Yes	No	Unk
Swimming Pool	N/A	Yes	No	Unk
Hot Tub/Spa	N/A	Yes	No	Unk
Water Heater ___Electric ___Gas ___Solar	N/A	Yes	No	Unk
Water Purifier	N/A	Yes	No	Unk
Water Softener ___Leased ___Owned	N/A	Yes	No	Unk
Sump Pump	N/A	Yes	No	Unk
Plumbing	N/A	Yes	No	Unk
Whirlpool Tub	N/A	Yes	No	Unk
Sewer System ___Public ___Septic ___Lagoon	N/A	Yes	No	Unk
Air Conditioning System ___Electric ___Gas ___Heat Pump	N/A	Yes	No	Unk
Window Air Conditioner(s)	N/A	Yes	No	Unk
Attic Fan	N/A	Yes	No	Unk
Fireplaces	N/A	Yes	No	Unk
Heating System ___Electric ___Gas ___Heat Pump	N/A	Yes	No	Unk

	Circle below			
Humidifier	N/A	Yes	No	Unk
Gas Supply ___Public ___Propane ___Butane	N/A	Yes	No	Unk
Propane Tank ___Leased ___Owned	N/A	Yes	No	Unk
Ceiling Fans	N/A	Yes	No	Unk
Electric Air Purifier	N/A	Yes	No	Unk
Garage Door Opener/ Control	N/A	Yes	No	Unk
Intercom	N/A	Yes	No	Unk
Central Vacuum	N/A	Yes	No	Unk
Security System ___Rent ___Own ___Monitored	N/A	Yes	No	Unk
Smoke Detectors	N/A	Yes	No	Unk
Dishwasher	N/A	Yes	No	Unk
Electrical Wiring	N/A	Yes	No	Unk
Garbage Disposal	N/A	Yes	No	Unk
Gas Grill	N/A	Yes	No	Unk
Vent Hood	N/A	Yes	No	Unk
Microwave Oven	N/A	Yes	No	Unk
Built-in Oven/Range	N/A	Yes	No	Unk
Kitchen Stove	N/A	Yes	No	Unk
Trash Compactor	N/A	Yes	No	Unk

Buyer's Initials——— Buyer's Initials ———

Seller's Initials ——— Seller's Initials ———

(OREC-11/03)

LOCATION OF SUBJECT PROPERTY _____

Source of Household Water ___Public ___Private ___Well	Other Items_____	Yes	No	Unk
	Other_____	Yes	No	Unk
	Other_____	Yes	No	Unk

IF YOU HAVE ANSWERED NO to any of the above, please explain. Attach additional pages with your signature(s).

Zoning, Flood and Water — **Circle below**

1. Property is zoned: ***(Check one)*** ___residential ___ commercial ___historical ___ agricultural ___ industrial ___ office ___urban Conservation ___ other ___unknown

2. Are you aware of any flood insurance requirements concerning the property?	Yes	No	Unk
3. Do you have flood insurance on the property?	Yes	No	Unk
4. Has the property been damaged or affected by flood, storm run-off, sewer backup, drainage or grading problems?	Yes	No	Unk
5. Are you aware of any surface or ground water drainage systems which assist in draining the property, e.g. french drains?	Yes	No	Unk
6. Has there been any occurrence of water in the heating and air conditioning duct system?	Yes	No	Unk
7. Are you aware of water seepage, leakage or other drainage problems in any of the improvements on the property?	Yes	No	Unk

Additions/Alterations/Repairs

8. Have any additions or alterations been made without required permits?	Yes	No	Unk
9. Are you aware of previous foundation repairs?	Yes	No	Unk
10. Are you aware of any alterations or repairs having been made to correct defects or problems?	Yes	No	Unk
11. Are you aware of any defect or condition affecting the interior or exterior walls, ceilings, slab/foundation, basement/storm cellar, floors, windows, doors, fences or garage?	Yes	No	Unk
12. Has the roof ever been repaired or replaced during your ownership of the property?	Yes	No	Unk
13. Approximate age of roof, if known _____Number of layers, if known_____			Unk
14. Do you know of any current problems with the roof?	Yes	No	Unk
15. Are you aware of treatment for termite or wood-destroying organism infestation?	Yes	No	Unk
16. Do you have a termite bait system installed on the property?	Yes	No	Unk
17. If yes, is it monitored by a licensed exterminating company? ***(Check one)*** ___ yes ___ no Annual cost $ _____			
18. Are you aware of any damage caused by termites or wood-destroying organisms?	Yes	No	Unk
19. Are you aware of major fire, tornado, or wind damage?	Yes	No	Unk

Environmental

20. Are you aware of the presence of asbestos?	Yes	No	Unk
21. Are you aware of the presence of radon gas?	Yes	No	Unk
22. Have you tested for radon gas?	Yes	No	Unk
23. Are you aware of the presence of lead-based paint?	Yes	No	Unk
24. Have you tested for lead-based paint?	Yes	No	Unk
25. Are you aware of any underground storage tanks on the property?	Yes	No	Unk
26. Are you aware of the presence of a landfill on the property?	Yes	No	Unk
27. Are you aware of existence of hazardous or regulated materials and other conditions having an environmental impact?	Yes	No	Unk
28. Are you aware of existence of prior manufacturing of methamphetamine?	Yes	No	Unk
29. Have you had the property inspected for mold?	Yes	No	Unk
30. Have you had any remedial treatment for mold on the property?	Yes	No	Unk
31. Are you aware of any condition on the property that would impair the health or safety of the occupants?	Yes	No	Unk

Buyer's Initials ——— Buyer's Initials ——— Seller's Initials ——— Seller's Initials ———

LOCATION OF SUBJECT PROPERTY_____

_____

Property Shared in Common, Easements, Homeowner's Association, Legal

32. Are you aware of features of the property shared in common with adjoining landowners, such as fences, driveways, and roads whose use or responsibility has an affect on the property? Yes No Unk
33. Other than utility easements serving the property, are you aware of easements or right-of-ways affecting the property? Yes No Unk
34. Are you aware of encroachments affecting the property? Yes No Unk
35. Are you aware of a mandatory homeowner's association? Yes No Unk
    Amount of dues $ _____ Special Assessment $ _____
    Payable: ***(Check one)*** ___monthly ___ quarterly ___annually
    Are there unpaid dues or assessments for the Property? ***(Check one)*** ___ yes ___no
    If yes, amount $_____Manager's Name:_____
    Phone No._____
36. Are you aware of any zoning, building code or setback requirement violations? Yes No Unk
37. Are you aware of any notices from any government or government-sponsored agencies or any other entities affecting the property? Yes No Unk
38. Are you aware of any threatened or existing litigation or lawsuit(s), directly or indirectly, affecting the property? Yes No Unk
39. Is the property located in a fire district which requires payment? Yes No Unk
    Amount of fees $ _____ To Whom Paid _____
    Payable ***(Check one)*** ___monthly ___quarterly ___annually
40. Is the property located in a private utility district? Yes No Unk
    (Check applicable) water ___garbage ___sewer ___ other ____
    If other, explain: _____
    Initial membership fee $ _____ annual membership fee $ _____
    If more than one (1) utility, attach additional pages.

Miscellaneous

41. Are you aware of other defect(s), affecting the property, not disclosed above? Yes No Unk
42. Are you aware of any other fees or dues required on the property that you have not disclosed? Yes No Unk

If you answered "YES" to any of the items 1- 42 above, list the item number(s) and explain. ***(If needed, attach additional pages, with your signature(s), date(s) and location of subject property.***

_____

_____

On the date this form is signed, the seller states that based on seller's **CURRENT ACTUAL KNOWLEDGE** of the property, the information contained above is true and accurate.

Are there any additional pages attached to this disclosure *(circle one):* Yes No. If yes, how many?_____

Seller's Signature Date Seller's Signature Date

A real estate licensee has no duty to the Seller or the Purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in this disclosure statement.

The Purchaser is urged to carefully inspect the property and, if desired, to have the property inspected by a licensed expert. For specific uses and restrictions for this property, contact the City Planning Department. The Purchaser acknowledges that the Purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase on the property identified.

Purchaser's Signature Date Purchaser's Signature Date

The disclosure and disclaimer statement forms and the Oklahoma Residential Property Condition Disclosure Act information pamphlet are made available at the Oklahoma Real Estate Commission (OREC), Shepherd Mall, 2401 NW 23 St, Suite 18, Oklahoma City, Oklahoma 73107-2431, or visit OREC's Web site www.orec.state.ok.us/.

[OAR Docket #04-912; filed 5-14-04]

TITLE 655. SECRETARY OF STATE CHAPTER 10. ADMINISTRATIVE RULES ON RULEMAKING

[OAR Docket #04-1065]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
655:10-1-1. [AMENDED]
655:10-1-2. [AMENDED]
Subchapter 7. Preparation of Documents
Part 1. General Provisions
655:10-7-1. [AMENDED]
655:10-7-2. [AMENDED]
655:10-7-6. [AMENDED]
Part 7. Miscellaneous Documents
655:10-7-45. [REVOKED]
Part 9. Document Scope
655:10-7-50. [AMENDED]
655:10-7-53. [REVOKED]
Subchapter 9. Submission of Documents
655:10-9-1. [AMENDED]
655:10-9-3. [AMENDED]
Subchapter 11. Review of Documents
655:10-11-1. [AMENDED]
Subchapter 13. Correction of Errors
655:10-13-2. [AMENDED]
655:10-13-3. [AMENDED]
Subchapter 15. The Oklahoma Register
655:10-15-1. [AMENDED]
655:10-15-2. [AMENDED]
655:10-15-5. [AMENDED]
Subchapter 19. Public Inspection and Copies of Documents
655:10-19-1. [AMENDED]
AUTHORITY:
Secretary of State; 75 O.S., §§ 250 et seq.
COMMENT PERIOD:
February 2, 2004 through March 3, 2004
PUBLIC HEARING:
March 3, 2004
ADOPTION:
March 8, 2004
SUBMITTED TO GOVERNOR:
March 8, 2004
SUBMITTED TO HOUSE:
March 8, 2004
SUBMITTED TO SENATE:
March 8, 2004
GUBERNATORIAL APPROVAL:
April 16, 2004
LEGISLATIVE APPROVAL:
Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2004
FINAL ADOPTION:
April 29, 2004
EFFECTIVE:
July 1, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
All requirements and references related to publishing local project funding contract announcements have been deleted as obsolete. Because EO 1995-26 was not continued by Governor Henry last year in EO 2003-7, local project funding contract announcements are no longer required to be published in the Oklahoma Register.

The provision establishing annual serialization of the Oklahoma Register has been revised so that "Register volumes" match "Code/Supplement years." Instead of running from November 1 to October 31, Register volumes will begin and end each year based on the closing date established by statute [75:256(B)(1)] for the annual Code/Supplement.

The provision stating that a "schedule of filing deadlines" is published in each issue of the Register has been replaced with a provision identifying the current practice of publishing a "schedule of publication dates and filing deadlines" on the Secretary of State's website.

A procedure has been added for handling open records requests for copies of documents that have been filed with the Office of Administrative Rules but have not yet been published in the Register as "official."

Provisions related to the distribution of free copies of the Code/Supplement to county clerks, as set forth in the APA [75 O.S., Section 257.1(B)], have been updated to reflect current methods of implementation. The statute states that county clerks are "entitled to receive" a copy of each year's Code/Supplement, and since the Code/Supplement is now available on cdrom as well as in print, county clerks are now being given the option each year of either receiving the Code/Supplement in print or on cdrom, or waiving their right to receive a free copy.
CONTACT PERSON:
Peggy Coe, *Code/Register* Managing Editor, Office of Administrative Rules, 2401 N. Lincoln Boulevard, Room 220, Oklahoma City, OK 73105, (405) 521-4911.

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

655:10-1-1. Purpose

This Chapter establishes procedures and standards for filing and publishing rules, rulemaking notices, and executive orders in The Oklahoma Register and The Oklahoma Administrative Code as authorized under the provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq. ~~In addition, this Chapter establishes procedures and standards for filing and publishing local project funding contract announcements in the Oklahoma Register pursuant to Executive Order 95-26.~~

655:10-1-2. Definitions

In addition to terms defined in 75 O.S., Section 250.3, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"APA" means the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

"ARR" means the Administrative Rules on Rulemaking, OAC 655:10.

"Agency" *means any constitutionally or statutorily created state board, bureau, commission, office, authority, public trust in which the state is a beneficiary, or interstate commission* [75:250.3(3)] with authority for rulemaking. Except, "agency" does not include *the Legislature or any branch, committee or officer thereof, [or] . . . the courts* [75:250.3(3)]. [See also definition of "rulemaking entity" in this Section]

"Amendment" means a revision which adds, modifies, or deletes characters, numbers, letters, words, phrases, sentences, spaces, or punctuation in an existing section.

"Appendix" means a division of the OAC which contains one or more "graphics" (as defined in this Section). Appendices are placed at the end of a Chapter. [See 655:10-3-37]

"Attestation" means certification by an agency as *to the correctness of copies of any rule . . . and that such rules were made and adopted if the rules are emergency* [or preemptive] *rules or finally adopted if the rules are permanent rules in substantial compliance with the Administrative Procedures Act* [75:254]. [See 655:10-7-16 (relating to attestations)]

"Chapter" means a division of the OAC which designates a broad area of regulatory control within an agency's Title. [See also 655:10-3-22 (relating to Chapter numbers and headings)]

"Code" means the publication authorized in 75 O.S., Section 256 and known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S., Section 256(A)(1)(a) and maintained in the OAR. [See also definition of "OAC" in this Section]

"Codification date" means the date a rule was accepted for inclusion in the first official compilation of codified rules authorized by 75 O.S., Section 256(A)(1)(a); except, the date of codification for subsequently promulgated new rules is the effective date of the permanent rulemaking action which establishes the rules.

"Docket number" means the identification number assigned to a document upon its receipt in the OAR. [See 655:10-15-4 (relating to docket numbers)]

"Document" means the total body of information required by APA and ARR to be submitted for each rulemaking action or executive order to be published in the Register~~, or the total body of information required by Executive Order 95-26 and ARR to be submitted for each local project funding contract announcement to be published in the Register~~. [See also Part 9 of Subchapter 7 of this Chapter (relating to scope of a document)]

"Document heading" means the two-part heading required at the beginning of each notice document or rule document submitted to the OAR. [See 655:10-7-3 (relating to document headings)]

"Emergency rule" means a "rule," as defined in the APA, which must be approved by the Governor under the special provisions of 75 O.S., Section 253 prior to promulgation of the rule.

"Enacting clause" means the portion of a rule document which proclaims the agency's rulemaking action and introduces regulatory text. [See 655:10-7-13 (relating to enacting clauses)]

"Existing rule" means an effective rule.

"Graphics" means tabular material, forms, illustrations, diagrams, maps, charts, graphs, figures, or other pictorial material. [See 655:10-3-37 (relating to graphics and appendices)]

~~**"Local project funding contract"** means *an agreement between a state agency and either a local government or private entity, or both, in which the state agency agrees to provide funding to the local government or private entity who agrees to accomplish a public purpose. In addition, the direct benefits of such a contract accrue primarily to the local population rather than the state as a whole. Local project funding contracts do not include contracts subject to state competitive bidding statutory requirements.* [Paragraph 1 of Executive Order 95-26]~~

"Notice document" means a "document," as defined in this Section, which contains one of the following notices:

(A) Notice of rulemaking intent [75:303(A),(B),(C)].

(B) Notice of cancelled hearing or comment period [655:10-7-27].

(C) Notice of continued hearing or comment period [655:10-7-28].

(D) Statement of submission of permanent rules for gubernatorial and legislative review [75:303.1(C)].

(E) Notice of gubernatorial approval of permanent rules [75:303.2(A)(1)].

(F) Notice of gubernatorial disapproval of permanent rules [75:303.2(A)(2)].

(G) Notice of legislative disapproval of rules [75:308(C) and 655:10-7-32].

(H) Notice of withdrawn rules [75:308(F) and 655:10-7-33].

(I) Notice of error in published document [655:10-7-35].

"OAC" means the publication authorized by 75 O.S., Section 256 and known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S., Section 256(A)(1)(a) and maintained in the OAR. [See also definition of "Code" in this Section]

"OAC number" means a Title, Chapter, Subchapter, Part, or Section number, or Appendix letter designation.

"OAR" means the Office of Administrative Rules. [See also definition of "Office of Administrative Rules" in this Section]

"Office of Administrative Rules" means the office, created pursuant to 75 O.S., Section 250.9 within the Office of the Secretary of State, with the *primary responsibility for publishing "The Oklahoma Register" and the "Oklahoma Administrative Code" and otherwise implementing the provisions of Article I of the Administrative Procedures Act* [75:250.9]. [See also definition of "OAR" in this Section]

"Paragraph" means the second level of subdivision in a Section; a paragraph is a subdivision of a subsection in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

"Part" means a division of the OAC which contains a group of Sections related to the same subject within a Subchapter. [See also 655:10-3-23 (relating to Part numbers and headings)]

"Permanent rule" means a "rule," as defined in the APA, which must be reviewed by the Governor and the Legislature pursuant to 75 O.S., Sections 303.1, 303.2, and 308 prior to promulgation of the rule. [See also 655:10-7-10 (relating to types of rules)]

"Preamble" means the portion of a rule document that summarizes the rule(s) and the history of the rulemaking action, cites legal authority, and functions as a preface to the rule(s). [See 655:10-7-11 (relating to preambles)]

"Preemptive rule" means a "rule," as defined in the APA, which is adopted by the Commission for Human Services and which must be approved by the Governor under the special

provisions of 75 O.S., Section 250.6 prior to promulgation of the rule.

"Proposed rule" means an emergency or preemptive rule prior to approval by the Governor, or a permanent rule prior to final adoption [see 75:250.3(4) (relating to final adoption)].

"Register" means the publication authorized in 75 O.S., Section 255 and known as The Oklahoma Register, successor publication to The Oklahoma Gazette.

"Regulatory text" means the language of any "rule," as defined in 75 O.S., Section 250.3(15) and this Section; any text, including graphics, which requires promulgation.

"Revocation" or **"revoke"** means the repeal of an existing rule (i.e., Section or Appendix) in its entirety.

"Rule" means a Section or Appendix [see also definition of "rule" in 75 O.S., Section 250.3(15)].

"Rule document" means a "document," as defined in this Section, which contains an emergency or preemptive adoption, or a permanent final adoption, of new rules or amendments to or revocations of existing rules.

"Rulemaking action" means any procedure, act, or occurrence, except executive orders ~~and local project funding contract announcements~~, which must be announced in or published in the Register or Code under APA or ARR provisions, including:

(A) Notice of rulemaking intent [75:303(A),(B),(C)].

(B) Notice of cancelled hearing or comment period [655:10-7-27].

(C) Notice of continued hearing or comment period [655:10-7-28].

(D) Final adoption of a permanent rule(s) [75:308.1 and 75:251(B)].

(E) Promulgation of an emergency rule(s) [75:253].

(F) Promulgation by the Commission for Human Services of a preemptive rule(s) [75:250.6].

(G) Submission of a proposed permanent rule(s) for gubernatorial and legislative review [75:303.1(C)].

(H) Approval of a proposed permanent rule(s) by the Governor [75:303.2(A)(1)].

(I) Disapproval of a proposed permanent rule(s) by the Governor [75:303.2(A)(2)].

(J) Disapproval of a rule(s) by the Legislature [75:308(C)].

(K) Withdrawal of a proposed rule from the rulemaking process [75:308(F) and 655:10-7-33].

(L) Notice of error in a published document [655:10-7-35].

"Rulemaking entity" means the board, commission, officer, or other person or entity legally authorized to adopt and promulgate "rules," as defined in 75 O.S., Section 250.3(15).

"Section" means a "rule," as defined in 75 O.S., Section 250.3(15). A Section is a division of the OAC which contains an agency statement(s) about a specific regulatory topic within a Chapter, Subchapter, or Part. [See 655:10-3-24 (relating to Section numbers and taglines)]

"Section subdivision" means any one of five possible levels into which a Section may be separated. A maximum of five levels of Section subdivisions may be used in a Section [see 655:10-3-25 (relating to Section subdivisions)]:

(A) Subsections
(B) Paragraphs
(C) Subparagraphs
(D) Units
(E) Subunits

"Section text" means the "regulatory text" (as defined in this Section) which follows the Section number and tagline in a Section.

"Source note" means the record of rulemaking history which follows a Section, an Appendix, or a Subchapter or Chapter table of contents in the Code. Source notes track the administrative history of a rule. [See 655:10-17-6 (relating to Chapter, Subchapter, and Section/Appendix source notes)]

"Strikeout" means a solid or dashed horizontal line through deleted regulatory text.

"Subchapter" means a division of the OAC which contains a group of Sections related to the same general subject area within a Chapter. [See 655:10-3-23 (relating to Subchapter numbers and headings)]

"Subparagraph" means the third level of subdivision within a Section; a subparagraph is a subdivision of a paragraph in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

"Subsection" means the first level of subdivision in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

"Subunit" means the fifth level of subdivision within a Section. A subunit is a subdivision of a unit in a Section; it is the smallest possible subdivision of a Section. [See 655:10-3-25 (relating to Section subdivisions)]

"Title" means the broadest division of the OAC; a Title contains all rules of an agency. [See 655:10-3-21 (relating to Title numbers and headings)]

"Unit" means the fourth level of subdivision within a Section; a unit is a subdivision of a subparagraph in a Section. [See 655:10-3-25 (relating to Section subdivisions)]

"Working day" means any day except Saturday, Sunday, or a legal holiday for state employees as proclaimed by the Governor.

SUBCHAPTER 7. PREPARATION OF DOCUMENTS

PART 1. GENERAL PROVISIONS

655:10-7-1. Types of documents; excluded documents

(a) **Rulemaking documents.** Notice and rule documents published in the Register are legal instruments through which a rulemaking entity revises its existing rules, or enacts new rules.

(1) **Notice documents.** Notice documents announce an agency's intention to adopt rules or the agency's compliance with certain other steps in the rulemaking process. Notice documents are published in the Register but are

not included in the Code. [See Part 5 of this Subchapter (relating to notice documents)]

(2) **Rule documents.** Rule documents announce final adoption of permanent rules [75:250.3(4); 75:308.1(A)], or adoption of emergency or preemptive rules [75:253; 75:250.6].

(A) **Permanent, preemptive rules.** Inclusion of a rule in the Code requires prior publication in a rule document in the Register as a finally adopted permanent rule or as an adopted preemptive rule that has been approved by the Governor.

(B) **Emergency rules.** Emergency rules are published in the Register but are not included in the Code.

(b) **Miscellaneous documents, including executive orders.** In addition to rulemaking documents, ~~local project funding contract announcements and~~ executive orders and certain other miscellaneous documents, if expressly required by law [see (c) of this section], are published in the Register.

~~(1) **Local project funding contract announcements.** As required by Executive Order 95-26, executive agencies must announce the availability of local project funding contracts in the Register. Local project announcements are not published in the Code.~~

~~(2) **Executive orders.**~~ Executive orders are published in both the Register and the Code.

(c) **Excluded documents.** Notices or other documents which are not expressly required by law to be published in the Register or the Code shall not be published in the Register or the Code.

655:10-7-2. Typing and word processing requirements

When preparing rules and documents that will be submitted to the OAR for publication in the Register, agencies shall comply with each of the following typing requirements and restrictions:

(1) **Requirements.**

(A) Use word processing software that is approved by the OAR as compatible with the software used for processing documents into the OAR's databases. If an agency does not know if its software meets this requirement, the agency must contact the Office of Administrative Rules. [See also 655:10-9-1 (relating to electronic copies)]

(B) Set paper size at $8\frac{1}{2}$ by 11 inches. Use plain white medium bond paper.

(C) Set the page settings for printing on one side of the page only.

(D) Set left, right, and top margins at one inch. Set bottom margin at .5 inch (to allow for page numbering, as described in 655:10-7-4).

(E) Set the font size to 11 or 12.

(F) Type in the conventional uppercase and lowercase format (not all capital letters or "small caps"), unless otherwise specifically required in this Chapter (e.g., centered Title, Chapter, Subchapter, Part headings are typed in uppercase letters).

(G) Set the line spacing to one.

(H) Fasten the document together with a paper clip.

(2) **Restrictions.**

(A) Underscoring is reserved for the purpose of showing new language in rules. Do not underscore letters, numbers, words, or symbols except as expressly reserved by this subparagraph. [See also 655:10-5-2 and 655:10-5-3 (relating to identifying language in new and amended rules)] For example, when typing the title of a book or other publication which is traditionally underscored, use some method other than underscoring or italicization to identify the title, such as capitalization or quotation marks.

(B) Strikeouts are reserved for the purpose of showing deleted or revoked language in existing rules. Do not strikeout letters, numbers, words, or symbols except as expressly reserved by this subparagraph. [See also 655:10-5-3 and 655:10-5-4 (relating to identifying language in amended and revoked rules)]

(C) Italics may not be used in rules except to identify language quoted from statutes, constitution, or other legal instruments. Do not italicize letters, numbers, words, or symbols except as expressly reserved by this subparagraph. [See also 655:10-5-12 (relating to quoting from legal instruments)]

(D) Do not use letterhead stationery.

(E) Do not fold any pages of the document.

(F) Do not staple any pages of the document.

(G) Do not bind the document together in any manner other than by paper clip.

(H) Do not punch holes in any pages of the document.

(I) Do not use carbon paper.

(J) Do not handwrite any portion of the document except:

(i) the signature or signatures and date required on attestations;

(ii) the signature and date required on a transmittal sheet [see 655:10-7-6]; and

(iii) the signatures and any other necessary handwriting on the Governor's approval of emergency or preemptive rules, a resolution by the Legislature disapproving rules, or an executive order.

(K) Do not turn on line hyphenation. Do not force hyphenation to phonetically split words at the ends of lines.

(L) Do not use tables or columns within the text of a Section unless absolutely necessary [see 655:10-3-37 (relating to graphics in rules)]. Do not use tables or columns in preambles~~,~~ or notice documents~~, or local project funding contract announcements~~. The format of tables and columns is not retained (except in scanned Appendices) when a document is moved to the database and published in the Register and Code.

(M) Do not center text within Sections, preambles, or notice documents~~, or local project funding contract announcements~~. The centering is not retained (except

in Appendices) when a document is moved to the database and published in the Register and Code.

(N) When using a fraction, formula, or equation (except in scanned Appendices), do not use underscoring for a division line. The underscoring will be lost when amendatory language is removed from Sections. Instead, use the division sign (÷), the words "divided by," or a slash. For example:

(i) [(y - .8) + (z - 1.2)] ÷ (y + z)

(ii) [(y - .8) + (z - 1.2)] divided by (y + z)

(iii) [(y - .8) + (z - 1.2)] / (y + z)

(O) Do not draw boxes around, or lines above, below, or around text (except if needed in Appendices).

(P) Do not use unusual word processing features, such as small caps, styles, hard back tabs, index codes, etc. (except if needed in Appendices).

(Q) Do not change font size (except superscript and subscript) or font style (except italics and bold) in a document. Font changes, other than those in Appendices, which are scanned, are not retained when the document is moved to the database and published in the Register and Code.

(R) Do not add extra horizontal spacing (blank lines), except in Appendices or as otherwise specifically required in this Chapter. If used (other than in Appendices), the extra spacing will not be retained when the document is moved to and published in the Register and Code.

(S) Do not use dot leaders (except if needed in Appendices). If used (other than in scanned Appendices), the dot leaders will not be retained when moved to and published in the Register and Code.

(T) Do not include extraneous information, such as information sometimes added to identify the electronic location of the document (e.g., file name, path, date, drafter's initials, etc.)

655:10-7-6. Transmittal sheet; liaison verification

(a) **Use; format.**

(1) A transmittal sheet must accompany each document submitted to the OAR and each emergency rule document submitted to the Governor and the Legislature. The transmittal sheet is not published.

(2) The transmittal sheet must include the headings and information described in (b) of this Section, formatted pursuant to the following:

(A) Begin each heading at the left margin.

(B) Begin the contents required for each heading on the first line below the heading.

(C) Indent the first line of the contents, but do not indent subsequent lines of the contents.

(b) **Content.** The transmittal sheet must be prepared pursuant to the style required in (a)(2) of this Section and must include the following headings and information:

(1) **Name of agency.** Under the bolded heading "**NAME OF AGENCY:**", type the name exactly as it appears in the agency's assigned Title heading in the OAC ~~or, if the document is a local project funding contract announcement, type the name of the issuing agency~~.

(2) **Type of document.** Under the bolded heading "**TYPE OF DOCUMENT:**", identify the type of document by typing one of the following:

(A) Final adoption of permanent rules.

(B) Adoption of emergency rules.

(C) Adoption of preemptive rules.

(D) Notice of rulemaking intent.

(E) Notice of cancelled hearing or comment period.

(F) Notice of continued hearing or comment period.

(G) Statement of submission for gubernatorial and legislative review.

(H) Notice of gubernatorial approval.

(I) Notice of gubernatorial disapproval.

(J) Notice of legislative disapproval.

(K) Notice of withdrawn rules.

(L) Notice of errors in published document.

~~(M) Local project funding contract announcement.~~

(3) **Liaison verification.** Under the bolded heading "**LIAISON VERIFICATION:**", include the following signed statement: "I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the APA and the rules of the Secretary of State. Additional information may be obtained by contacting me at (telephone number)." The statement must be followed by the liaison's signature, typed name, and job title, and the date the liaison signs the verification.

PART 7. MISCELLANEOUS DOCUMENTS

655:10-7-45. Local project funding contract announcements [REVOKED]

~~(a) **Use.** Executive Order 95-26 requires executive agencies to *announce the availability of contracts for local project funds by publication in the Oklahoma Register at least one month prior to the deadline for applications for such contracts* [Executive Order 95-26, paragraph 5].~~

~~(b) **Heading.** A Local Project Funding Contract Announcement begins with a bolded centered heading, as follows:~~

~~(1) On the first line, identify the name of the issuing agency. If more than one line is needed for the agency name, center all lines, with no hard returns between the lines.~~

~~(2) On the second line, type the words **LOCAL PROJECT FUNDING CONTRACT ANNOUNCEMENT.**~~

~~(c) **Format.** Beginning two single spaces below the heading described in (b) of this Section, include the headings and information described in (d) of this Section, formatted pursuant to the following:~~

~~(1) Begin each heading at the left margin.~~

~~(2) Begin the contents required for each heading and subheading on the first line below the heading or subheading.~~

~~(3) Indent the first line of the contents, but do not indent subsequent lines of the contents.~~

~~(d) **Content.** A Local Project Funding Contract Announcement must be prepared pursuant to the style required in (c) of this Section and must contain the following headings and information:~~

~~(1) **Description of project.** Under the bolded heading "**DESCRIPTION OF PROJECT:**", include *a description of the type of projects eligible for local project funding contracts, such description being simple and easily read yet sufficiently detailed to allow a reasonable person to know whether a project he may desire would be eligible* [Executive Order 95-26, Paragraph 5b].~~

~~(2) **Funds available.** Under the bolded heading "**FUNDS AVAILABLE:**", cite *the total amount of money available from the agency for the local project funding contract program described in the announcement* [Executive Order 95-26, Paragraph 5c].~~

~~(3) **Eligibility.** Under the bolded heading "**ELIGIBILITY:**", include *a description of the type of persons or entities who are eligible for local project funding contracts and a citation to the specific authority which establish the eligibility criteria* [Executive Order 95-26, Paragraph 5d].~~

~~(4) **Application deadline.** Under the bolded heading "**APPLICATION DEADLINE:**", cite *the closing date and time for receipt of applications* [Executive Order 95-26, Paragraph 5e].~~

~~(5) **Contact person.** Under the bolded heading "**CONTACT PERSON:**", cite *the name, business address, and telephone number of the person who interested parties may contact for additional information* [Executive Order 95-26, Paragraph 5f].~~

PART 9. DOCUMENT SCOPE

655:10-7-50. Combined category documents

The OAR may not accept a document for publication if it combines material that must appear in different categories of the Register [see 655:10-15-5(b) (relating to Register categories)]. For example, a document may not contain both a permanent rule and an emergency rule, or a notice of rulemaking intent and a ~~local project funding contract announcement~~notice of gubernatorial approval.

655:10-7-53. Miscellaneous document scope, limitations [REVOKED]

~~Agencies may not combine more than one Local Project Funding Contract Announcement in a single document.~~

SUBCHAPTER 9. SUBMISSION OF DOCUMENTS

655:10-9-1. Number of paper copies; electronic copies; special treatment of rule documents

(a) **Electronic preparation of documents.** All documents must be prepared using word processing software, as required by 655:10-7-2(1)(A).

(b) **Submission of documents.** When submitting a document to the OAR for publication in the Register, agencies shall submit the document as set forth in this subsection. [See also (c) of this Section for special treatment of rule documents.]

(1) **Paper copies.**

(A) **Rule documents.**

(i) **Permanent rules.** Submit two (2) originals, or one (1) original and one (1) copy, of permanent rule documents to the OAR. [See also (c) of this Section]

(ii) **Emergency rules.** Submit one (1) original of emergency rule documents to the Governor. Upon approval by the Governor, submit two (2) copies of the emergency rule document and the Governor's approval to the OAR. [See also (c) of this Section]

(iii) **Preemptive rules.** Submit one (1) original of preemptive rule documents to the Governor. Upon approval by the Governor, submit two (2) copies of the preemptive rule document and the Governor's approval to the OAR [75:250.6(B)(3)]. [See also (c) of this Section]

(B) **Notice documents.** Submit one (1) original of notice documents to the OAR. [75:303(B)]

~~(C) **Local project funding contract announcements.** Submit one (1) original of local project funding contract announcements to the OAR.~~

(~~D~~C) **Extra copies.** If an agency wishes to receive a stamped copy noting receipt and/or acceptance of a document, the agency should submit additional copies pursuant to 655:10-9-5 and 655:10-11-3.

(2) **Electronic copies.** Documents must also be submitted to the OAR in electronic form, as set forth in this paragraph; except Appendices, attestations, and supplemental information (in rule documents) and transmittal sheets which are NOT submitted in electronic form.

(A) **Media options.** Submit documents on a 3 $\frac{1}{2}$ inch DOS-formatted high density diskette.

(B) **~~Labelling~~Labeling disks.** Label each diskette. The label must identify the Title, Chapter, and type of filing of each document on the diskette.

(C) **Compression of records.** A record which contains a large rule document may be compressed using PKZip software utility. However, the agency must identify the use of PKZip on the diskette. Notice documents~~ and local projects~~ may not be compressed.

(D) **Inaccessible records.** If a record submitted to the OAR is inaccessible (due to a bad disk, corruption of the file, etc.), the OAR will notify the agency as soon as possible. The agency must resubmit another disk.

(c) **Special treatment of rule documents.**

(1) **Emergency and preemptive rules.** Upon approval by the Governor of an emergency or preemptive rule document, the agency shall submit the rule document in paper and electronic form to the OAR, as set forth in (b) of this Section, and pursuant to the following:

(A) Submit two (2) paper copies of the entire rule document, including attestation, to the OAR:

(i) The rule document submitted must include any corrections needed to bring the document into substantial compliance with this Chapter, as identified by the OAR in its review of the document during the Governor's review period [75:253(C)(1) and 250.6(B)(2)].

(ii) Copies of the rule document, including the attestation and transmittal sheet, may be photocopies rather than originals.

(B) Submit two (2) paper copies of the Governor's approval to the OAR.

(C) Submit a diskette copy of all parts of the properly formatted document except the attestation, transmittal sheet, and supplemental information (if any).

(D) An emergency or preemptive rule document is considered officially filed when the paper and diskette copies of the approved document are received by the OAR from the agency.

(2) **Permanent rules.** Within 30 calendar days after final adoption of permanent rules, the agency must submit a permanent rule document to the OAR [75:308.1(A)]. The document must be submitted in paper and electronic form, as set forth in (b) of this Section. The rules included in the permanent rule document must include any corrections necessary to bring the rules into substantial compliance with this Chapter, if any were reported to the agency at earlier stages of the rulemaking process.

655:10-9-3. Filing deadlines

(a) **First issue in month.** If a document is to be included in an issue of the Register published on the first working day of the month, the document must be reviewed and accepted by the Editor pursuant to 655:10-11-1 no later than 4:30 p.m. on the first working day preceding the 16th day of the preceding month. [See also 655:10-15-1 (relating to publication dates)]

(b) **Second issue in month.** If a document is to be included in an issue of the Register published on the first working day following the 14th day of the month, the document must be reviewed and accepted by the Editor pursuant to 655:10-11-1 no later than 4:30 p.m. on the first working day preceding the 2nd day of the same month. [See also 655:10-15-1 (relating to publication dates)]

(c) **Schedule of filing deadlines.** ~~A~~The Secretary of State issues a schedule of ~~the following volume's filing deadlines is published in the last issue of each volume of the Register. A schedule of the current volume's filing deadlines is published in each issue of the Register~~ filing and acceptance deadlines, as well as publication dates, at least 30 days prior to the beginning of a new volume of the Register, and publishes the schedule on the OAR's website [see 655:10-15-1(c)].

SUBCHAPTER 11. REVIEW OF DOCUMENTS

655:10-11-1. Review of Register submissions

(a) **OAR's review.** Upon receipt of a document for Register publication, the OAR shall review the document to determine if the document complies with requirements of ARR.

(1) **Acceptance of documents; Register publication.** If a document is not rejected by the OAR within six calendar days [see 655:10-1-7 (relating to computing days)] after its receipt in the OAR, the document is considered accepted and is published in the next possible issue of the Register. A schedule of Register publication dates and filing deadlines is issued by the Secretary of State at least 30 days prior to the beginning of a new Register volume each year [655:10-15-1(c)]. [See also 655:10-9-3 (relating to filing deadlines and 655:10-15-2 (relating to Register volumes)]

(2) **Rejection of documents.** The OAR may *refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary* [75:251(C)]. If a document is rejected, the OAR shall provide the agency with a written explanation for the rejection. The agency may modify the document and submit another document with a new received date.

(3) **Acceptance limited.** Acceptance of a document pursuant to this Section indicates only that the document is in the physical form specified by ARR. Acceptance by the OAR does not validate the accuracy of the information supplied by the agency and does not validate compliance with other provisions of APA or with the agency's individual statutory requirements. This compliance is the responsibility of each agency.

(b) **Failure to comply.** *Upon failure of an agency to comply with the provisions of Sections 251 through 256 of this Title [Title 75], ... the Secretary shall forward a written notice of the failure to comply to the chief administrative officer of the agency. The notice shall state a reasonable time, not to exceed thirty (30) calendar days, in which the agency shall fully comply. Further failure to comply shall be reported in writing to the Speaker of the House ..., the President Pro Tempore ..., the Governor, and the Attorney General. Upon such notification, the Attorney General shall immediately seek agency compliance and, if required, to institute mandamus proceedings to secure compliance of said agency.* [75:252(B)]

SUBCHAPTER 13. CORRECTION OF ERRORS

655:10-13-2. Errors prior to Register publication

In the event an agency discovers an error in a document after submission to the OAR but prior to its publication in the Register, the agency may correct the error pursuant to the following:

(1) **Timeliness.** The OAR may refuse to accept corrections to qualifying errors, as described in (2) of this Section, at any time after the acceptance deadline for the issue in which the document will be published. After the

acceptance deadline, the agency must call the OAR for a determination as to whether the OAR will accept the corrections.

(2) **Qualifying errors.** If the OAR will accept the corrections as timely, as described in (1) of this Section, the following errors may be corrected:

(A) **Notice documents~~; local projects~~.** Errors discovered in notice documents ~~and local project funding contract announcements~~ may be corrected prior to publication.

(B) **Permanent rule documents.** Errors discovered in permanent rule documents may be corrected, unless the correction would cause a conflict with the following statutory provisions:

(i) *[T]he text of the rule submitted for publication shall be the same as the text of the rule considered by the Legislature and the Governor* [75:308.1(B)], and

(ii) The agency may *change the format of . . . rules . . . to comply with the standard provisions established by the Secretary . . . so long as there is no substantive change to the rule* [75 O.S., Section 251(B)(2)(i)].

(C) **Emergency rule documents.** Emergency rule documents may not be corrected after approval by the Governor; except, the agency may change the format to comply with the ARR, as described in 75 O.S., Section 251(B)(2)(i). If these errors are discovered after the agency has filed the emergency rule document with the OAR [see 655:10-9-1(c)(1) (relating to filing emergency rule documents)] but prior to publication, the agency may correct these errors.

(D) **Preemptive rule documents.** Preemptive rule documents may not be corrected after approval by the Governor; except, the agency may change the format to comply with the ARR, as described in 75 O.S., Section 251(B)(2)(i), before filing the preemptive rule document with the OAR. If these errors are discovered after the agency has submitted a preemptive rule document to the OAR [see 655:10-9-1(c)(1) (relating to filing preemptive rule documents)] but prior to publication, the agency may correct the errors.

655:10-13-3. Errors after Register publication

(a) **Rule documents.**

(1) **Permanent rule documents.**

(A) **Regulatory text.** In the event an agency discovers an error in regulatory text in a permanent rule document after publication in the Register, the agency may correct the error through emergency, preemptive, or permanent rulemaking procedures only.

(B) **Other than regulatory text.**

(i) **Published pages.** When an agency discovers an error in the preamble (except effective date) or enacting clause (except effective date) in a permanent rule document after publication in the Register, the agency may submit a Notice of Error in Published Document pursuant to 655:10-7-35.

(ii) **Non-published pages.** When an agency discovers an error in the attestation or supplemental information pages of a permanent rule document after publication in the Register, the agency may submit the corrected page or pages to the OAR. Upon review and acceptance of the corrected pages, the OAR will add the corrected pages to the official files.

(2) **Emergency and preemptive rule documents.** Emergency and preemptive rule documents may not be corrected by an agency after publication in the Register.

(b) **Notice documents.**

(1) **Corrections allowed.** When an agency discovers an error in one of the following types of notice documents after publication in the Register, the agency may correct such error by submitting a Notice of Error in Published Document [see 655:10-7-35]:

(A) Statement of Submission for Gubernatorial and Legislative Review.

(B) Notice of Gubernatorial Approval of Permanent Rules.

(C) Notice of Gubernatorial Disapproval of Permanent Rules.

(D) Notice of Legislative Disapproval of Rules.

(E) Notice of Withdrawn Rules.

(2) **Corrections not allowed.** When an agency discovers an error in a notice document which announces an action affecting the public's direct participation in the rulemaking process (as identified in (A) through (C) of this paragraph), the agency may not correct the notice document after publication in the Register. The agency may submit a new notice document and, if applicable, publish a Notice of Cancelled Hearing or Comment Period; however, the new document acquires a new "publication date" for purposes of compliance with APA time restrictions (e.g., minimum 30-day comment period). Notice documents which may not be corrected with a Notice of Error in Published Document include the following:

(A) Notice of Rulemaking Intent.

(B) Notice of Cancelled Hearing or Comment Period.

(C) Notice of Continued Hearing or Comment Period.

~~(c) **Local Project Funding Contract Announcements.** In the event an agency discovers an error in a local project funding contract announcement after publication in the Register, the agency may not correct the announcement. The agency may submit a new local project funding contract announcement; however, the new document acquires a new "publication date" for purposes of the agency's compliance with the requirement to *announce the availability of contracts for local project funds by publication in the Oklahoma Register at least one month prior to the deadline for applications for such contracts* [Paragraph 5 of Executive Order 95-26].~~

SUBCHAPTER 15. THE OKLAHOMA REGISTER

655:10-15-1. Publication dates and filing deadlines

(a) **Publication dates.** The Register is published on the first working day of each month and on the first working day following the 14th day of each month. ~~A schedule of the following volume's publication dates is published in the last issue of each volume of the Register.~~

(b) **Filing deadlines.** For Register filing deadlines, see 655:10-9-3.

(c) **Schedule of publication dates and filing deadlines.** The Secretary of State shall issue a schedule of publication dates and filing deadlines at least 30 days prior to the beginning of a new volume of the Register [see 655:10-15-2], and shall publish the schedule on the OAR's website.

655:10-15-2. Series information; "code/supplement year"

Volumes and issues of the Register are numbered consecutively. Each volume includes twenty-four (24) issues beginning ~~in November~~ with the first issue of a "code/supplement year" and ending ~~in October~~ with the last issue of a "code/supplement year." A "code/supplement year" begins with the first issue of the Register with an acceptance deadline [as set forth in OAC 655:10-9-3, 655:10-11-1(a)(1), and 655:10-15-1(a)] that occurs after the deadline established by the Legislature in 75 O.S., Section 256(B) for inclusion of rules in the annual Code or Supplement, and ends with the last issue with an acceptance deadline on or before the deadline established in 75 O.S., Section 256(B).

655:10-15-5. Register contents

(a) **Register categories.**

(1) Documents published in the Register are arranged by document type, as follows:

(A) Notices of Rulemaking Intent.
(B) Cancelled Hearings or Comment Periods.
(C) Continued Hearings or Comment Periods
(D) Submissions for Review.
(E) Gubernatorial Approvals.
(F) Gubernatorial Disapprovals.
(G) Legislative Disapprovals.
(H) Withdrawn Rules.
(I) Emergency Adoptions.
(J) Preemptive Adoptions.
(K) Permanent Final Adoptions.
(L) Executive Orders.
~~(M) Local Projects.~~
(~~N~~M) Errors in Published Documents.
(~~O~~N) Editor's Notices.

(2) Within each category listed in (1)(A) through (K) and ~~(N)~~(M) of this subsection, documents are arranged by Title and Chapter number. ~~Local Project Funding Contract Announcements are arranged alphabetically by name of issuing agency.~~

(b) **Table of contents.** Each issue of the Register contains a table of contents arranged alphabetically by agency. Each agency's listing in the table of contents ~~indentifies~~identifies the types of rulemaking actions published for the agency in that issue.

(c) **Sections Affected Index.** Each issue of the Register published after publication of the first Code contains a Sections Affected Index that identifies each Section that is being promulgated (added, amended, revoked, renumbered, or reserved) in that issue.

(d) **Other user aids.** At its discretion, the OAR may publish additional user and finding aids in the Register.

SUBCHAPTER 19. PUBLIC INSPECTION AND COPIES OF DOCUMENTS

655:10-19-1. Public access to documents and publications

(a) **Secretary's responsibility.**

(1) Documents accepted by the OAR, as well as the OAR's publications, are available for public inspection, and copying and certification as set forth in 655:10-19-2 and 655:10-19-3, in the Secretary of State's Office of Administrative Rules, between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays. Records stored off-site and certification of documents must be requested at least 24 hours in advance. Copies of Register documents that have not yet been published in the Register can be copied, but only if clearly marked by the OAR with the following: "Unofficial --- Not yet published."

(2) Documents and publications may not be borrowed or removed from the Office of Administrative Rules. Documents may be photocopied, and publications may be photocopied or purchased, as set forth in this Subchapter, 655:10-15-7, and 655:10-17-4.

(b) **Issuing agency's responsibility.** *The agency submitting the rules shall make such rules available to the public in accordance with the Open Records Act.* [75:254(B)]

(c) **County clerks' responsibility.** Copies of the Register are *sent to those county clerks who request it* [75:255(A)(2)]. ~~A copy of the published Code and each annual Supplement is mailed to every~~In addition, every county clerk in the state of Oklahoma is *entitled to receive, at no cost, one copy of the printed volumes of the Code and the supplements thereto* [75:257.1(B(1)(a)]. Each year, the Secretary of State announces the availability of that year's Code or Supplement to the county clerks. Each county clerk may either:

(1) receive the printed product or the cdrom product, in lieu of the printed product, and make the publication available to the public during the county clerk's business hours, or

(2) waive his/her right to receive that year's publication. ~~In addition, copies of the Register are *sent to those county clerks who request it* [75:255(A)(2)].~~

(d) **Depository libraries.** Copies of the published Code and each annual Supplement, and copies of each issue of the Register, are deposited with the Oklahoma Publications Clearinghouse for distribution to each Oklahoma Government Publications Depository Library. [75:257.1(B)(2)]

(e) **Open Records Act.** The OAR shall make its records available for public inspection and copying pursuant to the Open Records Act, 51:24A.1 et seq. [75:256.3].

[OAR Docket #04-1065; filed 5-26-04]

TITLE 655. SECRETARY OF STATE CHAPTER 30. ADDRESS CONFIDENTIALITY PROGRAM

[OAR Docket #04-1066]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 30. Address Confidentiality Program [New]
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June 25, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The rules establish procedures for implementing the Address Confidentiality Program created pursuant to 22 O.S., § 60.14.
CONTACT PERSON:
Brenda Coffman, Address Confidentiality Program Director, PO Box 60189, Oklahoma City, OK 73146-0189, (405) 557-1700.

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 25, 2004:

655:30-1-1. Purpose

This chapter establishes administrative procedures necessary to implement the Address Confidentiality Program.

655:30-1-2. Definitions

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

"ACP" means Address Confidentiality Program.

"Address Confidentiality Program" means the statutorily created program responsible for implementing the provisions of 22 O.S., Sections 60.14 et. seq. within the Office of the Secretary of State.

"Application Assistant" means a representative of a designated agency who is a domestic violence and/or sexual assault advocate that has been trained and registered by the Secretary of State to assist individuals in the application process.

"Authorization Card" means the card issued by the Secretary of State to a program participant upon certification identifying them as a program participant.

"Authorization Number" means a number assigned to a program participant by the Secretary of State upon certification.

"Certification" means the process by which an applicant is determined eligible to participate in the program.

"Designated Agency" means a state or local agency, or a nonprofit agency that provides counseling, shelter, or other services to victims of domestic abuse, sexual assault, or stalking that has been designated by the Secretary of State as a place where persons apply to be program participants.

"Minor" means a person who is less than eighteen (18) years of age.

"Program Director" means the employee of the Office of the Secretary of State designated by the Secretary to administer the Address Confidentiality Program.

"Record" means a public record as defined in 51 O.S., Section 24A.3.

"Substitute Mailing Address" means the address assigned to a program participant by the Secretary of State.

655:30-1-3. Forms and informational material

The Secretary of State has prepared the following forms and informational materials related to this Chapter:

(1) Application Assistant Agreement Form
(2) Application Assistant Training Manual
(3) Application Assistant Guide
(4) Address Confidentiality Program Application
(5) Checklist for Application
(6) Authorization Card Form
(7) Change of Address Form
(8) Address Confidentiality Program Brochure
(9) ACP Implementation in Public Schools

655:30-1-4. Application assistants

(a) Prior to being designated as an application assistant, an individual must:

(1) Attend required training sessions provided by the ACP;

(2) Agree to adhere to the policies, procedures and directions provided by the ACP
for rendering assistance to program applicants; and

(3) Complete and sign an application assistant agreement form.

(b) Upon completion of the registration process, the ACP will notify the application assistant of such designation.

(c) Designation as an application assistant is valid for one year.

(d) The application assistant agrees not to discriminate against any client, or potential program participant, because of race, creed, color, national origin, gender, sexual orientation, age, or mental, physical or sensory disability.

(e) An application assistant is not deemed to be an employee of the Office of the Secretary of State nor an agent of the Secretary of State in any manner whatsoever. An application assistant will not hold himself/herself out as, nor claim to be an officer or employee of the Office of the Secretary of State or the State of Oklahoma and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Office of the Secretary of State or of the State of Oklahoma.

(f) In the event an application assistant no longer wishes to be designated as such or leaves his or her present position, the application assistant must provide written notification to the ACP.

(g) An application assistant's designation may be canceled by the Office of the Secretary of State for failing to abide by the requirements set forth in this Section or for failing to act in accordance with the requirements of the Address Confidentiality Program.

655:30-1-5. Criteria for program participation

To participate in the Address Confidentiality Program, an individual must meet the following criteria:

(1) A person attempting to escape from actual or threatened domestic violence, sexual assault or stalking;

(2) Fears for his or her safety and/or the safety of other family members;

(3) Recently established a residence address in Oklahoma unknown to the abuser or is planning to move in the near future; and

(4) Is eighteen (18) years of age or older or a parent or guardian acting on behalf of a minor or incapacitated person.

655:30-1-6. Applying for participation

(a) Any person meeting the criteria to be a program participant who wishes to apply to the Address Confidentiality Program shall complete the required application. The application consists of an Address Confidentiality Program Application, Checklist for Application, and Authorization Card Form.

(b) Forms shall be obtained from an Application Assistant at selected state or local agencies, or nonprofit agencies that have been designated by the Secretary of State to assist persons in the application process.

(c) The completed and signed application documents shall be filed with the ACP.

(d) *Any assistance and counseling rendered by the Office of the Secretary of State or its designees to applicants shall in no way be construed as legal advice.* [22 O.S., § 60.14(H)]

655:30-1-7. Certification

(a) Upon receipt of a properly completed application by the ACP, the applicant is certified as a program participant, assigned a substitute address, and issued an authorization card. The authorization card includes the program participant's name, date of birth, authorization number, substitute mailing address, certification expiration date, and participant's signature.

(b) The term of a program participant's certification shall be four (4) years.

655:30-1-8. Certification renewal

(a) A program participant may renew his or her program certification by filing with the ACP the following:

(1) His or her current authorization card;

(2) A properly completed renewal application; and

(3) A new signed authorization card form.

(b) The program participant shall be certified for another four (4) year term.

655:30-1-9. Certification withdrawal and cancellation

(a) A program participant may withdraw from participating in the program by submitting to the ACP written notice of withdrawal and his or her current authorization card. The withdrawal will be effective on the day of receipt of the notification by the ACP.

(b) The Secretary of State shall cancel a program participant's certification and invalidate his or her authorization card if:

(1) A program participant's certification term has expired and a renewal application had not been filed.

(2) A program participant knowingly provided false or incorrect information when applying for certification.

(3) A program participant obtains a name change.

(c) The Secretary of State may cancel a program participant's certification for any of the following reasons:

(1) The program participant no longer resides at the residential address listed on the application and has not provided seven (7) days prior written notice of the change in address.

(2) Mail forwarded to the participant is returned nondeliverable or unclaimed.

(d) The ACP shall attempt to send written notification of the cancellation to the participant at the last known mailing or residential address.

655:30-1-10. Use of the substitute address

(a) The substitute address serves as the participant's residential, school and work address.

(b) When creating state and local government records or updating existing records, a program participant shall show his or

her authorization card to the agency and request address confidentiality through the use of the substitute address as it appears on the authorization card, in lieu of his or her actual address.

(c) The agency employee assisting the program participant may make a file photocopy of the authorization card.

(d) The agency shall accept the substitute address unless the agency has received a written exemption from the Secretary of State. See 655:30-1-14.

(e) The agency shall not question the program participant about the details or circumstances of his or her inclusion in the program.

(f) All mail addressed to the participant at the substitute address shall include the authorization number appearing on the participant's authorization card.

(g) Mail received at the substitute address will be forwarded to the participant at his or her actual mailing address with the exception of magazines, books, periodicals, packages, and junk mail.

(h) Delivery of a participant's mail may be delayed as much as three (3) to five (5) days. It is important to remember this fact when sending time sensitive documents to a participant.

655:30-1-11. Public schools

(a) At the time of enrollment, students participating in the Address Confidentiality Program shall go to the school's administrative office for assistance and present his or her authorization card.

(b) The school shall contact the Program Director and request verification of enrollment eligibility.

(c) Eligibility for enrollment will be determined using the residential address shown in the participant's records.

(d) The ACP will notify the school of its findings both verbally and in writing.

(e) If questions are raised regarding the student's eligibility, the Program Director will work directly with the school superintendent or his or her designee to resolve the matter.

(f) All school correspondence mailed to the student and/or the student's parent shall be sent to the substitute address.

(g) Requests for the transfer of a student's records from one school to another shall be handled by the Program Director upon written authorization from the parent or legal guardian.

655:30-1-12. Voter registration

(a) An Address Confidentiality Program participant who is otherwise qualified to vote may register to vote as an ACP voter through the State Election Board. [OAC 230:15-5-83.1]

(b) ACP participants who become registered as ACP voters may vote only by absentee ballot. ACP voters will receive absentee ballots by mail at their substitute address for all local, state and national elections in which they are eligible to vote. [OAC 230:15-5-83.1(a)]

(c) All records pertaining to an ACP voter shall be maintained in a manner ensuring these records are accessible only to authorized personnel and shall not be publicly accessible.

(d) The name, address, and precinct number and absentee ballots of an ACP voter shall not be released to any person for any purpose except by court order. Additionally, the name, address, and precinct number of an ACP voter shall not appear on any list or report produced by either the State Election Board or County Election Board. [OAC 230:15-5-73(d)]

(e) The ACP shall notify the State Election Board when an ACP Voter's:

(1) Program certification has expired.

(2) Program certification has been withdrawn or canceled.

(3) Absentee ballot is returned nondeliverable.

(4) Residence address changes.

655:30-1-13. Service of process

(a) The Secretary of State is designated as agent for service of process and receipt of mail for all program participants.

(b) Service on the Secretary of State of any summons, writ, notice, demand or process can be made by mailing to the substitute address or by delivering in person to the Secretary of State at 2300 N. Lincoln Boulevard, 101 State Capitol, Oklahoma City, OK.

(c) When a summons, writ, notice, demand or process is served on the Secretary of State, the ACP shall immediately forward a copy to the program participant by first-class mail at the participant's current mailing address shown on the ACP records.

(d) The ACP shall maintain in the program participant's file, a record of all summonses, writs, notices, demands and processes served upon the Secretary of State for that participant, which shall include the date of such service and the action taken.

655:30-1-14. Agency exemption

(a) An agency requesting an exemption under 22 O.S., § 60.14(F) must provide in writing to the Secretary of State the following:

(1) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the actual address of the participant;

(2) Identification and description of the specific record for which the exemption is requested;

(3) Identification of the individual(s) who will have access to the record;

(4) An explanation of how the acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified above; and

(5) An explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures.

(b) The Secretary of State's determination to grant or deny a request for exemption will be based on, but not limited to, an evaluation of the information provided under this Section.

(c) If the Secretary of State determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's actual address and that the address will be used only for those statutory and administrative purposes, the Secretary of State may issue a written exemption for the agency. The written exemption may include:

(1) An agency's obligation to maintain the confidentiality of a program participant's address.
(2) Limitations on the use and access to the address.
(3) Term during which the exemption is authorized for the agency.
(4) Designation of the record format on which the address information may be maintained.
(5) Designation of an address information disposition date after which the agency may no longer maintain a record of the address information.
(6) Any provisions and qualifications determined appropriate by the Secretary of State.
(d) The Secretary of State's denial of an agency exemption request shall be made in writing and include a statement of the specific reasons therefore.
(e) The Secretary of State shall keep a record of all exemptions and all documentation relating to requests for exemption.

655:30-1-15. Disclosure of records
(a) The Secretary of State shall not make any records in a program participant's files available for inspection or copying unless directed by a court order to the person identified in the order. [22 O.S., § 60.14(G)] The participant information disclosed to a person identified in a court order shall be maintained in strict confidentiality by the party receiving the information.
(b) The Secretary of State may verify the participation of a specific program participant in which case the Secretary of State may only confirm information supplied by the requestor.
(c) The substitute address assigned to a program participant is not confidential.
(d) The Secretary of State shall provide immediate notification of disclosure to a program participant when disclosure takes place if not otherwise prohibited by law.

[OAR Docket #04-1066; filed 5-26-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 1. ORGANIZATION AND PROCEDURES OF SECURITIES COMMISSION

[OAR Docket #04-1067]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General provisions
660:1-1-3. Definitions [AMENDED]
Subchapter 3. Organization
660:1-3-1. Purpose and organization [AMENDED]
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The Oklahoma legislature enacted the Oklahoma Uniform Securities Act of 2004, 71 O.S., §§ 1-101 through 1-701, effective July 1, 2004 ("OUSA") to implement the Uniform Securities Act of 2004, and repealed 71 O.S., §§ 1-413,501,701-703, effective July 1, 2004, in S.B. No. 724 of the First Session of the 49th Oklahoma Legislature. The rule amendments will reflect this statutory change and clarify the procedures of the Securities Department.
CONTACT PERSON:
Faye Morton, Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

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

660:1-1-3. Definitions
Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Subdivided Land Sales Code, the Oklahoma Business Opportunity Sales Act or the Oklahoma Take-over Disclosure Act of 1985 shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:
"Administrator" means the Administrator of the Department of Securities.
"Business Opportunity Act" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.
"Commission" means the Oklahoma Securities Commission.
"Department" means the Oklahoma Department of Securities.
"Land Sales Act" means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.
"NASD" means the National Association of Securities Dealers, Inc.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"Take-over Act" means the most recent codification of the Oklahoma Take-over Disclosure Act of 1985 in Title 71 of the Oklahoma Statutes.

SUBCHAPTER 3. ORGANIZATION

660:1-3-1. Purpose and organization

The Oklahoma Securities Commission shall be the policy making and governing authority of the Department. The organization of the Commission shall be in accordance with the provisions of Section~~s 3,4,5 and 6~~ 1-601 of the Securities Act.

[OAR Docket #04-1067; filed 5-26-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

[OAR Docket #04-1068]

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PERMANENT final adoption
RULES:
Subchapter 1. General provisions
660:2-1-3. Definitions [AMENDED]
Subchapter 3. Organization
660:2-3-1. Organization [AMENDED]
Subchapter 5. Authority and actions of administrator
660:2-5-4. Summary orders [AMENDED]
Subchapter 7. Investigations
660:2-7-1. Initiation [AMENDED]
660:2-7-2. Authority [REVOKED]
660:2-7-3. Investigative ~~hearings~~processes [AMENDED]
660:2-7-4. Subpoenas [REVOKED]
660:2-7-5. Testimony [REVOKED]
660:2-7-6. Reports [REVOKED]
660:2-7-7. Enforcement of process [REVOKED]
660:2-7-8. Right to counsel [REVOKED]
660:2-7-9. Termination of investigation [AMENDED]
Subchapter 9. ~~Hearing~~Individual proceeding practices and procedures
660:2-9-1. Hearings in general [AMENDED]
660:2-9-2. ~~Setting of denial of hearing~~Initiation of individual proceedings [AMENDED]
660:2-9-3. Prehearing proceedings and processes [AMENDED]
660:2-9-4. Authority to subpoena witnesses [AMENDED]
660:2-9-5. ~~Right to counsel~~Representation [AMENDED]
660:2-9-6. Rules of evidence at hearings [AMENDED]
660:2-9-7. Record of hearing [AMENDED]
660:2-9-9. Rehearings [AMENDED]
Subchapter 11. Procedures for inspecting and/or copying public records
660:2-11-7. Fees [AMENDED]
Subchapter 13. Declaratory rulings and interpretive opinions
660:2-13-1. Opinions [AMENDED]
AUTHORITY:
Administrator, Oklahoma Department of Securities; 71 O.S., §§ 410 and 1-605
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 19, 2004
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May 19, 2004
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n/a
ANALYSIS:
The Oklahoma legislature enacted the Oklahoma Uniform Securities Act of 2004, 71 O.S., §§ 1-101 through 1-701, effective July 1, 2004 ("OUSA") to implement the Uniform Securities Act of 2004, and repealed 71 O.S., §§ 1-413,501,701-703, effective July 1, 2004, in S.B. No. 724 of the First Session of the 49th Oklahoma Legislature. The rule amendments will reflect this statutory change and clarify the procedures of the Securities Department.
CONTACT PERSON:
Faye Morton, General Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

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

660:2-1-3. Definitions

Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Land Sales Code, the Oklahoma Business Opportunity Sales Act or the Oklahoma Take-over Disclosure Act of 1985 shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the Department of Securities.

"Business Opportunity Act" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"Commission" means the Oklahoma Securities Commission.

"Department" means the Oklahoma Department of Securities.

"Hearing Officer" means a person who has been duly appointed by the Administrator to hold hearings and, as required, render proposed orders.

"Land Sales Act" means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"Take-over Act" means the most recent codification of the Oklahoma Take-over Disclosure Act of 1985 in Title 71 of the Oklahoma Statutes.

SUBCHAPTER 3. ORGANIZATION

660:2-3-1. Organization

(a) The Department shall be organized in accordance with ~~Sections~~Section ~~8, 9, 10, 11, 12 and 13~~ 1-601 of the Securities Act. It shall be the purpose of the Department ~~effectively~~ to ~~carry out~~implement the policies of the Commission and ~~the efficient and effective enforcement of~~ to enforce the Securities Act in an efficient and effective manner.

(b) The Department shall be organized in the following divisions:

(1) ~~Registration~~registration of broker-dealers, agents and investment advisers.

(2) ~~Registration~~registration of securities.

(3) ~~Investigation~~investigation and enforcement~~.~~; and

(4) investor education.

(c) The Department shall have as its chief officer an Administrator who shall be charged with the duty of administering and enforcing the acts under the supervision of the Commission and in accordance with its policies.

SUBCHAPTER 5. AUTHORITY AND ACTIONS OF ADMINISTRATOR

660:2-5-4. Summary orders

The Administrator may issue summary orders pursuant to the provisions set forth in:

(1) Sections ~~204(d), 306(b)~~ 1-306.D, 1-411.F or ~~406(e)~~1-604 of the Securities Act;

(2) Section 814(D) of the Business Opportunity Act;

(3) Sections 628(D), 634(C), or 660 of the Land Sales Act; or

(4) Subsection (D) of Section 453 of the Take-over Act.

SUBCHAPTER 7. INVESTIGATIONS

660:2-7-1. Initiation

Investigations ~~and inquiries~~may be initiated upon inquiry, request or complaint by members of the public or by the Administrator or the Commission upon their own motion. The request or complaint by a member of the public should be in writing on the form identified in Chapter 6 of this Title, be signed by the complainant and contain a statement setting forth the acts, activities or matters and the name and address of the party or parties against whom they are complaining. No ~~forms or~~formal procedures are required in making such requests or complaints. The complainant is not regarded as a party, since the Administrator acts only in the public interest. The Administrator shall not take action when the acts, activities or matters complained of are merely matters of private controversy and do not tend to adversely affect the public.

660:2-7-2. Authority [REVOKED]

~~(a) The Administrator encourages voluntary cooperation in investigations. The Administrator may invoke any or all of the compulsory processes authorized by law. Inquiries and investigations, under the statutes administered by the Administrator, are conducted by representatives designated and duly authorized for this purpose. Such representatives are authorized to exercise and perform the duties of their office in accordance with the statutes of the state of Oklahoma and the regulations of the Administrator, including administration of oaths and affirmations, in any matter under investigation by the Administrator.~~

~~(b) Any person under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation subject to the confidentiality requirements provided by law. Nothing in this section shall prohibit the Administrator or his designee from expanding or restricting the scope of any investigation at any time during an investigation.~~

660:2-7-3. Investigative ~~hearings~~processes

(a) **Authority.** Investigations under the statutes administered by the Administrator shall be conducted by representatives designated and duly authorized for this purpose. Such representatives are authorized to exercise and perform the duties of their office in accordance with the statutes of the state of Oklahoma and the regulations of the Administrator, including administration of oaths and affirmations, in any matter under investigation by the Administrator. Nothing in this section shall prohibit the Administrator or his designee from expanding or restricting the scope of any investigation at any time during an investigation.

(b) **Investigative hearings.** Investigative hearings, as distinguished from hearings in individual proceedings, may be conducted in the course of any investigation undertaken by the Administrator, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Administrator. Investigative hearings may be held before the Administrator, or his designee, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be non-public.

(c) **Subpoena to testify or produce records.** While the Administrator encourages voluntary cooperation in investigations, the Administrator, or his designee, at any stage of

any investigation, may issue a subpoena ordering the person named therein to appear before a designated representative at a designated time and place, including the offices of the Department, to provide testimony by deposition, sworn statement or affidavit and/or to produce documentary evidence relating to any matter under investigation. Such testimony shall only be reduced to writing or otherwise recorded in any manner by the person taking the testimony, or under his direction.

(d) **Subpoena to grant access.** The Administrator may issue a subpoena to grant access to, to examine, and to copy documents, books or other records of any person being investigated.

(e) **Service.** Subpoenas shall be served in the manner provided by law.

(f) **Written examination.** The Administrator, or his designee, may issue an order requiring persons to file a report or statement, or answers in writing and under oath to specific questions, relating to any matter under investigation.

(g) **Rights of witness.** Any person under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation, subject to the confidentiality requirements provided by law. Any person required to testify shall be entitled to review a copy of the transcript of his own testimony, if transcribed, at the offices of the Department of Securities. Any person required to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, provided that such counsel is duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may question such person briefly at the conclusion of the examination to clarify any of the answers such person has given.

(h) **Confidentiality.** Information or documents obtained by the Administrator and subpoenas issued in connection with an investigation shall be kept confidential and shall not be made available to the public, unless expressly ordered by the Administrator, disclosed pursuant to the provisions of Subchapter 9 of this Chapter or as otherwise provided by law.

660:2-7-4. Subpoenas [REVOKED]

~~(a) **Subpoena to appear or produce records.** The Administrator, or his designee, may issue a subpoena directing the person named therein to appear before a designated representative at a designated time and place, including the offices of the Department, to testify and/or to produce documentary evidence relating to any matter under investigation.~~

~~(b) **Subpoenas to grant access.** The Administrator may issue a subpoena to grant access to, to examine, and to copy documents, books or other records of any person being investigated.~~

~~(c) **Service.** Subpoenas shall be served in the manner provided by law.~~

~~(d) **Confidentiality.** Subpoenas issued in connection with an investigation shall be kept confidential and shall not be made available to the public, unless expressly ordered by the Administrator or disclosed pursuant to the provisions of Subchapter 9 of this Chapter.~~

660:2-7-5. Testimony [REVOKED]

~~(a) **Requirement to testify.** The Administrator, or his designee, may order testimony to be taken by deposition, sworn statement or affidavit in any investigation at any stage of such investigation. Such testimony may be taken before any person designated by the Administrator and having power to administer oaths. Such testimony shall only be reduced to writing or otherwise recorded in any manner by the person taking the testimony, or under his direction. Any person may be compelled to appear and depose and to produce documentary evidence in the manner as provided by law.~~

~~(b) **Rights of witness.** Any person required to testify or to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and review a copy of his own testimony as maintained at the offices of the Department of Securities.~~

660:2-7-6. Reports [REVOKED]

~~The Administrator, or his designee, may issue an order requiring persons to file a report or answers in writing and under oath to specific questions relating to any matter under investigation.~~

660:2-7-7. Enforcement of process [REVOKED]

~~In case of failure to comply with the Administrator's investigational processes, appropriate action may be initiated by the Administrator, including actions for enforcement by the Administrator.~~

660:2-7-8. Right to counsel [REVOKED]

~~Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel.~~

660:2-7-9. Termination of investigation

Upon completion of investigation, where the facts indicate that no corrective action by the Administrator is warranted, the investigative files ~~are~~ shall be closed, without prejudice to reopening. Where remedial action is appropriate, the files may be referred~~to the Administrator~~ for the initiation of administrative or civil proceedings, or other disposition as may be permitted under law. At any time during or after completion of an investigation, a matter may be referred to a law enforcement agency or another governmental or regulatory entity.

SUBCHAPTER 9. ~~HEARING~~ INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

660:2-9-1. Hearings in general

(a) **Authority~~ to hold hearings.~~** ~~The Administrator may hold hearings upon the request of any party to an individual proceeding.~~ Prior to issuance of a final order in an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. If the person to whom notice is addressed does not request a hearing within twenty (20) days after the service of notice is effective, a final order may be issued.

~~(b) **Appointment of hearing officer.** The Administrator may appoint a Hearing Officer to hold hearings whenever he deems appropriate under the circumstances. The Administrator shall enter into a written contract with each Hearing Officer appointed, which shall govern the terms of appointment.~~

~~(c) **Request for hearing.** The request for hearing shall be in writing and shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation of the Department. When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted.~~

(b ~~d~~) **~~Attendance at~~Public hearing.** All hearings shall be open to the public but may not be recorded by the public or any respondent by any electronic means.

~~(e) **Authority of Hearing Officer.** The Hearing Officer shall have the authority to do all things necessary and appropriate to discharge his duties. No provision of this Section shall be construed to limit the powers of the hearing officer provided by the Administrative Procedures Act. The powers of the Hearing Officer include, but are not limited to, the following:~~

~~(1) Administering oaths and affirmations;~~

~~(2) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;~~

~~(3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;~~

~~(4) Regulating the course of a proceeding and the conduct of the parties and their counsel;~~

~~(5) Holding prehearings and other conferences and requiring the attendance at any such conference of any party;~~

~~(6) Recusing himself or herself upon motion made by a party or upon his or her own motion;~~

~~(7) Subject to any limitations otherwise specified, considering and ruling upon all procedural and other motions;~~

~~(8) Requiring the filing of briefs;~~

~~(9) Requiring the filing of proposed findings of fact and conclusions of law in preparation for the proposed final order; and~~

~~(10) Preparing a proposed final order for submission to the Administrator.~~

(~~f~~c) **Hearings on summary orders.** The provisions of this Subchapter shall not apply to proceedings for summary orders. The procedures for hearings on summary orders shall be those set forth in:

(1) Sections ~~204(d), 306(b), or 406(e)~~ 1-306.D, 1-411.F, or 1-604.B of the Securities Act;

(2) Section 814(D) of the Business Opportunity Act;

(3) Sections 628(D), 634(C), or 660 of the Land Sales Act; and

(4) Subsections (D) and (E) of Section 453 of the Takeover Act.

660:2-9-2. ~~Setting or denial of hearing~~ Initiation of individual proceedings

(a) **Request for hearing and answer.** The request for hearing shall be in writing and shall specifically admit or deny each allegation of the Department or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation. When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted. Failure to file a request for hearing in substantial compliance with this subsection shall constitute grounds for denial of the request.

(b) **Setting or denial of hearing.** Upon receipt of a written request for a hearing, ~~as outlined in 660:2-9-1 of this Subchapter,~~ the Administrator shall either ~~set down the matter for~~ schedule a hearing to commence within ~~sixty days (60)~~ ninety (90) days from the receipt of the request ~~therefor~~ or shall issue a written order denying hearing.

(c) **Time of notice.** Notice of all hearings shall be served by regular mail or personal delivery within a time reasonable in light of the circumstances, in advance of the hearing, but not less than forty-five (45) days in advance thereof, to all parties. For good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.

(d) **Contents of notice.** The notice of hearing shall contain the following information:

(1) the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short plain statement of the matters asserted; and

(4) a reference to the particular sections of the statutes and rules involved.

(e) **Appointment of hearing officer.** The Administrator may delegate authority to a Hearing Officer to conduct an individual proceeding whenever deemed appropriate under the circumstances. The Administrator shall enter into a written contract with each Hearing Officer appointed, which shall govern the terms of appointment.

(f) **Authority of presiding officer.** The Administrator, or the Hearing Officer, shall have the authority to do all things necessary and appropriate to discharge his duties. The duties of the Administrator, or the Hearing Officer, include, but are not limited to, the following:

(1) Administering oaths and affirmations;

(2) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;

(3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(4) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(5) Holding prehearing and other conferences and requiring the attendance at any such conference of any party;
(6) Recusing himself or herself upon motion made by a party or upon his or her own motion;
(7) Considering and ruling upon all procedural and other motions, subject to any limitations otherwise specified;
(8) Requiring the filing of briefs, if so desired;
(9) Requiring the filing of proposed findings of fact and conclusions of law in preparation for the proposed final order if so desired; and
(10) Preparing a proposed final order for submission to the Administrator.

(g) **Submission of case on documentary record.** The Administrator, or the Hearing Officer, may elect not to hold a hearing if all parties agree to submit the case on the documentary record and waive their right to appear.

660:2-9-3. Prehearing proceedings and processes

(a) **Time of notice.** Notice of all hearings shall be given not less than ten (10) days in advance thereof to all persons directly affected by such hearing, but for good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.

(b) **Contents of notice.** The notice of hearing shall contain the following information:
(1) the time and place of hearing;
(2) a statement of the matters to be considered thereat;
(3) a statement of legal authority and jurisdiction under which the hearing is to be held;
(4) a short plain statement of the matters asserted. If such statement of the issues is not sufficient, upon application a more definite and detailed statement will be furnished; and
(5) a reference to the particular sections of law involved.

(c) **Proceedings.**

(1a) **Prehearing conference Scheduling.** As soon as is practicable after the request for hearing is received, the Administrator, or the Hearing Officer, shall schedule a prehearing conference and enter a scheduling order that is intended to expedite the disposition of the action; clarify matters under consideration, and insure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone prior to the prehearing conference and attempt to prepare a single agreed scheduling order to submit to the Hearing Officer prior to the date of the scheduling conference. If the proposed scheduling order is acceptable to the Hearing Officer no scheduling conference need be held. If the parties are unable to agree, the Hearing Officer shall issue an appropriate scheduling order or hold a scheduling conference in person or by telephone. The scheduling order should establish at least the following:
(A1) a statement of the issues as they then appear;
(B2) a proposed plan and schedule of discovery;
(C3) any limitations proposed to be placed on discovery;
(D) any other proposed orders with respect to discovery;
(E4) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing, including a brief statement of the testimony each witness will offer;
(F5) a schedule for filing and exchanging of any prehearing briefs, if any;
(G) any requirements or requests for discovery;
(H) stipulations regarding introduction of documents;
(I6) identification of any expert witness intended to be called, including a brief summary of their expected testimony;
(J) any matters of which official notice may be taken;
(K7) the date or dates and time for the final prehearing conference;
(L8) the date and time of the hearing; and
(M9) such other matters as may aid in the disposition of the matter.

(2b) **Final prehearing Prehearing conference**

(A1) A final prehearing conference shall be held as close to the time of hearing as is reasonable under the circumstances, but not less than twenty (20) days in advance thereof. No less than Ten ten (10) days before the prehearing conference each party shall submit to the Hearing Officer and serve on all other parties, by personal delivery or facsimile, their final witness list, final exhibit list and specific factual contentions and legal contentions. No less than five (5) days before the prehearing conference Any any objections to any witnesses or exhibits listed shall be submitted to the Administrator, or the Hearing Officer, in writing stating the specified grounds for each objection, and served on all other parties, by personal delivery or facsimile in writing stating the specified grounds for each objection five (5) days prior to the prehearing conference. After At the final conclusion of the prehearing conference is held, an a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the action unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice. The order shall include the results of the final prehearing conference and shall present:
(iA) all questions of law factual and legal issues to be determined in the case;
(iiB) the final list of witnesses and exhibits to be utilized at the hearing; and
(C) any admissions of fact and any stipulations regarding admission and authenticity of documents; and
(iiiD) if there is objection to the admission of any exhibit or witness, a list of the specific grounds for an each objection. and absent Absent proper objection, a statement that the a listed exhibit or the testimony of a listed witness is admitted when offered at the hearing.

(B2) Each party and the Administrator, or the Hearing Officer, shall approve the final prehearing order and the order shall supersede the previous scheduling order and

shall govern the hearing unless modified only to prevent manifest injustice.

(3) The Administrator, or the Hearing Officer, may conduct the prehearing conference by telephone. Upon notice to the participants, all or part of the prehearing conference may be recorded.

(~~3~~c) **Failure to participate.** Failure to participate and cooperate in the preparation of a scheduling order or ~~final~~ prehearing conference order, failure to appear at any conference, failure to appear at a conference substantially prepared, or failure to participate in good faith in any prehearing proceedings may result in any of the following sanctions:

(~~A~~1) striking of any pleading;

(~~B~~2) a preclusion order;

(~~C~~3) staying the proceeding;

(~~D~~4) default judgment; or

(~~E~~5) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(~~4~~d) **Post ~~final~~ prehearing conference ~~order~~.** If additional exhibits are discovered ~~After~~ after the ~~final~~prehearing conference order is issued, ~~if additional witnesses or exhibits are discovered,~~ the party intending to use them shall immediately notify all other parties and ~~provide~~ furnish copies of the additional exhibits to ~~all~~ such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses ~~shall be provided~~. These additional exhibits or the testimony of the additional witnesses shall be deemed admitted unless written objection is filed ~~within ten (10) days of receipt of notice~~ prior to or at the commencement of the hearing by the party objecting. If a written objection is filed, no exhibit or witness may be added to the ~~final~~ prehearing conference order ~~once filed~~ without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the addition of such exhibit or witness were not permitted.

(e) **Filing of papers.** All papers required to be served by a party shall be filed with the Administrator within the applicable time for service. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method or service and the mailing address or facsimile telephone number to which service was made, if not made in person.

(f) **Signature requirement.** Every filing of a party represented by counsel shall be signed by at least one counsel of record in his name and shall state that counsel's business address and telephone number. A party who acts as his own counsel shall sign his individual name and state his address and telephone number on every filing. The signature of a counsel or party shall constitute a certification that:

(1) the person signing the filing has read the filing;

(2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(3) If a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

660:2-9-4. Authority to subpoena witnesses

(a) **Subpoenas.** The Administrator, or the Hearing Officer, shall have the power to subpoena witnesses and administer oaths or to subpoena documentary evidence in any cause before him. ~~All subpoenas shall be served in like manner as if issued from the District Court.~~ Any ~~person a~~ party to a hearing ~~before the Administrator who may be adversely affected by the order of the Administrator~~shall have the right to have subpoenas issued to require the attendance and testimony of ~~any~~ witnesses ~~whose testimony~~ at a designated time and place, or ~~documents may be relevant or may lead to relevant evidence, in his behalf~~ to require the production of documentary evidence at a designated time and place. Where it appears to the Administrator, or the Hearing Officer, that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, he may, in his discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, he may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

(b) **Service.** Service of the subpoena shall be in the manner provided by law and shall be the responsibility of the party requesting the subpoena. Appropriate service shall be made at least three (3) calendar days before the person is required to appear. Proof of service shall be filed with the Administrator.

(c) **Fees.** Witnesses subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued.

660:2-9-5. ~~Right to counsel~~ Representation

(a) **Right to counsel.** Any ~~person affected by the hearing~~ party shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party must be duly licensed to practice law by the Supreme Court of Oklahoma~~, and~~. Such counsel may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses and may present evidence in his client's behalf.

(b) Notice of appearance. An attorney representing a party shall promptly file a notice of appearance with the Administrator. The notice of appearance shall contain all of the following:

(1) the attorney's name, address, telephone number, and bar number;

(2) the firm name, address, and telephone number if the attorney is a member of a firm; and

(3) the name, address, and telephone number of the person represented.

(c) **Service on attorney.** After a notice of appearance has been filed, service of all papers may be made upon the attorney or firm of record and shall be effective as service upon the person represented.

660:2-9-6. ~~Rules of evidence at~~ Conduct of hearings

(a) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator, or the Hearing Officer, during the hearing. However, the Administrator, or the Hearing Officer, may look to Section 310 of the Administrative Procedures Act for guidance on any matter not specifically provided for in this Subchapter.

(b) **Photocopies.** Documentary evidence may be received in the form of copies if the original is not readily available and no party or interested person has objected to the authenticity of the document or asserted it has been altered. Upon such objection or assertion, the Administrator, or the Hearing Officer, may require the original to be produced.

(c) **Official notice.** Notice may be taken by the Administrator, or the Hearing Officer, of judicially cognizable facts. In addition, notice may be taken of generally recognized practices, procedures and facts relating to the securities industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity to contest the material so noticed. The Administrator, or the Hearing Officer, shall utilize his experience, technical competence and specialized knowledge in evaluating the evidence presented.

(d) **Sequestration of witnesses.** Upon request by any party, the Administrator, or the Hearing Officer, may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during the testimony. The Administrator, or the Hearing Officer, may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.

(e) **In person testimony.** No witness shall testify by telephone or other electronic means unless by agreement of the parties.

660:2-9-7. Record of hearing

(a) **Requirement.** ~~Upon written request seasonably made by such person affected by the hearing, and at such person's expense, a full stenographic record of the proceedings shall be made by a competent court reporter. When a transcription thereof shall be made a part of the records of the Department, any other person having a direct interest therein shall be furnished a copy of such stenographic record at his expense.~~ Oral proceedings shall be electronically recorded at the expense of the Department. Costs of transcription shall be borne by the party requesting transcription and shall be paid directly to the person transcribing the proceeding.

(b) **Contents of record.** The record in any hearing shall include the following:

(1) all pleadings, motions and intermediate rulings;

(2) all evidence received or considered, including a statement of matters officially noted;

(3) questions or offers of proof, objections and rulings thereon;

(4) proposed findings and exceptions; ~~and~~

(5) the decision, opinion, or report~~or order~~ of the Administrator, or the Hearing Officer;

(6) all other evidence or data submitted to the Administrator, or the Hearing Officer, in connection with their consideration of the case provided all parties have had access to such evidence; and

(7) the final order of the Administrator.

660:2-9-9. Rehearings

(a) **Written ~~Request for rehearing~~ request.** ~~At the discretion of the Administrator a rehearing may be granted to any party~~ Any party aggrieved by a final order may request rehearing, reopening or reconsideration if a written request is made therefor within ten days (10) after ~~any~~ entry of the final order ~~is mailed or delivered to the person entitled to receive same~~.

(b) **~~Contents of request - grounds~~ Grounds.** In the request for rehearing, reopening or reconsideration, the party shall set forth one or more of the following grounds:

(1) newly discovered ~~and~~ or newly available evidence relevant to the issues;

(2) need for additional evidence to adequately develop the facts essential to proper decision;

(3) probable error committed by the Administrator, or the Hearing Officer, in the proceeding or in his decision such as would be ground for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest; or

(5) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(c) **Additional grounds for rehearing.** Nothing in these rules shall prevent the Administrator from ordering any matter reheard, reopened or reconsidered in accordance with other applicable statutory provisions or rules or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

(d) **Order granting rehearing.** The order granting reconsideration, reopening or rehearing shall set forth the grounds that justify such action.

(e) **Scope ~~of rehearing~~.** ~~On~~ The reconsideration, reopening or rehearing~~, the hearing~~ shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ~~requested or~~ granted.

SUBCHAPTER 11. PROCEDURES FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

660:2-11-7. Fees

(a) **Amounts payable.** The following are the fees that shall be charged by the Department for copying and/or mechanical reproduction of public records and for the search for public records requested by the public pursuant to the Open Records Act and Section ~~412~~ 1-612 of the Securities Act; provided, however, no record search and/or copying charge shall be assessed against officers or employees of the Department who make requests which are reasonably necessary to the performance of their official duties:

(1) **Inspection fees.** No fee shall be charged for inspection of a public record in the offices of the Department.

(2) **Copying fees.** The following fees shall be charged for copies of public records:

(A) 8 1/2" by 14" or smaller - $ .25 per page

(B) Larger than 8 1/2" by 14" - $1.00 per page

(C) Certified copy 8 1/2" by 14" or smaller - $1.00 per page

(D) Certified copy larger than 8 1/2" by 14" - $2.00 per page

(3) **Fee for mechanical reproduction.** For copying any public record which cannot be reproduced by photocopying, such as a computer printout or a blueprint, or where the size of the record to be copied warrants sending the record outside for copying, the person requesting the record shall be charged the actual cost to the Department of such copying, including the cost of labor, materials and equipment.

(4) **Search fee.** If the person requesting a record is using the record solely for a commercial purpose, a search fee shall be charged equal to $20.00 per hour for the time spent by employees in retrieving the record.

(b) **Prepayment of fees.** The Record Custodian may require prepayment of estimated fees for requests for public records and shall require prepayment of a fee whenever the estimated amount exceeds $200.00. The prepayment amount shall be an estimate of the costs of copying, mechanical reproduction and/or searching for the record. Any overage or underage in the prepayment amount shall be settled prior to producing the requested record or delivering the copy or mechanical reproduction of the record to the person requesting the record.

SUBCHAPTER 13. DECLARATORY RULINGS AND INTERPRETIVE OPINIONS

660:2-13-1. Opinions

The Administrator and/or Commission may honor requests from interested persons for interpretive opinions and as to the applicability of any rule or order, if it be shown that an actual case, controversy or issue is in contemplation and that unreasonable hardship, loss or delay would result if the matter were not determined in advance. The Administrator in his discretion may honor requests from interested persons for formal interpretive opinions relating to a specific factual circumstance and no-action positions, including consideration of waivers, where appropriate and in the public interest, on the basis of facts stated and submitted in writing, with respect to the provisions of the Securities Act or any rule or statement of policy adopted thereunder, provided such requests satisfy and conform to the following requirements:

(1) Such requests shall be in writing and shall include or be accompanied by all information and material required by any statute, rule or statement of policy under which an exception or exemption may be claimed, including but not limited to, copies of prospectuses or offering circulars if applicable or appropriate.

(2) An original and one copy of the request letter itself shall be submitted and the name of the entity for whom the request is being made along with the specific subsection of the particular statute or the particular rule or statement of policy to which the letter pertains shall be indicated in the upper right-hand corner of the letter.

(3) The letter should contain a brief narrative of the fact situation and should set out all of the facts necessary to reach a conclusion in the matter; however, such narratives should be concise and to the point.

(4) The names of the company or companies, organization or organizations and all other persons involved should be stated and should relate and be limited to a particular factual circumstance. Letters relating to unnamed companies, organizations or persons or to hypothetical situations will not warrant a formal response.

(5) Every such request shall include or be accompanied by a manually signed opinion of legal counsel which briefly and concisely states counsel's understanding, counsel's opinion in the matter, which may be expressed tentatively or conditioned upon concurrence by the Administrator, and the basis for such opinion.

(6) Each request for a no-action position and/or interpretive opinion letter shall be accompanied by payment of a fee in the amount specified in Section ~~412~~ 1-612 of the Securities Act.

[OAR Docket #04-1068; filed 5-26-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 6. FORMS

[OAR Docket #04-1069]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Forms used under the Securities Act
660:6-5-1. Forms for registration or exemption of securities [AMENDED]
660:6-5-2. Licensing forms [AMENDED]

AUTHORITY:
Administrator, Oklahoma Department of Securities; 71 O.S., §§ 410 and 1-605

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ANALYSIS:
The Oklahoma legislature enacted the Oklahoma Uniform Securities Act of 2004, 71 O.S., §§ 1-101 through 1-701, effective July 1, 2004 ("OUSA") to implement the Uniform Securities Act of 2004, and repealed 71 O.S., §§ 1-413,501,701-703, effective July 1, 2004, in S.B. No. 724 of the First Session of the 49th Oklahoma Legislature. The rule amendments will reflect this statutory change and clarify the procedures of the Securities Department.
CONTACT PERSON:
Faye Morton, General Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

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. FORMS USED UNDER THE SECURITIES ACT

660:6-5-1. Forms for registration or exemption of securities

(a) The following is a list of forms accepted by the Department in connection with the registration or exemption of securities under the Securities Act:

(1) U-1 -- Uniform Application to Register Securities
(2) U-2 -- Uniform Consent to Service of Process
(3) U-2A -- Uniform Form of Corporate Resolution
(4) U-7 -- Small Corporate Offerings Registration Form
(5) NF -- Uniform Investment Company Notice Filing
(6) USR-1 -- Uniform Sales Report for Issuers
(7) Form D -- Notice of Sale of Securities Pursuant to Regulation D
(8) Oklahoma Accredited Investor Exemption Supplemental Information Form

(b) **Obtaining forms.**

(1) Copies of forms listed in (a)(1) through (6) of this Section, can be obtained from The North American Securities Administrators Association, Inc. at 10 G Street Northeast, Suite 710, Washington, D.C. 20002 or on the NASAA web site at http://www.nasaa.org.

(2) Copies of Form D may be obtained from The Public Reference Branch of the main office of the SEC, 450 5th Street, N.W., Washington, D.C. 20549, from any of the regional or branch offices of the SEC, or on the SEC web site at http://www.sec.gov.

(3) Copies of the form listed in (a)(8) of this Section can be obtained from the Department.

(4) The referenced forms are also available from the Department's website at www.securities.ok.us.

660:6-5-2. Licensing forms

(a) The following is a list of forms used by the Department in connection with licensing persons as broker-dealers, agents, principals, issuer agents, investment advisers or investment adviser representatives, under the Securities Act:

(1) BD -- Uniform Application for Broker-Dealers, Investment Advisers and Agents
(2) ADV -- Uniform Application for Investment Adviser Registration
(3) U-2 -- Uniform Consent to Service of Process
(4) U-2A -- Uniform Form of Corporate Resolution
(5) U-4 -- Uniform Application for Securities Industry Registration or Transfer
(~~4~~6) U-5 -- Uniform Application for Termination of Registration
~~(5) U-6 -- Uniform Disciplinary Action Reporting Form~~
(~~6~~7) U-10 -- Uniform Examination Request for Non-NASD Candidates
(~~7~~8) OBD-001 -- Applicant/Management Certification for Non-NASD Principals
(~~8~~9) OBD-008 -- Application for Renewal of Non-NASD Broker-Dealer Registration
(~~9~~10) OBD-015 -- Application for Renewal of Issuer Agent Registration
(~~10~~11) OBD-016 -- Application for Renewal of Non-NASD Broker-Dealer Principal Registration
~~(11) OBD-017 -- Investment Adviser Representative Applicant/Management Certification for Associated Persons.~~
(12) OBD-018 -- Applicant/Management Certification for Issuer Agents
(13) OBD-019 -- Application for Renewal of Non-NASD Broker-Dealer Agent Registration
(14) OBD-020 -- NonBranch Sales Office Form

(b) **Obtaining forms.**

(1) Copies of the forms listed in (a)(1) ~~through~~ and (~~6~~2) of this Section, can be obtained from the SEC, 450 5th Street, N.W., Washington, D.C. 20549 or from any of the regional or branch offices of the SEC.

(2) Copies of the forms listed in (a)(1), ~~and~~ (~~3~~5) ~~through~~ and (6) of this Section, can be obtained by contacting the NASD, ~~9513~~ 9509 Key West Avenue, ~~P.O. Box 6011,~~ Rockville, Maryland 20850, ~~301-738-6500~~ 301-590-6500.

(3) Copies of forms listed in (a)~~(1) and~~ (3) through (7) of this Section, can be obtained from The North American

Securities Administrators Association, Inc. at 10 G Street, Northeast, Suite 710, Washington, D.C. 20002.

(4) Copies of forms listed in (a)(~~7~~8) through (~~13~~14) of this Section, can be obtained from the Department.

(5) Many of the referenced forms are available from the Department's website at www.securities.state.ok.us.

[OAR Docket #04-1069; filed 5-26-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 10. OKLAHOMA SECURITIES ACT

[OAR Docket #04-1070]

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ANALYSIS:
The Oklahoma legislature enacted the Oklahoma Uniform Securities Act of 2004, 71 O.S., §§ 1-101 through 1-701, effective July 1, 2004 ("OUSA") to implement the Uniform Securities Act of 2004, and repealed 71 O.S., §§ 1-413,501,701-703, effective June 25, 2004, in S.B. No. 724 of the First Session of the 49th Oklahoma Legislature. The rule amendments will reflect this statutory change and clarify the procedures of the Securities Department.
CONTACT PERSON:
Faye Morton, General Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

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 [REVOKED]

660:10-1-1. Purpose [REVOKED]

~~The provisions of this Chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Securities Act including, but not limited to, provisions governing the offer, sale and issuance of securities.~~

660:10-1-2. Statutory citations [REVOKED]

~~Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Securities Act in Title 71 of the Oklahoma Statutes.~~

660:10-1-3. Definitions [REVOKED]

~~Unless the context otherwise requires, or unless defined in this Section or in 660:10-5-2, terms used in this Chapter, if defined in the Securities Act, shall have the meaning as defined in the Securities Act. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~**"Authorized to do business in Oklahoma"** means authorized to do business in Oklahoma pursuant to the Oklahoma Securities Act.~~

~~**"Audited financial statements"** means "Certified financial statements."~~

~~**"Certified financial statements"** means financial statements prepared in accordance with generally accepted accounting principles and examined by Independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion as described in 660:10-15-1.~~

~~**"CRD"** means the NASAA/NASD Central Registration Depository System~~

~~**"Date of filing"** means the date on which a proper registration statement is filed for purposes of determining the dates of the statements of financial condition to be filed with a registration statement. If amendments to a registration statement are necessary to comply fully with the registration requirements, "date of filing" means the date on which the last amendment is filed.~~

~~**"FDIC"** means the Federal Deposit Insurance Corporation.~~

~~**"Financial statements"** means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles.~~

~~**"Independent accountants"** means independent certified public accountants. The concept of independence shall be that promulgated by the American Institute of Certified Public Accountants.~~

~~**"Investment companies"** means investment companies of whatever form, style or organization which offer or maintain transaction accounts.~~

~~**"NASAA"** means the North American Securities Administrators Association.~~

~~**"NASD"** means the National Association of Securities Dealers, Inc.~~

~~**"NASDR"** means the National Association of Securities Dealers Regulation, Inc.~~

~~**"1933 Act"** means the Securities Act of 1933, as amended.~~

~~**"1934 Act"** means the Securities Exchange Act of 1934, as amended.~~

~~**"1940 Act"** means the Investment Company Act of 1940.~~

~~**"Predecessor of an issuer"** means:~~

~~(A) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or~~

~~(B) a person from which the issuer acquired directly or indirectly the major portion of its assets.~~

~~**"Promotional or developmental stage company"** means an issuer for which any of the following conditions exist:~~

~~(A) the company and any predecessors were formed within the twelve month period ending on the date of the filing of the application for registration;~~

~~(B) the company has no significant revenues from the line of business being undertaken with the offering proceeds;~~

~~(C) the principal operations to be conducted with offering proceeds have not commenced or have been commenced within the twelve month period ending on the date of the filing of the application for registration; or~~

~~(D) the principal operations to be conducted with offering proceeds have commenced, but the issuer has not demonstrated profitable operations for two of the three fiscal years prior to registration, evidenced by net income determined in accordance with generally accepted accounting principles after taxes, and excluding extraordinary items.~~

~~**"Prospectus"** means a prospectus in a form and containing such information as may be required by the Administrator, including a prospectus filed under the 1933 Act or an offering circular used in connection with an exempt security or transaction regardless of the designation of the document (i.e., prospectus, offering circular, memorandum, etc.).~~

~~**"Registration statement"** means an application for registration of securities under Sections 302, 303, 304 or 304.1 of the Securities Act and all documents and exhibits related thereto, including a Prospectus.~~

~~**"SEC"** means the United States Securities and Exchange Commission.~~

~~**"Securities Act"** means the most recent codification of the Oklahoma Securities Act in Title 71 of the Oklahoma Statutes.~~

~~**"SIPC"** means the Securities Investor Protection Corporation.~~

SUBCHAPTER 3. INVESTMENT CERTIFICATE ISSUERS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

660:10-3-1. Definitions [REVOKED]

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

~~**"Allowance"** means an allowance for loan losses or a reserve against bad debts.~~

~~**"Net loans outstanding"** means total gross loans outstanding less unearned discount.~~

~~**"Nonperforming loan"** means a loan over 90 days past due with respect to principal and/or interest.~~

~~**"Uncollectible"** means the potential for collection is virtually nonexistent.~~

~~**"Worthless"** means lacking value.~~

PART 3. REPORTING AND ACCOUNTING REQUIREMENTS [REVOKED]

660:10-3-21. Loans [REVOKED]

~~(a) **Classifications.** Each investment certificate issuer shall observe the classification standards of loans prescribed below:~~

~~(1) Loss - all, or a portion, of the loan considered uncollectible or worthless.~~

~~(2) Doubtful - all, or a portion, of the loan the ultimate collection of which is doubtful and in which a substantial loss is probable, but not as yet definitely ascertainable in amount.~~

~~(3) Substandard - all, or a portion, of the loan not classified as doubtful or loss and which involves more than normal risk due to the financial condition or unfavorable record of the borrower, insufficiency of security, or other factors.~~

~~(4) Special mention - loans not warranting classification as substandard, doubtful, or loss but which are of an unusual nature carrying more than the usual risk, and should have the careful attention of management.~~

~~(b) **Appraisals.** Each investment certificate issuer shall perform an in-house appraisal or obtain an appraisal by a licensed independent appraiser of collateral at the time of the origination of each loan. Said appraisal shall be updated by a licensed independent appraiser upon the Administrator's written request upon a change in the economic or market conditions or if the loan becomes nonperforming.~~

~~(c) **Aging schedules.**~~

~~(1) The provisions of this subsection shall apply to determining the age of loans. Loans shall be aged on the basis of contract terms in effect at the close of business each month. Account balances not in current status shall be classified in the following categories (assuming monthly payments):~~

~~(A) One installment or a portion in excess of 5% of an installment due and unpaid 0 to 30 days past due.~~

~~(B) Two installments or one and a portion in excess of 5% of an installment due and unpaid 31 to 60 days past due.~~

~~(C) Three installments or two and a portion in excess of 5% of an installment due and unpaid 61 to 90 days past due.~~

~~(D) Four installments or three and a portion in excess of 5% of an installment due and unpaid over 90 days past due.~~

~~(2) Amortizing real estate loans are to be reported as past due when the borrower is in arrears two or more monthly payments. Such obligations with payments scheduled other than monthly are to be reported as past due when one scheduled payment is due and unpaid for 30 days or more.~~

~~(3) Single payment and demand notes providing for the payment of interest at stated intervals are to be reported as past due after one interest payment is due and unpaid for 30 days or more.~~

~~(4) Single payment notes providing for the payment of interest at maturity are to be reported as past due after maturity if interest or principal remains unpaid for 30 days or more.~~

~~(d) **Interest.** Loans are to be reported as being in nonaccrual status if:~~

~~(1) said loans are maintained on a cash basis because of deterioration in the financial position of the borrower;~~

~~(2) payment in full of interest or principal is not expected; or~~

~~(3) principal or interest has been in default for a period of 90 days or more unless the obligation is both well secured and in the process of collection. A debt is "well secured" if it is secured (1) by collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt in full, or (2) by the guaranty of a financially responsible party. A debt is "in the process of collection" if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status.~~

~~(e) **Charge-offs.** Each investment certificate issuer shall charge off the whole or any part of a loan at such times that said loan is classified by the Administrator as "loss" as defined in Subsection (a) above.~~

660:10-3-22. Valuation of other assets [REVOKED]

~~(a) **Real property.** Real property shall be recorded on the balance sheet in accordance with generally accepted accounting principles. Each investment certificate issuer shall maintain an appraisal of all real property recorded on the balance sheet. Said appraisal shall be updated by a licensed, independent appraiser upon the Administrator's request if a change in the economic or market conditions occur. If said appraisal indicates that the value of the asset is materially overstated on the balance sheet such that the financial statements are materially misstated, said asset shall be written down to market value upon the written request of the Administrator.~~

~~(b) **Other assets.** All other assets of the investment certificate issuer shall be recorded on the balance sheet in accordance with generally accepted accounting principles.~~

~~(c) **Charge-offs.** Each investment certificate issuer shall charge off the whole of any other asset, including real property, at such time that said asset is deemed to be lacking in value by the Administrator.~~

660:10-3-23. Reserve against bad debts [REVOKED]

~~(a) **Requirement to maintain reserve.** Each investment certificate issuer shall at all times maintain a reserve against bad debts, that is, an Allowance for Loan Losses, in an amount equal to two percent (2%) of the total loans outstanding.~~

~~(b) **Determination of amount of reserve.** As of the end of each quarter, the management of each investment certificate issuer shall evaluate the collectibility of the loan portfolio to bring the Allowance, by means of a charge or credit, to a level adequate to absorb anticipated loan losses. Any recoveries during the reporting period should be credited to the Allowance, and any charge-offs should be charged to the Allowance. With respect to those loans classified as "doubtful" in accordance with 660:10-3-21, the Allowance shall be increased by an amount equal to fifty percent (50%) of the amounts classified as "doubtful." With respect to those loans classified as "substandard" in accordance with 660:10-3-21, the Allowance shall be increased by the following percentages of the amounts of the outstanding loans classified as "substandard":~~

~~(1) for fiscal year 1991, four percent (4%);~~

~~(2) for fiscal year 1992, six percent (6%);~~

~~(3) for fiscal year 1993, eight percent (8%); and~~

~~(4) for fiscal year 1994, ten percent (10%).~~

660:10-3-24. Books and records [REVOKED]

~~(a) **Maintenance of books and records.** Each investment certificate issuer shall maintain its books and records in such a manner that said books and records will facilitate preparation of financial statements in accordance with generally accepted accounting principles. Said books and records shall be maintained in sufficient detail to afford an analysis of all transactions.~~

~~(b) **Financial statements.** Each investment certificate issuer shall prepare a balance sheet and statement of income at the close of business on the last day of each month. Said financial statements shall be prepared not later than fifteen (15) business days after the end of the accounting period.~~

660:10-3-25. Reports [REVOKED]

~~(a) **Reports required.** Each investment certificate issuer shall prepare and file with the Administrator quarterly reports for the quarters other than the quarter ending the fiscal year. Each report shall include the following:~~

~~(1) balance sheet and statement of income at the close of business on the last day of the quarter covered by said report;~~

~~(2) a schedule of the loans classified as loss, doubtful, substandard or special mention pursuant to 660:10-3-21,~~

~~to include the loan balance amount of accrued interest and value of collateral for each loan appearing thereon; and~~

~~(3) aging schedules as prepared in accordance with 660:10-3-21.~~

~~(b) **When to file.** Each report shall be submitted to the Administrator within thirty (30) days of the end of the quarter for which the report applies.~~

PART 5. MISCELLANEOUS PROVISIONS [REVOKED]

660:10-3-31. Qualifications of conservator or liquidator [REVOKED]

~~A conservator or liquidator, who may be the Administrator of the Department or a member of his staff, appointed under Section 307(i)(2) of the Securities Act shall be of legal age, of good moral character, a resident of the state of Oklahoma and competent to perform the duties of conservator or liquidator.~~

660:10-3-32. Acknowledgment [REVOKED]

~~The purpose of Section 307(c) of the Securities Act is to aid investment certificate issuers in applying for insurance by the FDIC. The prior issuance and continued effectiveness of a registration order shall constitute the written acknowledgment addressed by Section 307(c) of the Securities Act. A formal acknowledgment for purposes of seeking insurance by the FDIC will be issued by the Administrator upon receipt of a written request therefor. Said request shall be accompanied by a copy of the application filed or to be filed with the FDIC. Upon obtaining membership in the FDIC, an investment certificate issuer shall not be subject to the prospectus preparation and delivery requirements set forth in Section 304(d) of the Securities Act.~~

660:10-3-33. Examination standards [REVOKED]

~~Examinations made by the Administrator or designated members of his staff may be performed in reliance upon the American Institute of Certified Public Accountants industry audit guides for financial institutions and federal regulatory guidelines for financial institutions.~~

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

660:10-5-1. Purpose [REVOKED]

~~The rules in this Subchapter have been adopted to provide procedures for complying with the provisions of Sections 201 through 204 of the Securities Act relating to the licensing of broker-dealers and agents in the state of Oklahoma.~~

660:10-5-2. Definitions [REVOKED]

~~In addition to the terms defined in 660:10-1-3, the following words and terms when used in this Subchapter shall have the following meaning, unless the context clearly indicates otherwise:~~

~~**"Branch office"** means any business location of a broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.~~

~~**"Complaint"** means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.~~

~~**"Completion of the transaction"** means:~~

~~(A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in subparagraph (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;~~

~~(B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;~~

~~(C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in subparagraph (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;~~

~~(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.~~

~~**"Customer"** means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. **"Customer"** shall not include a broker-dealer.~~

~~**"Direct participation programs"** mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs~~

~~of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.~~

~~**"Investment company and variable contracts products"** means:~~

~~(A) redeemable securities of companies registered pursuant to the 1940 Act;~~

~~(B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and~~

~~(C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.~~

~~**"Municipal securities"** mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section 3(a)(29) of the 1934 Act.~~

~~**"Nonbranch sales office"** means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.~~

~~**"Option"** means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the 1933 Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.~~

~~**"OSJ"** or **"Office of supervisory jurisdiction"** means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:~~

~~(A) order execution and/or market making;~~

~~(B) structuring of public offerings or private placements;~~

~~(C) maintaining custody of customers' funds and/or securities;~~

~~(D) final acceptance (approval) of new accounts on behalf of the broker-dealer;~~

~~(E) Review and endorsement of customer orders pursuant to 660:10-5-42;~~

~~(F) Final approval of advertising or sales literature for use by agents of the broker-dealer;~~

~~(G) Responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.~~

~~**"Public offering price"** shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.~~

~~**"Selling group"** means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.~~

~~**"Selling syndicate"** means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.~~

~~**"Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program"** means the document entitled "Broker Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.~~

PART 3. LICENSING PROCEDURES [REVOKED]

660:10-5-11. Initial registration [REVOKED]

~~(a) **Broker-dealer.** Broker-dealers applying for initial registration in the state of Oklahoma pursuant to Section 202 of the Securities Act:~~

~~(1) A broker-dealer who is contemporaneously applying for NASD membership or who is an NASD member:~~

~~(A) shall file with the CRD:~~

~~(i) a completed Form BD, including Schedules A-E; and~~

~~(ii) the filing fee specified in Section 412 of the Securities Act.~~

~~(B) shall file with the Department, within 60 days of becoming registered, a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma~~

~~(2) A broker-dealer who is not a current NASD member shall file the following with the Department:~~

~~(A) a completed Form BD, including Schedules A-E;~~

~~(B) the filing fee specified in Section 412 of the Securities Act;~~

~~(C) audited financial statements as required by 660:10-5-45;~~

~~(D) documentation of compliance with the minimum capital requirement set forth in Section 202(d) of the Securities Act and 660:10-5-17;~~

~~(E) designation, qualification and registration of a principal as defined in Section 2 of the Securities Act pursuant to Subsection (c) of this Section;~~

~~(F) a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma;~~

~~(G) a copy of the written supervisory procedures of the broker-dealer; and~~

~~(H) any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~

~~(b) **Broker-dealer agent.**~~

~~(1) **Required documents.** Agents of broker-dealers applying for initial registration in the state of Oklahoma pursuant to Section 202 of the Securities Act shall file the following:~~

~~(A) a completed Form U-4;~~

~~(B) the filing fee specified in Section 412 of the Securities Act;~~

~~(C) proof of successful completion of the applicable examinations specified in 660:10-5-16; and~~

~~(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~

~~(2) **Where to file.** An agent applying for registration with an NASD member shall file the required documentation with the CRD. Agents applying for registration with a non-NASD broker-dealer shall file the required documentation with the Department.~~

~~(c) **Broker-dealer principal.**~~

~~(1) **Required documents.** Principals of broker-dealers applying for initial registration in the state of Oklahoma who are not members of the NASD shall file the following with the Department:~~

~~(A) a completed Form U-4;~~

~~(B) a $50.00 filing fee;~~

~~(C) proof of successful completion of the applicable examinations specified in 660:10-5-16;~~

~~(D) an executed Applicant/Management Certification for Principals Form; and~~

~~(E) any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~

~~(2) **Effect of registration.** Registration as a principal of a broker-dealer shall constitute registration as an agent.~~

~~(d) **Issuer agent.** Agents of issuers applying for initial registration in the state of Oklahoma pursuant to Section 202 of the Securities Act shall file the following with the Department:~~

~~(1) a completed Form U-4;~~

~~(2) the fee specified in Section 412 of the Securities Act;~~

~~(3) proof of successful completion of the applicable examinations specified in 660:10-5-16;~~

~~(4) an executed Applicant/Management Certification Form; and~~

~~(5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~

~~(e) **Requirement for continued registration.** 660:10-5-42, adopted pursuant to Section 204(g) of the Securities Act, sets forth the standards of ethical practices for broker-dealers and their agents. Paragraph (22) of said Section requires that each broker-dealer establish, maintain and enforce written procedures that will enable it to supervise properly the activities of each registered agent to assure compliance with applicable securities laws, rules, regulations and statements of policy. Therefore, the initial and continued registration of a broker-dealer that is not an NASD member is conditioned upon the designation, qualification and registration of a principal who shall be responsible for the supervision of all agents of the broker-dealer who are registered in the state of Oklahoma. A broker-dealer applicant or registrant may apply for registration of more than one person as a principal of said broker-dealer.~~

660:10-5-12. Renewal [REVOKED]

~~(a) **Broker-dealer.** An NASD member shall renew its registration by submitting the renewal fee specified in Section 412 of the Securities Act to the CRD. A non-NASD member shall renew its registration by submitting to the Department an Application for Renewal of Broker-Dealer Registration and the renewal fee specified in Section 412 of the Securities Act.~~

~~(b) **Broker-dealer agent.** Agents of NASD members shall renew their registrations by submitting the renewal fee specified in Section 412 of the Securities Act to the CRD. Agents of non-NASD members shall renew their registrations by submitting an Application for Renewal of Broker-Dealer Agent Registration and the renewal fee specified in Section 412 of the Securities Act to the Department.~~

~~(c) **Broker-dealer principal.** Principals of NASD members shall renew their registrations by submitting the renewal fee specified in Section 412 of the Securities Act to the CRD. Principals of non-NASD members shall renew their registrations by submitting an Application for Renewal of Broker-Dealer Principal Registration and the renewal fee specified in Section 412 of the Securities Act to the Department.~~

~~(d) **Issuer agent.** Issuer agents shall renew their registrations by submitting an Application for Renewal of Issuer Agent Registration and the renewal fee specified in Section 412 of the Securities Act to the Department.~~

660:10-5-13. Agent transfer [REVOKED]

~~An agent who wishes to terminate his employment with one registered broker-dealer and thereafter commence employment with another broker-dealer may do so without causing a suspension in the agent's registration if all of the following conditions are met:~~

~~(1) Both the terminating and employing broker-dealers are members of the National Association of Securities Dealers, Inc.~~

~~(2) The transfer is effected in accordance with the terms and conditions of the NASAA/NASD Central Registration Depository Temporary Agent Transfer Program.~~

~~(3) The employing broker-dealer has executed and filed an "Undertaking for Participation in the NASAA/NASD Central Registration Depository TAT Program."~~

~~(4) The employing broker-dealer currently is not subject to an order of the Administrator which would otherwise make this section unavailable.~~

660:10-5-14. Agent termination [REVOKED]

~~(a) **Filing requirement.** Termination notice pursuant to the requirements of Section 201(b) of the Securities Act shall be given by filing within thirty calendar (30) days of termination, a completed Uniform Termination Notice For Securities Industry Registration, Form U-5. The Form U-5 for an agent terminating registration with an NASD member shall be filed with the CRD. The Form U-5 for agents terminating registration with a non-NASD broker-dealer shall be filed with the Department.~~

~~(b) **Responsibility for filing.** A completed Form U-5 signed by the employer will be accepted as fulfilling the statutory requirements of both parties. Upon verification that the Form U-5 has not been filed by the broker-dealer, the agent shall notify the Department in writing of said termination.~~

~~(c) **Effect of failure to file.** In the event of termination, the filing of a future application for registration shall not be considered complete until compliance with the termination notice requirements of Section 201(b) and this Section.~~

660:10-5-15. Categories of registration [REVOKED]

~~(a) **Broker-dealers.** The Department shall register broker-dealers in accordance with the following categories:~~

~~(1) General securities - an applicant whose activities in the securities business are not limited.~~

~~(2) Investment company and variable contracts products - an applicant whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.~~

~~(3) Direct participation programs - an applicant whose activities in the securities business are limited solely to marketing, on behalf of the issuer, direct participation programs.~~

~~(4) Options - an applicant whose activities in the securities business include transactions in put or call options with the public.~~

~~(5) Municipal securities - an applicant whose activities in the securities business are limited solely to effecting transactions in municipal securities.~~

~~(6) Multiple categories - an applicant may be registered in more than one category if qualified to be so registered.~~

~~(b) **Principals and agents.** The Department shall register principals and agents of broker-dealers in accordance with the following categories of registration as applicable:~~

~~(1) General securities principal or agent - an applicant representing a broker-dealer whose activities in the securities business are not limited.~~

~~(2) Investment company and variable contracts products principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.~~

~~(3) Direct participation programs principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to marketing, on behalf of the issuer, direct participation programs.~~

~~(4) Options principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to transactions in put or call options with the public.~~

~~(5) Municipal securities principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to effecting transactions in municipal securities.~~

~~(6) Limited agent - corporate securities - an applicant representing a general securities broker-dealer in the solicitation, purchase, and/or sale of a security, as that term is defined in Section 2(r) of the Securities Act, however, such person's activities do not include activities with respect to the following securities unless such person is separately qualified and registered in the category or categories of registration related to these securities:~~

~~(A) Municipal securities;~~

~~(B) Option securities;~~

~~(C) Redeemable securities of companies registered pursuant to the 1940 Act, except for money market funds; and/or,~~

~~(D) Direct participation programs.~~

~~(7) Issuer agent - an applicant whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer as that term is defined in Section 2(k) of the Securities Act.~~

~~(8) Multiple categories - an applicant may be registered in more than one category provided he is qualified to be so registered. An applicant qualified solely within one category of registration shall not be qualified to transact business as an agent in any area not prescribed by said category.~~

660:10-5-16. Qualification examination requirements [REVOKED]

~~(a) **Examination requirement.** A written examination shall be taken by each applicant for registration as a broker-dealer agent, broker-dealer principal or issuer agent. Proof of compliance with the written examination requirements of this rule is prerequisite to a complete filing for registration in this state. Written examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. Examinations administered by the NASDR are adopted, as applicable to each individual registrant by category of registration, as the required written examination for general securities law.~~

~~(b) **Limitations on licenses.** Regardless of an association with an NASD member, each applicant for registration as a principal or agent must prove successful completion of the examinations required by this rule based upon the category of registration applied for in the state of Oklahoma.~~

~~(c) **Examination categories.** Examination categories are as follows:~~

~~(1) General securities or government securities - NASD members:~~

~~(A) Principals - Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66.~~

~~(B) Agents - Series 7 and 63 or 66~~

~~(2) General securities - Non-NASD Members/Issuers:~~

~~(A) Principals - Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66~~

~~(B) Agents - Series 7 and 63 or 66~~

~~(3) Investment company and variable contract products:~~

~~(A) Principals - Series 6, 26 and 63 or 66~~

~~(B) Agents - Series 6 and 63 or 66~~

~~(4) Direct participation programs:~~

~~(A) Principals - Series 22, 39 and 63 or 66~~

~~(B) Agents - Series 22 and 63 or 66~~

~~(5) Options:~~

~~(A) Principals - Series 4 , 7 and 63 or Series 4, 62 and 63 or 66~~

~~(B) Agents - Series 7 or 42 and 63 or 66~~

~~(6) Municipal securities:~~

~~(A) Principals - Series 52, 53 and 63 or 66~~

~~(B) Agents - Series 52 and 63 or 66~~

~~(7) Limited agent - corporate securities - Series 62 and 63 or 66~~

~~(8) Assistant agent - order processing - Series 11 and 63 or 66~~

~~(d) **Change in series number.** Should NASDR examination series numbers change, the most current examination series applicable to the category of registration shall apply.~~

~~(e) **Minimum score.** Principals and agents must score a minimum of 70% on each examination taken.~~

~~(f) **Validity of prior examination scores.** Any NASDR examination score which predates an initial application for registration by more than two (2) years will not be recognized for purposes of qualification for registration in this state, in the absence of continuous NASD registration since examination. Any person whose most recent registration as an agent or principal has been terminated with the NASD for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration in the state of Oklahoma shall be required to take the examinations appropriate to the category of registration and correctly answer 70% of the questions on each examination taken.~~

~~(g) **Waiver of examination requirement.** The examination requirements may be waived by the Administrator on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.~~

660:10-5-17. Net capital for broker-dealers [REVOKED]

~~(a) **General requirement.** All broker-dealers registered under the Securities Act shall at all times have and maintain net capital of no less than the highest minimum requirement applicable to each broker-dealer as established by the SEC in 17 CFR 240.15c3-1.~~

~~(b) **Calculation of "net capital.** " As used herein, net capital shall mean the net worth of a broker-dealer calculated according to the formula established by the SEC.~~

660:10-5-19. Piecemeal filings [REVOKED]

~~An application for initial registration or renewal of registration as a broker-dealer, broker-dealer agent, broker-dealer principal or issuer-agent shall not be deemed to have been filed until all of the documentation required by 660:10-5-11 or 660:10-5-12 is submitted, or is otherwise made available, to the Department and payment of the proper fees is made. Such documentation shall be in completed form.~~

PART 5. REPORTING REQUIREMENTS [REVOKED]

660:10-5-31. Post-registration reporting requirements [REVOKED]

~~(a) **Filing requirement.** Pursuant to Section 203(b) of the Securities Act, all broker-dealers registered under Section 202 of the Securities Act who are not NASD members must make post-registration filings with the Department. The Department will not accept incomplete or piecemeal filings. Failure to file a complete report when due may result in the suspension or revocation of registration. The Department will consider requests that no enforcement action be taken regarding a delinquent filing pursuant to the provisions of 660:2-13-1.~~

~~(b) **Report content.** Such registered broker-dealers shall make one (1) post-registration filing each fiscal year. Said filing shall contain audited financial statements as of the broker-dealer's fiscal year-end and the report filing fee specified in Section 412 of the Securities Act.~~

~~(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal period to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.~~

PART 7. RECORD KEEPING AND ETHICAL STANDARDS [REVOKED]

660:10-5-41. Record keeping requirements for broker-dealers [REVOKED]

~~(a) **Required records for business.** Every broker-dealer, as defined in Section 2 of the Securities Act, shall make and keep~~

~~current in a central location the following books and records relating to his business and such books and records shall be made available to the staff of the Department during the course of an examination conducted pursuant to Section 203 of the Securities Act:~~

~~(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.~~

~~(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts. The general ledger should be posted as frequently as may be necessary to determine compliance with 660:10-5-17 but in no event shall the general ledger be posted less than once a month.~~

~~(3) Ledger accounts (or other records) itemized separately as to each cash and margin account of every customer and of such broker-dealer and principals or partners thereof; all purchases, sales receipts and deliveries of securities and commodities for such account; and all other debits and credits to such account. Such records shall be posted no later than settlement date.~~

~~(4) Ledgers (or other records) reflecting the following:~~

~~(A) securities in transfer;~~

~~(B) dividends and interest received;~~

~~(C) securities borrowed and securities loaned;~~

~~(D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and~~

~~(E) securities failed to receive and failed to deliver. The records listed in (A) through (D) of this paragraph shall be posted no later than two (2) days subsequent to the earlier of the date of securities or monies movement. The securities failed to receive and failed to deliver ledgers should be posted no later than two (2) days subsequent to the settlement date.~~

~~(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for his own account or for the account of his customers, principals, or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried. Such record shall be posted no later than the business day subsequent to the earlier of settlement date or the date of securities movement.~~

~~(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purpose of sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such broker-dealer, principal, partner, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between principals, partners and employees of a broker-dealer. The term "time of entry" shall be deemed to mean the time when such broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received. The agency sales memoranda, principal sales memoranda, option records and comparisons shall be prepared no later than the business day subsequent to the transaction date of the option written.~~

~~(7) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution.~~

~~(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers, principals, and partners of such broker-dealer.~~

~~(9) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect to the person or persons authorized to transact business for such account. In addition, the broker-dealer shall maintain accounts of customers in such form and manner as to show the following information: whether the customer is of legal age, occupation, name and address of the employer, the signature of the registered agent introducing the account and the signature of the appropriate party accepting the account for the broker-dealer. The broker-dealer shall also maintain documentation that reasonable efforts have been undertaken to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by the broker-dealer or its agents. In the case of discretionary accounts, the broker-dealer shall also record the age or approximate age and occupation of the customer as well as the signature of each person authorized to exercise discretion in such account. The record of beneficial ownership of each cash or margin account (customer account card) shall be prepared no later than the second business day following the initial transactions. Beneficial ownership refers to the name and address of the customer for each cash or margin account as provided above.~~

~~(10) A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.~~

~~(11) A record of the proof of money balances of all ledger accounts in the form of financial statements, including balance sheet and statement of operations, prepared currently and available for examination by representatives of the Administrator at any time after the 15th day of the month following the month to which such statements relate.~~

~~(12) Copies of all written communications received and copies of all written communications sent by such broker-dealer relating to the solicitation or execution of all securities transactions effected by its agents.~~

~~(13) Copies of all documentation pertaining to any pending or resolved customer complaint and any internal review or investigation by any internal or external source. A "complaint" shall be deemed to mean and include any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.~~

~~(14) A copy of the written supervisory procedures of the broker-dealer.~~

~~(15) Copies of all advertisements appearing in a newspaper, magazine or other print medium and the text of all advertisements broadcast on television and/or radio relating to the services offered by the broker-dealer.~~

~~(b)~~ **~~Required records for branch offices and nonbranch sales offices.~~** ~~The following books and records shall be maintained by each branch office and nonbranch sales office of every broker-dealer in a centralized, easily accessible location:~~

~~(1) An itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.~~

~~(2) Account statements as to each cash and margin account of every customer and of such broker-dealer and principals or partners thereof; all purchases, sales receipts and deliveries of securities and commodities for such account; and all other debits and credits to such account. The customer ledger accounts shall be posted no later than settlement date.~~

~~(3) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such broker-dealer, principal, partner, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between principals, partners and employees of a broker-dealer. The term "time of entry" shall be deemed to mean the time when such broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received. The agency sales memoranda, principal sales memoranda and option records shall be prepared no later than the business day subsequent to the transaction date or the date the option is written.~~

~~(4) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution.~~

~~(5) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers, principals, and partners of such broker-dealer.~~

~~(6) Copies of records in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect to the person or persons authorized to transact business for such account. In addition, the broker-dealer shall maintain accounts of customers in such form and manner as to show the following information: whether the customer is of legal age, occupation, name and address of the employer, the signature of the registered agent introducing the account and the signature of the appropriate party accepting the account for the broker-dealer. The broker-dealer shall also maintain documentation that reasonable efforts have been undertaken to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by the broker-dealer or its agents. In the case of discretionary accounts, the broker-dealer shall also record the age or approximate age and occupation of the customer as well as the signature of each person authorized to exercise discretion in such account. The record of beneficial ownership of each cash or margin account (customer account card) shall be prepared no later than the second business day following initial transactions. Beneficial ownership refers to the name and address of the customer for each cash or margin account as provided above.~~

~~(7) Copies of all written communications received and copies of all written communications sent by the branch office or nonbranch sales office relating to the solicitation or execution of all securities transactions effected by the agents operating in and from that office.~~

~~(8) Copies of all documentation pertaining to any pending or resolved customer complaint and any internal review or investigation by any internal or external source. A "complaint" shall be deemed to mean and include any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the~~

~~activities of those persons effecting the solicitation or execution of any transaction or the disposition of securities or funds of that customer in or from the branch office or nonbranch sales office.~~

~~(9) A copy of the written supervisory procedures of the broker-dealer.~~

~~(10) Copies of all advertisements appearing in a newspaper, magazine or other print medium and the text of all advertisements broadcast on television and/or radio relating to the services offered by the branch office or the nonbranch sales office.~~

~~(11) Documentation evidencing registration of all agents effecting securities transactions in and from the branch office or nonbranch sales office.~~

~~(c) **Alternative form of recordkeeping.** For purposes of this subsection, due to the changing technology in the area of recordkeeping by broker-dealers and for purposes of compliance with this Section, the specific records listed in paragraph 5 above are not required to be maintained so long as the information generally contained within said records is available in another form and such record is readily accessible to the registrant's personnel as well as to the staff of the Department. The record shall be reproduced and provided to the Department upon its request.~~

660:10-5-42. Standards of ethical practices [REVOKED]

~~(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the Standards of Ethical Practices specified in this Section will constitute unethical practices in the securities business. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this Section shall apply to all broker-dealers and their agents if applicable. A broker-dealer or agent whose registration has been suspended shall be considered as nonactive during the period of suspension for purposes of applying the provisions of the standards. Nevertheless, such persons shall have all of the obligations imposed by the Securities Act, these Standards of Ethical Practices and other applicable rules and regulations of the Administrator and/or the Commission.~~

~~(b) **Standards.**~~

~~(1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.~~

~~(2) In recommending to a customer the purchase, sale or exchange of any security, the broker-dealer and his agents shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer a broker-dealer shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such broker-dealer or registered agent in making such recommendation.~~

~~(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.~~

~~(4) In "over the counter" transactions, whether in "listed" or "unlisted" securities, if a broker-dealer or agent of a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.~~

~~(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.~~

~~(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.~~

~~(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.~~

~~(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such~~

~~information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.~~

~~(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.~~

~~(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:~~

~~(A) whether such broker-dealer is acting as a broker for such customer and some other person; and~~

~~(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.~~

~~(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.~~

~~(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.~~

~~(13) The following standards shall apply to discretionary accounts:~~

~~(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.~~

~~(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with paragraph (22) hereof.~~

~~(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.~~

~~(D) This section shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.~~

~~(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.~~

~~(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.~~

~~(16) The following standards shall apply to the use of customer funds:~~

~~(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.~~

~~(B) No broker-dealer or agent of a broker-dealer shall lend, either to himself or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.~~

~~(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.~~

~~(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.~~

~~(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.~~

~~(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.~~

~~(17) The following standards shall apply to customer credit:~~

~~(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer over a period of time in installments or by a series of partial payments, unless:~~

~~(i) in the event such broker-dealer acts as an agent or broker in such transaction, he shall immediately, in the regular course of his business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of his business, take possession or control of such security and shall maintain possession or control thereof so long as he remains under obligation to delivery of the security to the customer;~~

~~(ii) in the event such broker-dealer acts as a principal in any such transaction, he shall, at the time of such transaction own such security and shall maintain possession or control thereof so long as he remains under obligation to deliver the security to the customer; and~~

~~(iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.~~

~~(B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with his customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.~~

~~(18) The following standards shall apply to books and records:~~

~~(A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.~~

~~(B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:10-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.~~

~~(19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.~~

~~(20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.~~

~~(21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price~~

~~which may be fixed by him unless prevented therefrom by agreement.~~

~~(22) The following standards shall apply to supervisory procedures:~~

~~(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.~~

~~(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:10-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.~~

~~(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.~~

~~(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.~~

~~(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.~~

~~(23) The following standards shall apply to financial information:~~

~~(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, prepared in accordance with generally accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.~~

~~(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided for in (A) of this paragraph available and shall, upon request, furnish same to the Department.~~

~~(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 301 of the Securities Act.~~

~~(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained herein shall be construed to limit the powers of the Administrator under Section 401(d) of the Securities Act.~~

660:10-5-43. Examination of broker-dealers [REVOKED]

~~(a) **Periodic examinations.** The business and records of each broker-dealer registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. The broker-dealer so examined shall pay to the Department the proper charges incurred in such examination as provided in Section 412 of the Securities Act and 660:10-5-44. A report of each such examination shall be prepared.~~

~~(b) **Department access.** Each broker-dealer scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each broker-dealer shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to comply with any provision hereof shall constitute a violation of this Section and shall be a basis for denial, suspension or revocation of the registration or application for registration.~~

660:10-5-44. Charges incurred in periodic examinations [REVOKED]

~~Each person to be examined under Section 203 of the Securities Act and/or 660:10-5-43, shall pay the proper charges for the examination. The Administrator may require prepayment of the charges by presenting the person to be examined with a statement setting forth an estimate of the total charges. Remittance shall be due within fifteen (15) days from the statement date. Any balance due for an examination shall be paid by the registrant within forty-five (45) days from the billing date, and any refund of prepaid expenses shall be included with the registrant's copy of the examination report. Failure to remit a prepayment or a balance due in a timely manner shall be a~~

~~basis for the suspension or revocation of registration. For the purposes hereof actual charges for an on-site examination shall include, but are not necessarily limited to the following:~~

~~(1) Time spent by Department personnel in traveling to and from the examination site, conducting the examination, and preparing the examination report. Such time will be billed at $25.00 per employee hour with a minimum charge per examination of $200.00.~~

~~(2) Travel expenses for meals, lodging, transportation and other related expenses.~~

~~(3) The cost of supplies, materials, photocopying and postage.~~

660:10-5-45. Financial statements for broker-dealers [REVOKED]

~~(a) **Audited statements.** Applications for registration for broker-dealers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have been in operation for less than twelve (12) months shall submit an audited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and an audited statement of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.~~

~~(b) **Unaudited interim financial statements.** If the audited financial statements required by (a) of this Section are not current to within ninety (90) days of the date of filing of the application, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.~~

~~(c) **Net capital computation** Financial Statements submitted by or on behalf of a broker-dealer shall include a statement of the amount of net capital required by the SEC for the broker-dealer and a schedule presenting a computation of net capital as of each statement of financial condition date. The computation of net capital shall be calculated according to the formula established by the SEC.~~

~~(d) **Waiver.** The Administrator in his or her discretion may waive any of the requirements of this Section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.~~

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

660:10-7-1. Purpose [REVOKED]

~~The rules in this Subchapter are adopted to provide procedures for complying with the provisions of Sections 201 through 204 of the Securities Act relating to the licensing of investment advisers and investment adviser representatives in the state of Oklahoma.~~

660:10-7-2. Definitions [REVOKED]

~~In addition to the terms defined in 660:10-1-3, the following words and terms when used in this Subchapter shall have the following meaning, unless the context clearly indicates otherwise:~~

~~**"Impersonal advisory services"** means investment advisory services provided solely:~~

~~(A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;~~

~~(B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or~~

~~(C) any combination of the foregoing services.~~

~~**"Investment company contract"** means a contract with an investment company registered under the 1940 Act that meets the requirements of Section 15(c) of that Act.~~

~~**"Solicitor"** means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.~~

PART 3. LICENSING PROCEDURES [REVOKED]

660:10-7-11. Initial registration [REVOKED]

~~(a) **Investment adviser.** Investment advisers applying for initial registration in the state of Oklahoma pursuant to Section 202 of the Securities Act shall file the following with the Department:~~

~~(1) a completed Form ADV, including Schedules A-I;~~

~~(2) the filing fee specified in Section 412 of the Securities Act;~~

~~(3) audited financial statements as required by 660:10-7-44 unless exempt therefrom;~~

~~(4) a copy of the investment advisory contract to be executed by Oklahoma clients; and~~

~~(5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~

~~(b) **Investment adviser representative.** I-nvestment adviser representatives applying for initial registration in the state of Oklahoma shall file the following with the Department:~~

~~(1) a completed Form U-4 if the information on the Form U-4 is not maintained in current form on the CRD;~~

~~(2) the filing fee specified in Section 412 of the Securities Act;~~

~~(3) proof of successful completion of the applicable examinations specified in 660:10-7-13;~~

~~(4) an executed Investment Adviser Representative Applicant/Management Certification Form; and~~

~~(5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~

660:10-7-12. Renewal [REVOKED]

~~(a) **Investment adviser.** An investment adviser registered under the Act shall renew its registration by submitting to the Department the renewal fee specified in Section 412 of the Securities Act and a copy of the Department's renewal notice.~~

~~(b) **Investment adviser representative.** Investment adviser representatives registered under the Act shall renew their registrations by submitting to the Department the renewal fee specified in Section 412 of the Securities Act and a copy of the Department's renewal notice.~~

660:10-7-13. Qualification examination requirements [REVOKED]

~~(a) **Examination requirement.** Proof of compliance with the written examination requirements of this rule is prerequisite to a complete filing for registration in this state.~~

~~(b) **Examinations.** Any natural person seeking registration as an investment adviser or investment adviser representative shall be required to take the Series 65 or 66 and Series 6 or such other examination(s) or certifications determined by the Administrator to be acceptable in lieu thereof.~~

~~(c) **Change in series number.** Should examination series numbers change, the most current examination series applicable to the category of registration shall apply.~~

~~(d) **Minimum score.** Any natural person seeking registration as an investment adviser or investment adviser representative must score a minimum of 70% on each examination taken.~~

~~(e) **Validity of prior examination scores.** Any examination score which predates an application for registration by more than two (2) years will not be recognized for purposes of qualification for registration in this state, in the absence of continuous registration as an investment adviser representative in another jurisdiction since examination or continuous registration as an agent with the NASD since examination. Otherwise, the applicant shall be required to take the appropriate examinations and correctly answer 70% of the questions on each examination taken.~~

~~(f) **Waiver of examination requirement.** The examination requirement may be waived by the Administrator on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.~~

660:10-7-15. Piecemeal filings [REVOKED]

~~An application for initial registration or renewal of registration as an investment adviser or investment adviser representative shall not be deemed to have been filed until all of the documentation required by 660:10-7-11 or 660:10-7-12 is submitted, or is otherwise made available, to the Department and payment of the proper fees is made. Such documentation shall be in completed form.~~

PART 5. REPORTING REQUIREMENTS [REVOKED]

660:10-7-31. Post-registration reporting requirements [REVOKED]

~~(a) **Filing requirement.** Pursuant to Section 203(b) of the Securities Act, all investment advisers registered under Section 202 of the Securities Act must make post-registration filings with the Department. The Department will not accept incomplete or piecemeal filings. The post-registration filing shall contain the financial or operating report fee set forth in Section 412 of the Securities Act. Failure to file a complete report when due may result in the suspension or revocation of registration. The Department will consider requests that no enforcement action be taken regarding a delinquent filing pursuant to the provisions of 660:2-13-1.~~

~~(b) **Report content.** Registered investment advisers who have custody or possession of clients' funds or securities or require prepayment of advisory fees six (6) months or more in advance and in excess of $500.00 per client shall make one (1) post-registration report each fiscal year. Said filing shall contain the report filing fee specified in Section 412 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.~~

~~(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal year to which they apply; however a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.~~

PART 7. RECORD KEEPING AND ETHICAL STANDARDS [REVOKED]

660:10-7-41. Record keeping requirements [REVOKED]

~~(a) Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records relating to his investment advisory business:~~

~~(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.~~

~~(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.~~

~~(3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through~~

~~whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.~~

~~(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.~~

~~(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.~~

~~(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period.~~

~~(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:~~

~~(A) any recommendation made or proposed to be made and any advice given or proposed to be given,~~

~~(B) any receipt, disbursement or delivery of funds or securities, or~~

~~(C) the placing or execution of any order to purchase or sell any security; PROVIDED, HOWEVER:~~

~~(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and~~

~~(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.~~

~~(8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.~~

~~(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.~~

~~(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.~~

~~(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.~~

~~(12) A record of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor the investment adviser representative has any direct or indirect influence or control, and transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.~~

~~(13) A record of each customer account containing the name, address, date of birth, net worth and investment objectives of the beneficial owner of such account.~~

~~(14) Ledgers or other records itemized separately as to each account of every investment adviser representative of such investment adviser reflecting all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such accounts. Said records shall reflect transactions as of the date they occur and should be prepared no later than the day following the transaction.~~

~~(15) A copy of the written supervisory procedures of the investment adviser.~~

~~(b) Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this Section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements. For purposes of this Subsection, the term "principal place of business" means "the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser."~~

~~(c) All books and records required to be maintained under the provisions of (a) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years, the first two (2) years in the principal office of the investment adviser.~~

660:10-7-42. Standards of ethical practices [REVOKED]

~~(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 204(a)(2)(G) of the Securities Act. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards shall not be construed to apply to contracts made prior to the effective date hereof. The standards set forth in this Section and the disclosure delivery requirement set forth in 660:10-7-43 shall apply to all investment advisers and investment adviser representatives. An investment adviser or investment adviser representative whose registration has been suspended shall be considered as nonactive during the period of suspension for purposes of applying the provisions of the standards. Nevertheless, such persons shall have all of the obligations imposed by the Securities Act, these Standards of Ethical Practices and other applicable rules and regulations of the Administrator and/or the Commission.~~

~~(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:~~

~~(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.~~

~~(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.~~

~~(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.~~

~~(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.~~

~~(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.~~

~~(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.~~

~~(7 Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.~~

~~(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.~~

~~(9) Charging a client an unreasonable advisory fee.~~

~~(10) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:~~

~~(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and~~

~~(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees.~~

~~(11) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.~~

~~(12) Publishing, circulating and distributing any advertisement which does not comply with Reg. § 275.206(4)-1, under the Investment Advisers Act of 1940.~~

~~(13) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.~~

~~(14) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action is subject to and does not comply with the requirements of Reg. § 275.206(4)-2 under the Investment Advisers Act of 1940.~~

~~(15) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.~~

~~(16) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:~~

~~(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;~~

~~(B) remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard; or~~

~~(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.~~

660:10-7-43. Disclosure requirements [REVOKED]

~~(a) **Disclosure delivery requirement.** In furtherance of compliance with the Standards of Ethical Practices specified in 660:10-7-42, every investment adviser, registered or required to be registered under the Securities Act shall, in accordance with the provisions of this Section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV including Schedule F, if applicable, or written documents containing at least the information then so required by Part II of the Form ADV including Schedule F, if applicable; provided however, delivery of the required statement need not be made in connection with entering into an investment company contract or a contract for impersonal advisory services.~~

~~(b) **Time of delivery.** An investment adviser shall deliver the statement required by (a) of this Section to an advisory client or prospective advisory client~~

~~(1) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or~~

~~(2) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract. For purposes of this Section, "entering into" does not include an extension or renewal without material change of any investment advisory contract which is in effect immediately prior to such extension or renewal.~~

~~(c) **Annual delivery requirement.** Unless exempted as provided in (a) of this Section, an investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Section. Any statement requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.~~

660:10-7-44. Financial statements for investment advisers [REVOKED]

~~(a) **Audited statements.** Applications for registration as investment advisers shall contain audited financial statements for the applicant as of the end of its last fiscal year.~~

~~(b) **Unaudited interim financial statements.** If the audited financial statements required in the preceding subsection are not current to within ninety (90) days of the date of filing, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.~~

~~(c) **Sole proprietors.** Investment advisers who are individuals or sole proprietorships, in lieu of audited financial statements, may provide financial statements that have been prepared in accordance with generally accepted accounting principles and which have been reviewed and reported upon by independent accountants in accordance with the standards for the review of financial statements promulgated by the American Institute of Certified Public Accountants.~~

~~(d) **Exemption.** The financial statement requirements specified in this Section shall not apply to an investment adviser unless the investment adviser has custody or possession of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of $500.00 per client.~~

~~(e) **Waiver.** The Administrator in his or her discretion may waive any of the requirements of this Section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.~~

660:10-7-45. Examination of investment advisers [REVOKED]

~~(a) **Periodic examinations.** The business and records of each investment adviser registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. The investment adviser so examined shall pay to the Department the proper charges incurred in such examination as provided in Section 412 of the Securities Act and 660:10-7-46. A report of each such examination shall be prepared.~~

~~(b) **Department access.** Each investment adviser scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each investment adviser shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to comply with any provision hereof shall constitute a violation of this Section and shall be a basis for denial, suspension or revocation of the registration or application for registration.~~

660:10-7-46. Charges incurred in periodic examinations [REVOKED]

~~Each person to be examined under Section 203 of the Securities Act and/or 660:10-7-45 promulgated thereunder, shall pay the proper charges for the examination. The Administrator may require prepayment of the charges by presenting the person to be examined with a statement setting forth an estimate of the total charges. Remittance shall be due within fifteen~~

~~(15) days from the statement date. Any balance due for an examination shall be paid by the registrant within forty-five (45) days from the billing date and any refund of prepaid expenses shall be included with the registrant's copy of the examination report. Failure to remit a prepayment or a balance due in a timely manner shall be a basis for the suspension or revocation of registration.~~

660:10-7-47. Payments for client solicitations [REVOKED]

~~(a) **Prohibition.** An investment adviser required to be registered pursuant to Section 201 of the Securities Act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:~~

~~(1) the investment adviser is registered under the Securities Act;~~

~~(2) the solicitor is not a person:~~

~~(A) subject to an administrative order issued under Section 204, 306 or 406 of the Securities Act or a similar administrative order issued by the administrator of another state securities agency, the SEC or a self-regulatory securities organization,~~

~~(B) convicted within the previous ten (10) years of any felony or misdemeanor involving a security or any aspect of the securities business, or~~

~~(C) permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; and~~

~~(3) such cash fee is paid pursuant to a written agreement to which the investment adviser is a party.~~

~~(b) **Written agreement.** The written agreement required by paragraph (3) of subsection (a) of this Section shall:~~

~~(1) describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;~~

~~(2) contain an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Securities Act and the rules thereunder;~~

~~(3) require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the customer with a current copy of the investment adviser's written disclosure statement required by 660:10-7-43 and a separate written disclosure document described in subsection (d) of this Section.~~

~~(c) **Investment adviser responsibilities.** The investment adviser shall receive from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. In addition, the investment adviser shall ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.~~

~~(d) **Disclosure by solicitor.** The separate written disclosure document required to be furnished by the solicitor to the customer pursuant to subsection (b) of this Section shall contain the following information:~~

~~(1) the name of the solicitor;~~

~~(2) the name of the investment adviser;~~

~~(3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;~~

~~(4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser;~~

~~(5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and~~

~~(6) the amount, if any, for the cost of obtaining his account the customer will be charged in addition to the advisory fee, and the differential, if any, among customers with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting customers for, or referring customers to, the investment adviser.~~

PART 9. SEC COVERED INVESTMENT ADVISERS [REVOKED]

660:10-7-51. SEC covered investment adviser notice filing [REVOKED]

~~(a) **Initial filing.** The initial filing required to be made pursuant to Section 202.1 of the Securities Act shall include the following:~~

~~(1) a completed Form ADV, including Schedules A-I.~~

~~(2) a completed Form U-2, Consent to Service of Process, and Form U-2A.~~

~~(3) the investment adviser notice filing fee set forth in Section 412(a) of the Securities Act.~~

~~(4) the name, social security or CRD number, and $50.00 for each investment adviser representative who intends to transact business in the state of Oklahoma but is exempt from registration under Section 201(d)(3)(A) of the Securities Act.~~

~~(b) **Renewal.** A notice filing made pursuant to Section 202.1 of the Securities Act may be renewed by submitting the following:~~

~~(1) the investment adviser notice filing fee set forth in Section 412(a) of the Securities Act.~~

~~(2) the name, social security or CRD number, and $50.00 for each investment adviser representative who intends to transact business in the state of Oklahoma but is exempt from registration under Section 201(d)(3)(A) of the Securities Act.~~

~~(c) **Updates.** An SEC covered investment adviser shall promptly update its notice filing as necessary to identify additional investment adviser representatives who intend to transact business in the state of Oklahoma but who are exempt from registration under Section 201(d)(3)(A) of the Securities Act. The updates shall include the name, social security or~~

~~CRD number, and $50.00 for each such investment adviser representative.~~

SUBCHAPTER 9. REGISTRATION OF SECURITIES [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

660:10-9-2. Amendments [REVOKED]

~~The Administrator may by order amend the provisions of this Subchapter to conform references to the Securities Act or to rules promulgated thereunder to numerical redesignations occasioned by legislative or rulemaking activities.~~

PART 3. REGISTRATION PROCEDURES [REVOKED]

660:10-9-11. Filing by coordination [REVOKED]

~~An offering of securities for which an application for registration is not filed with and received by the Department prior to SEC effectiveness shall not be deemed to be in connection with the same offering of securities and therefore shall not be eligible for registration in the state of Oklahoma pursuant to Section 303 of the Securities Act.~~

660:10-9-12. Content of registration statement [REVOKED]

~~In addition to the other requirements set forth in the Securities Act and the rules and regulations promulgated thereunder, a registration statement filed under the provisions of Sections 302(a)(1), 303, 304 and 304.1 of the Securities Act shall contain the information that would be required in a registration statement filed with the SEC under Section 5 of the 1933 Act, as amended. Except for offerings attempting to register pursuant to Section 304.1 of the Securities Act or attempting to register by use of the Form U-7, the registration statement shall be on the form that the issuer would be entitled to use if filing under the 1933 Act and in accordance with the specified instructions of said form.~~

660:10-9-13. Amendments to registration statements [REVOKED]

~~(a) **Requirement to amend.** A correcting amendment to an effective Registration Statement shall be prepared and submitted to the Department any time that the information contained therein becomes inaccurate or incomplete in any material respect. The responsibility for identifying and reporting a material change lies with the registrant. Any of the following changes are likely to be the basis for filing a correcting amendment; however, the following is not intended to be a comprehensive listing of specific events or conditions which might give rise to such a filing:~~

~~(1) changes in officers, directors and other management personnel identified in the Registration Statement, including those persons who would have been identified in the Registration Statement had the change occurred prior to making the initial filing;~~

~~(2) a change of 10% or more in the equity ownership of the issuer by persons identified in the Registration Statement as principal security holders or by persons who would have been so described had the change occurred prior to making the initial filing;~~

~~(3) changes in the issuer's aims, objectives, business enterprise, operations or activities;~~

~~(4) a change of 10% or more in any designated Use of Proceeds item;~~

~~(5) impairment of the issuer's assets, the issuer's insolvency or the filing of a petition for bankruptcy by or for the issuer;~~

~~(6) management's intention to dispose of a significant portion of an issuer's assets, or the actual occurrence of such disposal;~~

~~(7) changes in the compensation arrangements described in the Registration Statement for promoters, general partners or sponsors of the issuer, including controlling persons of such promoters, general partners or sponsors, who are identified in the Registration Statement, or who would have been so identified had a change occurred prior to making the initial filing;~~

~~(8) changes in underwriting terms;~~

~~(9) any agreement in principle to enter into a business combination;~~

~~(10) changes in the industry, the economy, or in laws or regulations governing the industry, if disclosures in the Registration Statement are affected by the changes or if the condition resulting from such changes would have resulted in a disclosure requirement had the changes occurred prior to making the initial filing.~~

~~(b) **Time of filing and undertaking.**~~

~~(1) Every Registration Statement shall contain an undertaking by the applicant to file correcting amendments to the Registration Statement whenever the information in the Registration Statement becomes inaccurate or incomplete in any material respect by the earlier of:~~

~~(A) two business days after filing such amendment with the SEC, or~~

~~(B) fifteen business days following the event giving rise to the amendment.~~

~~(2) If not registered with the SEC, registrants shall file an amended Registration Statement if required within fifteen (15) business days following the event giving rise to the amendment, and in no event, not less often than annually as a part of the Annual Report required by 660:10-9-51.~~

~~(c) **Contents of filing.** Each filing of a correcting amendment to a Registration Statement shall contain a copy of each item of the Registration Statement which has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the Registration Statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. Neither the Administrator nor~~

~~any member of his staff shall be held to have taken notice of any item of material change not summarized in such a report.~~

~~(d) **Effect of failure to amend.** Solicitation of prospective investors through utilization of a Prospectus containing information which is inaccurate or incomplete in any material respect is a violation of Section 101 of the Securities Act and constitutes a basis for suspending or revoking the effectiveness of a Registration Statement under Section 306(a)(2)(E) of the Securities Act. Failure to report to the Department and disclose to prospective investors a material change that occurs after the effective date of a Registration Statement and prior to the sale of a security is a violation of Section 101 of the Securities Act and a basis for the suspension or revocation of the registration under Section 306(a)(2)(E) of the Securities Act. Nothing in this Section shall be construed to require any open-end investment company registered under the 1940 Act and the Securities Act to disclose fluctuations in its investment portfolio.~~

660:10-9-14. Financial statements [REVOKED]

~~(a) **Section 302 filings.** Registration statements filed pursuant to Section 302 of the Securities Act shall contain Audited Financial Statements of the issuer for its last two (2) fiscal years except that registration statements filed pursuant to Section 302(a)(2) of the Securities Act may contain unaudited Financial Statements for any period in which Audited Financial Statements are not available.~~

~~(b) **Section 304 filings.** Except for applications made on the Form U-7, registration statements filed pursuant to Section 304 of the Securities Act shall contain Audited Financial Statements of the issuer for its last two (2) fiscal years. Registration statements filed with applications made on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7.~~

~~(c) **Section 304. 1 filings.** Registration statements filed pursuant to Section 304.1 of the Securities Act shall contain Audited Financial Statements of the issuer as of the end of the most recent fiscal year. If the issuer has been in existence for less than one (1) fiscal year, financial statements current to within four (4) months of the Date of the Filing of the registration statement shall be required. However, if each of the following conditions are met, the financial statements in lieu of being audited may be reviewed by an independent certified public accountant in accordance with the standards established by the American Institute of Certified Public Accountants:~~

~~(1) the issuer has not been previously required under federal or state securities laws to provide audited financial statements in connection with any offer and sale of securities,~~

~~(2) the aggregate amount of all previous sales of securities by the issuer pursuant to Section 304.1 and/or any exemption from registration under the Securities Act shall not exceed $1,000,000.00; and~~

~~(3) the amount of the present offering does not exceed $500,000.00.~~

~~(d) **Unaudited interim financial statements.** If the Audited Financial Statements or unaudited Financial Statements required in subsections (a) through (c) of this Section are not current to within four (4) months of the Date of Filing of the registration statement, additional unaudited Financial Statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included.~~

~~(e) **Multiple financial statements.** If more than one balance sheet or more than one statement of income is required to be filed pursuant to subsections (a) through (c) of this Section, the statement shall be in comparative columnar form, the date or periods applicable to each column shall be clearly shown, and columns relating to unaudited Financial Statements shall be clearly designated "Unaudited."~~

~~(f) **Acquisitions.** If any part of the proceeds of the offering is to be applied to the purchase of any business, the same Financial Statements required in subsections (a) through (c) shall be filed for the business to be acquired. When appropriate for full and fair disclosure, the Administrator may require proforma combined Financial Statements.~~

~~(g) **Application of Regulation S-X.** As to definitions, qualifications of accountants, content of accountant's certificates, requirements for consolidated or combined statements, and actual form and content of Financial Statements, the Administrator shall apply Regulation S-X of the SEC (17 C.F.R. Part 210) in its most currently amended form as of the date of the filing of the application to all Financial Statements filed with the Department in connection with the registration of securities.~~

~~(h) **Financial statements incorporated by reference.** Where Financial Statements in a prospectus are incorporated by reference from another document, the Administrator may require that such other document be filed with the Department and be delivered to investors with the prospectus.~~

~~(i) **Application of antifraud provisions.** Any Financial Statement distributed in connection with the offer or sale of securities under the Act shall be subject to the provisions of Section 101 of the Act. Any Financial Statement filed with the Department shall be subject to the provisions of Section 403 of the Act.~~

660:10-9-15. Change of accountant proceeding or during effectiveness [REVOKED]

~~(a) **Materiality of event.** One of the foundations of the administration of the disclosure requirements of securities law is reliance upon the reports of independent accountants regarding the financial statements of registrants. These reports provide the assurance of an outside expert's examination and opinion, thereby substantially enhancing the reliability of financial statements. Consequently, the resignation or dismissal of the principal auditing firm during a period immediately preceding or contemporaneous with an application for registration of securities in this state is considered to be of material importance.~~

~~(b) **Procedure.** If during the 18 months preceding registration and/or during the period of effective registration, the principal accountant or firm auditing the registrant's financial statements resigns or is dismissed, the following shall be required:~~

~~(1) Issuers which are SEC reporting companies shall file a copy of all Form 8-K's filed with the SEC during the 18 months preceding their filing with the Department as well as any that may be filed during the period of registration with the Department.~~

~~(2) All other issuers as a condition for initial and continuing registration, shall provide the following information to the Department:~~

~~(A) the date of such resignation or dismissal;~~

~~(B) disclosure of any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure to which the accountant would have made reference in his report in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding the dismissal or resignation. Each disagreement should be disclosed whether it was resolved to the accountant's satisfaction or not;~~

~~(C) any principal accountant's report on the financial statements for any of the past two years containing a disclaimer of opinion or an adverse or qualified opinion; and~~

~~(D) a statement that the decision to change accountants was recommended or approved by either:~~

~~(i) the Audit Committee of the Board of Directors, if the issuer has such a committee; or,~~

~~(ii) the Board of Directors, if the issuer has no such committee.~~

~~(3) The registrant shall request the former accountant to furnish a letter addressed to the Administrator stating whether or not he agrees with the statements made by the registrant and, if not, stating the respects in which he does not agree. The former accountant's letter shall be attached as an exhibit to the information required above.~~

660:10-9-16. Abandoned filings [REVOKED]

~~An application for registration of securities pursuant to Sections 302, 303, 304 or 304.1 of the Securities Act shall be deemed abandoned if such registration is not effective in the state of Oklahoma within one year from the date of receipt by the Department of the initial filing of the application for registration. Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees shall be required.~~

PART 5. GUIDELINES AND POLICIES APPLICABLE TO OFFERINGS OF REGISTERED SECURITIES [REVOKED]

660:10-9-31. Prospectus delivery requirement [REVOKED]

~~No offer or sale of any security registered under the Securities Act may be made unless concurrent with the initial solicitation or immediately thereafter there is furnished to the prospective purchaser, a prospectus, in such form and containing such information as may be required pursuant to the Securities Act or the rules and regulations promulgated thereunder or by order of the Administrator, which prospectus has been previously filed with and approved by the Administrator for use; provided, no prospectus shall be required in connection with offers or sales of securities or transactions exempted by Section 401 of the Securities Act, except as may be specifically required by such Act or the rules and regulations promulgated thereunder or by order of the Administrator; and provided further, no prospectus shall be required, except as otherwise specifically required by the provisions of the Securities Act or the rules and regulations promulgated thereunder or by order of the Administrator, for use in connection with offers or sales of securities registered under Section 302(a)(2) of the Securities Act. In addition, after the effective date of the registration statement in the state of Oklahoma, all broker-dealers and agents effecting transactions in the securities registered under the Securities Act shall be required to deliver a prospectus prior to or concurrently with any transaction in said securities for the same time periods specified in Section 4(3) of the 1933 Act and Rule 174 adopted by the SEC (17 C.F.R. 230.174) in its most currently amended form as of the date of the filing of the application. Nothing in this rule obviates the need for registrants to comply with the provisions of Section 101 of the Securities Act.~~

660:10-9-32. Escrow agreements [REVOKED]

~~(a) **General requirements.** In any instance where an escrow of the proceeds of sale of securities is determined to be in the public interest and necessary for the protection of investors, as a condition of registration the Administrator may require that the registrant deposit a specific percentage or amount of the proceeds from the sale of the registrant's securities in an acceptable depository pursuant to a written agreement between the registrant issuer and the depository. The proceeds shall be retained therein until a specific sum has been accumulated and the terms and conditions of the agreement have been performed.~~

~~(b) **Filing requirement.** Each escrow agreement shall be negotiated between the depositor and the depository and an executed copy filed with the Administrator.~~

~~(c) **Required provisions.** Each such escrow agreement shall substantially comply with the following guidelines and shall contain the following terms or information:~~

~~(1) the date of the agreement;~~

~~(2) the names and addresses of the depositor and the depository;~~

~~(3) the specified percentage or amount of gross proceeds from the sale of the securities involved to be deposited;~~

~~(4) the aggregate sum to be accumulated;~~

~~(5) the date on or before which such accumulation shall be completed;~~

~~(6) the conditions under which the escrowed funds are to be released to the depositor, or are to be refunded to the persons entitled thereto, and by whom and in what manner such refunding is to be effected;~~

~~(7) a provision that interest and other earnings, if any, from the escrowed funds shall be distributed to the public investors if the escrowed offering proceeds are refunded;~~

~~(8) a statement that neither release nor refunding of the escrowed funds is to be effected unless and until the depositor has given the Administrator and/or Commission ten (10) days written notice of the action to be taken. To~~

~~be complete, such notice shall contain a sworn affidavit from the applicant that all the terms of the escrow agreement have been properly fulfilled.~~

~~(d) **Prohibited provisions.** An escrow agreement will not be acceptable, except upon unusual circumstances with prior approval of the Department, if the agreement:~~

~~(1) provides for the depositor to make any levy or assessment or to apply any lien on or against the escrowed funds. It is the intent and purpose hereof that all charges, fees, and costs incurred in respect to the escrow agreement and its performance be charged to and be borne by the depositor;~~

~~(2) provides for or permits credit towards or inclusion in the specific sum to be accumulated of any monies deposited in the account, including interest or other earnings directly attributable to the escrowed funds, if such monies constitute proceeds of any transaction or were derived from sources other than sales of the depositor's securities;~~

~~(3) provides for any rights of the depositor to require release of, or obligation on the part of the depository to release all or any part of the escrowed funds, except after accumulation in the fund of a specific sum on or before the date fixed by the escrow agreement for the accumulation to be completed.~~

660:10-9-33. Special requirements for promotional or developmental stage companies [REVOKED]

~~(a) **Definition.** For purposes of this Section a "promotional or developmental stage company" means any entity that meets the definition in 660:10-1-3.~~

~~(b) **Requirements.** Registration statements filed under Sections 304.1 or 305 of the Securities Act or any exhibits filed therewith relating to securities of a promotional or developmental stage company must demonstrate in addition to meeting any other requirements that may apply, the issuer's ability to meet the following requirements:~~

~~(1) Taking into consideration the minimum net proceeds of the offering, past earnings, and accounts receivable, of the issuer, the prospectus must demonstrate the issuer's ability to operate for a period of at least six months without additional capital; or based on a business plan filed supplementally, the issuer must demonstrate its ability to operate for a period of at least 12 months. Any registrant may request that such business plan not be deemed filed with the registration statement and may request that it be held in confidence. A prospectus relating to an offering of debt securities must demonstrate the issuer's ability to service the debt. This can be demonstrated by submission of a compilation.~~

~~(2) No more than 25% of the proceeds of the offering net of offering costs shall be paid as remuneration to promoters, executive officers, directors or shareholders owning 10% or more of any class of outstanding stock of the issuer.~~

~~(3) The prospectus must demonstrate compliance with 660:10-9-35 regarding limitations on offering expenses and remuneration and with the NASAA statement of policy regarding promotional shares.~~

~~(4) Issuers shall not have granted, and shall agree not to grant in the future, options to acquire securities of the same class as those being offered, at an exercise price that is less than 85% of the fair market value of the securities at the time of the grant of the option. The prospectus shall disclose the dilution that would result from the exercise of all outstanding warrants or options to acquire securities of the same class as those being offered.~~

~~(5) The use of offering proceeds must be disclosed with specificity in the prospectus.~~

~~(c) **Waiver provisions.** The Administrator in his or her discretion may waive any of the above requirements upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.~~

660:10-9-34. NASAA guidelines [REVOKED]

~~(a) **Application of guidelines** The guidelines or statements of policy, heretofore or hereafter adopted by NASAA, or its predecessors or successors, in their most currently amended form as of the date of the filing of the application, may be applied to the registration of securities pursuant to the Securities Act.~~

~~(b) **Cross-reference sheet.** Issuers, or interested persons on the issuer's behalf, as a condition to compliance with this section, shall prepare a cross-reference sheet setting out each section of the guideline relied upon pursuant to this rule, and reflecting the document and page numbers where compliance with each section of the selected guideline is disclosed. Any variance or failure to comply with particular sections of an accepted guideline shall be noted by the issuer or his attorney, and the reasons for the variance shall be fully stated.~~

~~(c) **Waiver provisions.** The Administrator in his or her discretion may waive any of the requirements of the guidelines or statements of policy upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.~~

660:10-9-35. Limitations on offering expenses and remuneration [REVOKED]

~~(a) **Issuer expenses.** Expenses incurred by an issuer of securities (including the sponsor or general partners of a limited partnership expended or being reimbursed from partnership funds) in connection with an offering of securities shall not exceed 15% of the amount of securities actually sold. Such expenses shall include, but are not necessarily limited to, the following:~~

~~(1) Sales commissions or discounts, including expense allowances and warrants issued gratis or at nominal prices.~~

~~(2) Finders fees, advisory fees and similar fees however designated.~~

~~(3) Promotional or carried interests granted, or sold at a price substantially different from the public offering price, to an underwriter, broker-dealer or agent.~~

~~(4) Organizational expenses of recently formed issuers.~~

~~(5) Advertising directly associated with the sale of the public offering being registered.~~

~~(6) Attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations.~~

~~(7) The cost of prospectuses, circulars and other documents required to comply with such laws and regulations.~~

~~(8) Other expenses directly incurred in connection with such qualifications and compliance with such laws and regulations (filing fees and investigation fees prior to registration).~~

~~(9) Cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps.~~

~~(10) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, auditors, and of engineers, appraisers, and other experts.~~

~~(11) Those expenses required to be itemized in Part II of a registration statement filed with the SEC, and with an application for registration by coordination pursuant to Section 303 of the Securities Act.~~

~~(b) **Underwriters' or broker-dealers' remuneration.** Remuneration received directly or indirectly by any underwriter, broker-dealer, agent, or any other person performing similar functions, for effecting or attempting to effect transactions in securities, shall not exceed 15% of the sales price of the securities sold in each transaction, regardless of by whom such remuneration is paid. Further, the aggregate amount of remuneration received directly or indirectly by all underwriters, broker-dealers, agents, or other persons performing similar functions for effecting or attempting to effect transactions in securities, shall not exceed 15% of the aggregate amount of securities actually sold. For the purpose of this rule (including subsection (a) above and 660:10-9-36) an interstate (or other jurisdiction) offering of securities shall be viewed in its entirety. Remuneration shall include, but is not necessarily limited to, the following:~~

~~(1) Sales commissions or discounts, including expense allowances and warrants issued gratis or at nominal prices.~~

~~(2) Finders fees, advisory fees and similar fees, however designated.~~

~~(3) Promotional or carried interests granted, or sold at a price substantially different from the public offering price.~~

~~(c) **Disclosure of expenses and remuneration.** The aggregate amounts (or good faith estimates of such amounts) of sales commission and offering expenses paid by an issuer of securities as discussed in subsection (a) above and remuneration to be received by the seller of securities as discussed in subsection (b) above, shall be clearly disclosed in the prospectus, offering circular, private placement memorandum or other offering document.~~

~~(d) **Waiver.** Where good cause is shown, the Administrator may waive or modify the percentage limitations set forth in this Section. Consideration of such requests shall be on a case-by-case basis and only pursuant to a written request setting forth the reasons therefor.~~

660:10-9-36. Promoters' and organizers' equity contributions [REVOKED]

~~(a) **Requirement.** Where an issuer is a promotional or developmental stage company as defined in 660:10-1-3, the ratio of equity investment by promoters or insiders must be determined as reasonable and equitable in light of the facts and circumstances presented in each particular case. Cases where the fair value of such equity investment is less than 10% of the total offering are discouraged, and in such instances, the proponents of the registration shall have the burden of establishing that the offering is being made without unfair or unreasonable amounts of promoters' profits or participation, as provided in Section 306(a)(2)(F) of the Securities Act.~~

~~(b) **Presumption.** In those instances where only 5% or more has been contributed by promoters or organizers, but where they have entered into bona fide and binding subscription contracts exercisable within one year with the new enterprises for capital stock representing the difference between the amount contributed and 10%, then the burden of proof established herein will be deemed to have been satisfied.~~

~~(c) **Determination of equity investment.** The fair value of equity investment shall be deemed to mean the total of all sums conveyed to the issuer in the form of paid-in or contributed cash or other assets with an established or determinable value. In those cases where the issuer has experienced losses from operations, the fair value of equity investment shall be the net worth of the issuer as of the date of the proposed offering determined in accordance with generally accepted accounting principles.~~

~~(d) **Burden of proof.** The burden of justifying as equitable the quantity of promotional securities to be issued for assets so conveyed, and of establishing reasonable or market value of said assets, shall rest with the applicant.~~

PART 7. REPORTING REQUIREMENTS [REVOKED]

660:10-9-51. Registration renewal and sales reporting requirements [REVOKED]

~~(a) **Registration renewal.** Pursuant to Section 305(h) of the Securities Act, every registration statement ordered effective is effective for one (1) year from its effective date, and certain registration statements may be effective for any longer period during which the security is being offered. Registration statements, the effectiveness of which is to continue beyond one (1) year from their effective date, must have their effectiveness renewed annually. A renewal of the effectiveness of a registration statement may be obtained by submitting a registration renewal report to keep the information contained in the registration statement reasonably current and by paying appropriate fees.~~

~~(1) **Time of filing.** Each registration renewal report shall be submitted no more than thirty (30) days before or thirty (30) days after each anniversary of the registration effective date.~~

~~(2) **Content.** Each registration renewal report submitted shall contain:~~

~~(A a written summary of any substantive changes in the registration statement since the later of the date of registration or the latest filing of a registration renewal report; and~~

~~(B) a copy of the latest post-effective amendment to the registration statement as filed with the SEC that has been marked for changes from the prior version of the registration statement as filed with the SEC; or, if not registered with the SEC, the proposed amendment to the registration statement that has been marked for changes from the prior version of the registration statement as filed with the Department.~~

~~(3) **Examination of report.** Pursuant to Section 405(e) of the Securities Act, the Department shall conduct a special examination of each registration renewal report filed. The purpose for such special examination shall be to evaluate the reported changes in the registration statement and to determine whether the registration should continue. The examination report shall consist of notification to the registrant of the status of the registration.~~

~~(4) **Fee.** Each registration renewal report filed shall be accompanied by the examination fee set forth in Section 412(b) of the Securities Act.~~

~~(b) **Sales reporting.** Pursuant to Section 305(i) of the Securities Act, and so long as a registration statement is effective, the Administrator may require the applicant, the issuer, or the broker-dealer to file reports not more often than quarterly to disclose the progress of the offering. Unless the Administrator requires more frequent sales reporting by request as to a specific registered security, a person who has filed a registration statement that has been ordered effective shall file one (1) registration sales report to disclose the progress of the offering for the initial one (1) year period of effectiveness and for each one (1) year renewal period of effectiveness thereafter.~~

~~(1) **Time of filing.** Each registration sales report shall be submitted no later than thirty (30) days after each anniversary of the effective date of the registration, or no later than thirty (30) days after the termination of the offering, whichever is earlier.~~

~~(2) **Content.** Each registration sales report submitted shall contain:~~

~~(A) the file number of the registration of securities to which the registration sales report relates;~~

~~(B) a statement as to whether the offering has been completed; and~~

~~(C) the dollar amount of each class of securities sold in the state for the entire one (1) year period of the registration, or from the beginning of the one (1) year period of registration through the completion of the offering, as applicable, in substantially the following form: Balance unsold at beginning of period $ ADD: Additional authorizations LESS: Amount sold during period Balance unsold at end of period $~~

~~(3) **Fee.** Each registration sales report filed shall be accompanied by an issuer sales report fee as required in Section 412(a) of the Securities Act.~~

~~(c) **Piecemeal filings.** Any report required under this Section is not considered filed if it is incomplete. Piecemeal filings shall not be accepted.~~

~~(d) **Delinquent filings.** Failure to file any report required under this Section on a timely basis shall constitute a basis for suspension or revocation of registration. The Department will consider requests that no enforcement action be taken regarding a delinquent filing pursuant to the provisions of 660:2-13-1.~~

660:10-9-53. Special examinations of registrations [REVOKED]

~~(a) **Examination of application.** The Department shall conduct a special examination of each application for registration under Sections 302, 303, 304, or 304.1 of the Securities Act to determine the adequacy of disclosure and to fulfill the Department's obligations under Section 306 of the Securities Act. This examination shall be based upon material contained in the Registration Statement and any other documentation which the applicant may be required to submit. Each application for registration shall be accompanied by the examination fee set forth in Section 412(b) of the Securities Act. The examination report shall consist of the Department's written comments regarding the filing.~~

~~(b) **On-site examinations of issuers.** T he business and records of issuers registered pursuant to Sections 302, 303, 304, or 304.1 of the Securities Act may be subject to periodic on-site examinations by the Administrator, and/or his designee, at such times as he determines necessary for the protection of the public. The Division of Registrations shall prepare a special report of every such examination.~~

~~(c) **Department access.** Each issuer scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each issuer shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to comply with any provision hereof shall constitute a violation of this Section and shall be a basis for denial, suspension or revocation of the registration or application for registration.~~

~~(d) **Charges incurred.** Each person to be examined under Section 405(e) of the Securities Act and subsection (b) of this Section shall pay the proper charges for the examination. The Administrator may require prepayment of the charges by presenting the person to be examined with a statement setting forth an estimate of the total charges. Remittance shall be due within fifteen (15) days from the statement date. Any balance due for an examination shall be paid by the registrant within forty-five (45) days from the billing date, and any refund of prepaid expenses shall be included with the registrant's copy of the examination report. Failure to remit a prepayment or a balance due in a timely manner shall be a basis for the suspension or revocation of registration. The total of the actual charges for an~~

~~on-site examination of an issuer shall be reduced by the amount of any examination fee required by Section 412(b) remitted by the registrant during the then current Departmental fiscal year (twelve months ending June 30.) For the purposes hereof actual charges for an on-site examination shall include, but are not necessarily limited to the following:~~

~~(1) Time spent by Department personnel in traveling to and from the examination site, conducting the examination, and preparing the examination report. Such time will be billed at $25.00 per employee hour with a minimum charge per examination of $200.00.~~

~~(2) Travel expenses for meals, lodging, transportation and other related expenses.~~

~~(3) The cost of supplies, materials, photocopying and postage.~~

SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

660:10-11-1. Definitions [REVOKED]

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

~~**"Enterprise"** means a corporation, general partnership, limited partnership, joint venture and any other formal or informal entity, association or arrangement (other than a sponsor) in which the investors' rights, interests or participation constitute "securities" as defined by Section 2 of the Securities Act; and~~

~~**"Sponsor"** means any natural person, corporation, general partnership, limited partnership, joint venture or other entity which is directly or indirectly instrumental in organizing an enterprise or which will manage or participate in the management of an enterprise.~~

660:10-11-2. Commissions [REVOKED]

~~(a) **Definition.** As used in Sections 201(a)(3)(C)(i) and 401(b) of the Securities Act, the term "commission" shall mean any economic benefit paid or given, directly or indirectly, for the offering, selling or purchasing of a security whether in the form of money or its equivalent, or any real or personal property or interest therein, or otherwise. Such economic benefit shall be presumed to be paid or given for the offer, sale or purchase of a security if the amount of such benefit is based on the amount of securities offered, sold or purchased or is an inducement for an offer, sale or purchase.~~

~~(b) **Exceptions.** Notwithstanding subsection (a) of this Section, the following do not constitute a commission:~~

~~(1) **Benefit for property purchased or services performed.**~~

~~(A) A benefit paid or given, whether or not such benefit is paid from the proceeds of the sale of a security of an enterprise or is related to the sale of a security of an enterprise, if such benefit is paid or given for property purchased or services performed so long as:~~

~~(i) the property or services are reasonably related to the present or proposed business of the enterprise, and~~

~~(ii) the amount or value of the benefit paid or given is competitive with the amounts charged or paid in the same or comparable areas by persons not affiliated with the enterprise who are engaged in the business of rendering comparable services or providing comparable property.~~

~~(B) Payment to independent third party professional engineers, geologists, accountants, attorneys, or such other persons for professional services rendered or to be rendered for the enterprise does not constitute a commission.~~

~~(2) **Promotional or other interest of sponsor.**~~

~~(A) Any promotional or other interest of a sponsor of an enterprise in the revenues, assets or equity of the enterprise which is proportionately greater than the capital invested by such sponsor in the enterprise or the total costs and expenses of the enterprise borne by or charged to such sponsor, if:~~

~~(i) the interest received is reasonable or customary in the industry in which the enterprise operates or proposes to operate; and~~

~~(ii) the sponsor or entity receiving such interest has or will have substantial duties unrelated to the sale of a security in connection with the enterprise.~~

~~(B) For the purpose of this paragraph, the type and amount of interests allowed under any applicable guidelines adopted by NASAA or any other guidelines adopted by the Department for public offerings registered with the Department shall be presumed reasonable and customary.~~

~~(3) **Compensation to officer, director, partner or employee.** The payment of compensation to an officer, director, partner or employee of an enterprise or its sponsor if:~~

~~(A) such payment is not directly or indirectly related to the offer or sale of a security;~~

~~(B) the officer, director, partner or employee is a bona fide officer, director, partner or employee who has substantial duties that are unrelated to the sale of a security; and~~

~~(C) the officer, director, partner or employee's activity involving the offer or sale of a security is strictly incidental to such person's bona fide primary work duties.~~

~~(c) **Presumptions.** No presumption shall arise that a benefit constitutes a commission if the relevant conditions described in subsection (b) of this Section are not satisfied. The burden of proving that the conditions of this rule have been met remains with the person claiming an exemption addressed by this rule.~~

660:10-11-3. Number of purchasers [REVOKED]

~~(a) **Exclusions.** For purposes of computing the number of persons to whom sales of the issuer's securities are made pursuant to Sections 401(b)(10)(A) and 401(b)(16) of the Securities Act, sales to the following purchasers shall be excluded:~~

~~(1) any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as such purchaser;~~

~~(2) any trust or estate in which a purchaser and any of the persons related to him as specified in paragraph (1) of this subsection or paragraph (3) of this subsection collectively have more than 50% of the beneficial interest (excluding contingent interests);~~

~~(3) any corporation or other organization of which a purchaser and any of the persons related to him as specified in paragraphs (1) or (2) of this subsection collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests.~~

~~(b) **Entities as purchasers.** A corporation, partnership, or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor as defined in Section 501 of Regulation D, then, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.~~

~~(c) **Sales to certain clients or customers.** Sales to clients of an investment adviser, customers of a broker or dealer, a trust administered solely by a bank trust department or persons with similar relationships, shall be considered as separate sales for purposes of this Section regardless of the amount of discretion given to the investment adviser, broker or dealer, bank trust department, or other persons to act on behalf of the client, customer or trust.~~

~~(d) **Joint or common ownership.** A sale to persons who acquire the securities as joint tenants, or as tenants in common, shall be counted as sales to each tenant unless otherwise covered by the rules of attribution provided by this Section.~~

660:10-11-4. Integration of offerings [REVOKED]

~~(a) **General.** An offering made by an issuer attempting to rely on the exemptions from registration provided by Sections 401(b)(10)(A) and 401(b)(10)(B) of the Securities Act, and 660:10-11-50 must be separate and distinct from any other offering. Offers and sales of an offering will be deemed integrated with offers and sales of another offering when a review of the integration factors provided by subsection (b) below indicates that the offers and sales are part of a larger offering. Integration may occur between two (2) claimed exempt offerings as well as between a claimed exempt offering and a registered offering.~~

~~(b) **Factors.** The following five (5) factors are deemed relevant to a determination as to whether or not two (2) different offerings are in fact integrated and thus part of a larger offering:~~

~~(1) the different offerings are part of single plan of financing;~~

~~(2) the offerings involve the issuance of the same class of security;~~

~~(3) the offerings are made at or about the same time;~~

~~(4) the same type of consideration is to be received;~~

~~(5) the offerings are made for the same general purpose.~~

~~(c) **Case by case determination.** Determination as to whether or not integration has occurred between two offerings shall be made on a case by case basis. The presence of all the integration factors shall not be required to establish the integration of two (2) offerings.~~

PART 3. EXEMPT SECURITIES [REVOKED]

660:10-11-21. Section 401(a)(6) notice filing [REVOKED]

~~(a) **Notice filing.** Issuers relying upon the exemption from registration in Section 401(a)(6) of the Securities Act shall file a written notice with the Administrator at least ten (10) full business days prior to the first offering of sale pursuant to such claim. Such notice shall include:~~

~~(1) the identity of the issuer;~~

~~(2) the amount and type of securities to be sold pursuant to the exemption;~~

~~(3) a description of the use of proceeds of the securities;~~

~~(4) the person or persons by whom offers and sales will be made; and~~

~~(5) the fee required by Section 412 of the Securities Act.~~

~~(b) **Offering document.** The notice filed with the Administrator shall be accompanied by the offering document, if any, to be utilized in connection with the offer and sale of the securities.~~

660:10-11-22. Commercial paper exemption [REVOKED]

~~(a) **Securities exempt.** The term commercial paper shall be defined as including only prime quality negotiable notes, drafts, bills of exchange or bankers acceptance or a type not ordinarily purchased by the general public, that is issued to facilitate the financing of well recognized types of current business requirements and is not advertised for sale to the general public. In this regard, the exemption is not available for the unregistered public offering of promissory or collateral trust notes or similar evidences of a debt of any issuer directly to public investors through such channels as public advertisements or solicitation letters addressed to customers of the issuer.~~

~~(b) **Limitation on amount.** Commercial paper may not be sold in denominations of less than $25,000.00.~~

~~(c) **Use of proceeds.** The proceeds from commercial paper may be utilized in any manner which has been indicated to be acceptable in a no action interpretive opinion from the SEC's Division of Corporation Finance or in compliance with specific existing SEC guidelines as expressed in regulations, releases, no-action letters to other issuers or published in any other form and relating to the issuance of commercial paper pursuant to~~

~~the exemption from registration provided by Section 3(a)(3) of the 1933 Act, governing such issuance.~~

~~(d) **Qualification of issuer.** Issuers of commercial paper must, as of the date of issuance, have a net worth of $500,000.00 and may not issue commercial paper in an aggregate amount of more than twenty (20) times the issuer's average consolidated annual net earnings determined in accordance with generally accepted accounting principles for the three (3) most recent years or, in the alternative, have an existing unused line of credit in an amount at least equal to the total of its commercial paper outstanding at any time which the issuer has committed to insure payment of its commercial paper, and which line of credit is established in writing by a bank, savings institution or trust company organized and supervised under the laws of any state or the United States provided that the amount of the line of credit is within the statutory lending limits of the issuing bank, savings institution or trust company.~~

~~(e) **Antifraud provisions.** It should be emphasized that Section 401(a)(7) of the Securities Act, if available, affords an exemption only from the registration requirements of Section 301 of the Securities Act and that the civil liabilities of Section 408 of the Securities Act and the antifraud provisions of Section 101 of the Securities Act are still applicable.~~

660:10-11-23. Manual exemption [REVOKED]

~~(a) **Recognized securities manuals.** The publications which shall be recognized by the Administrator for purposes of the exemption from registration set forth in Section 401(b)(2) of the Securities Act shall be as follows:~~

~~(1) Best's Insurance Reports, Life Health~~

~~(2) Moody's Industrial Manual~~

~~(3) Moody's International Manual~~

~~(4) Standard & Poor's Corporation Records~~

~~(b) **Additional requirements.** To be eligible for the exemption from registration provided by Section 401(b)(2) of the Securities Act, the following additional conditions must be met:~~

~~(1) All information specified as required to be contained in the recognized securities manuals pursuant to Section 401(b)(2) of the Securities Act must be given to the purchaser with the confirmation by providing the purchaser with a copy of either:~~

~~(A) the information contained in the manual listing; or~~

~~(B) the information maintained by the broker-dealer effecting the transaction that is required to be kept by such broker-dealer pursuant to the requirements of SEC Rule 15c2-11 promulgated under the provisions of the 1934 Act.~~

~~(2) The information required under paragraph (1) of this Subsection must be reasonably current in all material respects. The time for determining whether the information is current is at the date of the particular sale not the date the manual listing is published. For purposes of this paragraph, the term "reasonably current" shall have the meaning set forth in SEC Rule 15c2-11.~~

~~(3) The financial statements of the issuer required pursuant to Section 401(b)(2) of the Securities Act must be audited by an independent public accountant in accordance with generally accepted auditing standards, presenting fairly, in all material respects, the financial condition of the issuer; provided, if the issuer is an entity formed and operating under the laws of a foreign jurisdiction, the financial statements shall be audited in accordance with the auditing standards applicable in its jurisdiction of formation and operation.~~

~~(4) The issuer of the security, including any predecessors, has either:~~

~~(A) been in continuous business or operations for at least two (2) years, unless the issuer is an insurance company in which event it shall have been in business for at least five (5) years; or~~

~~(B) had a class of equity securities registered under Section 301 of the Securities Act within the past five (5) years.~~

~~(C) As used in this paragraph, "business or operations" means actual activities related to its current business or operations and shall not include merely holding funds or assets for future use.~~

~~(5) Sales must be made by a broker-dealer, either as principal or agent, who is registered under the provisions of Section 201 of the Securities Act.~~

~~(6) The securities must be offered or sold at a price reasonably related to the current market price of such securities.~~

~~(7) The securities must be issued and outstanding. The exemption is not available for issuer transactions. For purposes of this paragraph, "issuer" shall include all officers, directors and controlling (5% or more) shareholders of the issuer.~~

~~(8) The security does not constitute the whole or any part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security.~~

~~(c) **Restriction for promotional or developmental stage companies.** This exemption may not be used to evade the registration requirements of Section 301 of the Securities Act. Accordingly, transactions in reliance on this exemption for the securities of an issuer which is a promotional or developmental stage company as defined in 660:10-1-3, involving securities that~~

~~have not been registered for offer or sale in the state of Oklahoma and which securities would not have met the requirements for registration set forth in Sections 302 through 304.1 of the Securities Act and the rules promulgated thereunder, had the securities been filed for registration pursuant to such sections of the Securities Act, may be deemed to have violated this requirement unless proven otherwise.~~

~~(d) **Exemption.** The requirements of paragraph 1 of subsection (b) of this Section, shall not apply to the sale of the securities of an issuer who has net tangible assets in excess of $10,000,000.00 (U.S.) as determined by its most recent audited financial statements. For foreign issuers, the net tangible asset value may be determined by applying the exchange rate in effect as of the date of the financial statement relied upon unless there has been a material change in such exchange rate after the date of the financial statement that would reduce by~~

~~greater than 20% the value in U.S. dollars. In that event, the exchange rate applied should be the rate effective as of the last day of the preceding month. Nothing herein shall release the broker-dealer effecting the transaction from its obligation to maintain the information required by SEC Rule 15c2-11 and to deliver any such information to any person involved in a transaction effected in the security, upon request by such person.~~

PART 5. EXEMPT TRANSACTIONS [REVOKED]

660:10-11-42. Interpretation of 'existing security holders' [REVOKED]

~~For purposes of the exemption from registration set forth in Section 401(b)(12) of the Securities Act, the term "existing security holder" shall not include a person who is a security holder of an issuer only by the receipt of securities as a gift by said issuer; consequently, the exemption from registration set forth in Section 401(b)(12) of the Securities Act would not be available in connection with transactions to such security holders. For purposes of this rule, a distribution of securities shall be deemed to be a gift if the security holder does not give consideration in exchange for the securities.~~

660:10-11-43. Section 401(b)(10)(B) notice filing [REVOKED]

~~(a) **Introduction.** Subparagraph (B) of Section 401(b)(10) of the Securities Act contains substantive requirements which must be strictly adhered to before an issuer may validly rely on the exemption from registration. This rule is designed to interpret the terms and provisions of Section 401(b)(10)(B) of the Securities Act and to provide substantive guidelines to insure the availability of the exemption for an issuer's offering.~~

~~(b) **Notice of sales.** A notice of sales pursuant to Section 401(b)(10)(B)(iii) of the Securities Act must be filed as provided in this Subsection.~~

~~(1) **Notice.** Issuers relying upon the exemption from registration in Section 401(b)(10)(B) of the Securities Act shall file with the Administrator one (1) signed copy of each notice of sales on Form D filed with the SEC and at the same times as filed with the SEC provided the initial notice of sales may be filed with the Administrator no later than fifteen (15) days after the first sale of securities subject to the Securities Act.~~

~~(2) **Fee.** The first notice of sales filed with the Administrator in connection with such offering shall include the fee set forth in Section 412 of the Securities Act.~~

~~(3) **Time of filing.** A notice shall be considered filed with the Administrator as of the date on which it is received at the Administrator's office, or as of the date on which the notice is mailed by means of United States registered or certified mail to the Administrator's office if the notice is delivered to such office after the date on which it is required to be filed.~~

~~(c) **Disqualifying provision.** Failure to comply with subsection (b) of this Section shall not result in the loss of availability of the exemption pursuant to Section 401(b)(10)(B) of the Securities Act unless the issuer, any of its predecessors or affiliates have been subject to a cease and desist order of the Administrator or any order, judgment, or decree by another state securities agency, the SEC or any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with subsection (b) of this Section or Rule 503 of Regulation D. This subsection shall not apply if the Administrator determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Requests for waivers of the disqualifying provision of this subsection shall be in writing setting forth the reasons therefor.~~

660:10-11-44. Section 401(b)(15) notice filing [REVOKED]

~~(a) **Notice filing.** Issuers relying upon the exemption from registration in Section 401(b)(15) of the Securities Act shall file a written notice with the Administrator at least ten (10) full business days prior to the first offering of sale pursuant to such claim. Such notice shall include:~~

~~(1) the identity of the issuer;~~

~~(2) the amount and type of securities to be sold pursuant to the exemption;~~

~~(3) a description of the use of proceeds of the securities;~~

~~(4) the person or persons by whom offers and sales will be made; and~~

~~(5) the fee required by Section 412 of the Securities Act.~~

~~(b) **Offering document.** The notice filed with the Administrator shall be accompanied by the offering document, if any, to be utilized in connection with the offer and sale of the securities.~~

660:10-11-45. Section 401(b)(19) notice filing [REVOKED]

~~To qualify a transaction in a security for the exemption from registration provided by Section 401(b)(19) of the Securities Act, a filing must be made with the Department on the same form as would be required to register the security under Section 12 of the 1934 Act and additional filings must be made at such times as would be required under the provisions of Sections 13 or 15 of the 1934 Act. The initial filing shall be accompanied by the fee specified in Section 412 of the Securities Act. Subsequent filings shall be accompanied by a fee of $50.00 for each filing.~~

660:10-11-48. Exchange/national market system exemption - issuer transaction [REVOKED]

~~(a) For purposes of Section 401(b)(20) of the Securities Act, the Administrator hereby approves the following national securities exchanges:~~

~~(1) The New York Stock Exchange;~~

~~(2) The American Stock Exchange;~~

~~(3) Chicago Board Options Exchange;~~

~~(4) Pacific Stock Exchange, Tier 1; and~~

~~(5) Philadelphia Stock Exchange, Tier 1.~~

~~(b) For purposes of Section 401(b)(20) of the Securities Act the Administrator hereby approves the following national market system: NASDAQ National Marketing System as operated by the NASD.~~

660:10-11-49. Exchange national/market system exemption - nonissuer transaction [REVOKED]

~~(a) For purposes of Section 401(b)(21) of the Securities Act, the Administrator hereby approves the following national securities exchanges:~~

~~(1) New York Stock Exchange;~~
~~(2) American Stock Exchange;~~
~~(3) Chicago Board Options Exchange;~~
~~(4) Midwest Stock Exchange;~~
~~(5) Philadelphia Stock Exchange; and~~
~~(6) Pacific Stock Exchange.~~

~~(b) For purposes of Section 401(b)(21) of the Securities Act, the Administrator hereby approves the following national market system: NASDAQ National Marketing System as operated by the NASD.~~

660:10-11-50. Uniform limited offering exemption [REVOKED]

~~(a) **Preliminary notes.**~~

~~(1) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities laws.~~

~~(2) In view of the objective of this Section and the purposes and policies underlying the Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Section.~~

~~(3) Nothing in this Section is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.~~

~~(b) **Terms of the exemption.** By authority delegated to the Administrator in Section 401(b)(22) of the Securities Act, the following transaction is determined to be a type of transaction for which registration is not necessary or appropriate for the protection of investors and which is exempt from the registration provisions of the Securities Act: any offer or sale of securities offered or sold in compliance with the 1933 Act, Regulation D, Rules 230.505 and/or 230.506, including any offer or sale made exempt by application of Rule 508(a) and which satisfies the following further conditions and limitations:~~

~~(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this paragraph if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.~~

~~(2) No exemption under this Section shall be available for the securities of any issuer if any of the parties described in the 1933 Act, Regulation A, Rule 230.252 sections (c), (d), (e) or (f):~~

~~(A) Has filed a registration statement which is subject to a currently effective registration stop order entered pursuant to any state's securities law within five (5) years prior to the filing of the notice required under this exemption.~~

~~(B) Has been convicted within five (5) years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.~~

~~(C) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the notice required under this exemption.~~

~~(D) Is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.~~

~~(E) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the notice required under this exemption.~~

~~(F) The prohibitions of (A), (B), (C) and (E) of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this~~

~~state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed or registered.~~

~~(G) Any disqualification caused by this paragraph is automatically waived if the Administrator determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.~~

~~(H) It is a defense to a violation of this paragraph if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.~~

~~(3) The issuer shall file with the Administrator one (1) signed copy of each notice on Form D filed with the SEC and at the same times as filed with the SEC, provided that:~~

~~(A) The initial notice of sales may be filed with the Administrator no later than fifteen (15) days after the first receipt of consideration or the delivery of a subscription agreement by an investor in this state which results from an offer being made in this state, in reliance upon this exemption. The initial notice shall contain an undertaking by the issuer to furnish to the Administrator, upon written request, the information furnished by the issuer to offerees.~~

~~(B) Unless otherwise available, included with or in the initial notice shall be a consent to service of process.~~

~~(C) Every person filing the initial notice provided for in (A) of this paragraph shall pay the exemption notification fee required by Section 412 of the Securities Act.~~

~~(4) In all sales to nonaccredited investors in this state one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:~~

~~(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.~~

~~(B) The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.~~

~~(c) **Substantial compliance.** A failure to comply with a term, condition or requirement of (1), (3) and (4) of (b) of this Section will not result in the loss of the exemption from the requirements of Section 301 of the Securities Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:~~

~~(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and~~

~~(2) the failure to comply was insignificant with respect to the offering as a whole; and~~

~~(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of (1), (3) and (4) of (b) of this Section.~~

~~(d) **Action by Administrator.** Where an exemption is established only through reliance upon (c) of this Section, the failure to comply shall nonetheless be actionable by the Administrator under the Securities Act.~~

~~(e) **Reliance on other exemptions.** Transactions which are exempt under this Section may not be combined with offers and sales exempt under any other rule or any Section of the Securities Act; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions of this exemption, the issuer may claim the availability of any other applicable exemption.~~

~~(f) **Waiver of terms.** The Administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.~~

~~(g) **Title.** The exemption authorized by this Section shall be known and may be cited as the "Uniform Limited Offering Exemption."~~

SUBCHAPTER 13. SALES LITERATURE [REVOKED]

660:10-13-1. Purpose [REVOKED]

~~The rules of this Subchapter are adopted to provide procedures for complying with the provisions of Section 402 of the Securities Act relating to sales literature.~~

660:10-13-2. Definitions [REVOKED]

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

~~**"Sales literature"** means material published, or designed for use, in a newspaper, magazine or other periodical, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to customers or the public including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format.~~

~~**"Sales literature package"** means all submissions of Sales Literature to the Department under one posting or delivery relating to a specific issue of securities.~~

660:10-13-3. Filing requirements [REVOKED]

~~(a) **Requirement of filing.** Section 402 of the Securities Act requires a filing of all Sales Literature for review and response~~

~~by the Administrator before use or distribution in Oklahoma. A complete filing shall consist of the Sales Literature Package, the fee specified in Section 412 of the Securities Act and a representation by the applicant, issuer or broker-dealer, that reads substantially as follows: "I hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Oklahoma Department of Securities on or about ."~~

~~(b) **Exemption from filing.** The following types of Sales Literature are excluded from the filing requirements set forth herein:~~

~~(1) Sales Literature which does nothing more than identify a broker-dealer and/or offer a specific security at a stated price;~~

~~(2) Internal communications that are not distributed to the public;~~

~~(3) Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such, or pursuant to Section 305(b)(4) of the Securities Act as long as Section 305(b)(4) of the Securities Act and/or 660:10-9-13 are referenced in the cover letter accompanying said filing;~~

~~(4) Sales Literature solely related to changes in a name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers; and~~

~~(5) Sales Literature filed with and approved by the NASD.~~

~~(c) **Piecemeal filings.** The Department will not approve any Sales Literature Package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith.~~

660:10-13-4. Content [REVOKED]

~~(a) **Application of antifraud provisions.** Sales Literature used in any manner in connection with the offer and sale of securities is subject to the provisions of Section 101 of the Securities Act, whether or not such Sales Literature is required to be filed pursuant to Section 402 of the Securities Act or 660:10-13-3. Further, Sales Literature filed with the Department is subject to the provisions of Sections 402 and 403 of the Securities Act. Sales Literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact which might confuse or mislead an investor.~~

~~(b) **Prohibited disclosures.** Unless stating that the Commission, Administrator or Department has not approved the merits of the securities offering or the Sales Literature, no Sales Literature shall contain a reference to the Commission or the Department unless such reference is specifically required in a Departmental Prospectus Guide or requested by the Administrator.~~

SUBCHAPTER 15. MISCELLANEOUS PROVISIONS [REVOKED]

660:10-15-1. General rules for presentation of financial statements [REVOKED]

~~(a) **Asset values.** The following rules shall apply in presenting asset values in all Financial Statements filed with the Department:~~

~~(1) A unilateral "write up" of assets above historical cost is not considered in accordance with generally accepted accounting principles. Financial Statements containing a "write up" of assets to appraisal values (irrespective of the soundness of the appraisal) shall not be accepted.~~

~~(2) A registrant acquiring assets in an "arms length" transaction, solely or partly for its own capital stock, should record the transaction in its Financial Statements at either:~~

~~(A) the fair market value of the shares of stock given in consideration, or~~

~~(B) the fair market value of the asset so acquired. The amount selected should be one which has the preponderance of evidence substantiating its selection.~~

~~(3) Where a parent company (one owning more than 50% of other companies) or a subsidiary company or an affiliated company is the registrant, consolidated or combined Financial Statements shall be submitted. The consolidated statements must conform to generally accepted accounting principles and result in the elimination of "write ups" or appraisal amounts not represented by "arms length" transactions.~~

~~(4) Where the "promoters" of a registrant have transferred assets to the registrant solely or partly for capital stock, the tests referred to in (1), (2) and (3) of this subsection must be applied so as to result in either no "write up" or one not greater than would have resulted from a transaction carried out at "arms length." The registrant shall make full disclosure of all pertinent facts and substantiate the values used in its Financial Statements if not representing "historical cost" of acquisition from third parties.~~

~~(b) **Opinion of independent accountants.** Audited Financial Statements shall be accompanied by an opinion of the Independent Accountant. The opinion letter shall be dated, shall be manually signed, shall identify without detailed enumeration the Financial Statements covered by the opinion, shall state that the examination was conducted in accordance with generally accepted auditing standards and shall express the Independent Accountant's opinion as to the fairness or unfairness of the Financial Statements in accordance with generally accepted accounting principles or his inability to express such an opinion.~~

SUBCHAPTER 17. INVESTMENT COMPANIES [REVOKED]

660:10-17-1. Definitions [REVOKED]

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

~~**"Class"** means the lowest level of subdivision of the securities offered by an issuer.~~

~~**"Notice"** means the filing required to be made with the Administrator by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 prior to offering a security in this state. [71:305.2]~~

~~**"Superseding Notice"** means a notice filing relating to the offer of securities that were described in a previously filed and currently effective notice.~~

660:10-17-2. Investment company notices [REVOKED]

~~(a) **Notice requirement.** Pursuant to Section 305.2 of the Securities Act, prior to the offer in this state of a Class of security of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, the issuer must file a Notice with the Administrator. While each Class of an issuer's securities must have an effective Notice filed prior to the offer of such Class of security in this state, a Notice may describe and be effective for all securities of one issuer that are offered in the same prospectus. However, once a Notice is filed and effective, it may not be amended to add additional Classes of securities of an issuer, even if the additional Classes are to be offered in the same prospectus as the securities described in the Notice. Therefore, a separate Notice as described in subsection (b) of this Section will need to be submitted for the additional Class(es). The separate Notice may include only the additional Class(es) or may include all securities of the issuer that are offered in the particular prospectus. A Class of an issuer's securities shall be subject to only one effective Notice at any given time; thus, if the separate Notice includes all securities offered in the particular prospectus, it will serve as a Superseding Notice as to the Class(es) of the issuer's securities that were described in a previously filed and currently effective Notice. The Superseding Notice will terminate the effectiveness of any Notice previously filed as to the Class(es) of securities described in the Superseding Notice. If the effectiveness of a Notice that relates to a definite amount of securities is terminated by the filing of a Superseding Notice, it will be necessary to file an appropriate sales report in accordance with 660:10-17-3 as to the prior notice.~~

~~(b) **Content of notice.** A Notice shall include the following:~~

~~(1) A properly completed Form NF;~~

~~(2) A Consent to Service of Process (Form U-2), and Corporate Resolution (Form U-2A), if applicable; and~~

~~(3) The examination and appropriate filing fees set forth in subsection (b) of Section 412 of the Securities Act. An allocation on the Form NF of the aggregate amount of securities for which fees are paid among the various securities described in the notice is not required. Documents other than those requested above, unless specifically requested by the Department, should not be filed with the Department. Documents that should not be filed with the Department, unless specifically requested, include, but are limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature.~~

~~(c) **Effective date of notice.** A Notice shall be effective for the Class(es) of securities described therein upon the date of receipt by the Administrator.~~

~~(d) **Period of effectiveness of notice.** The effectiveness of a Notice will be maintained as to a particular Class of security described therein until the earlier of:~~

~~(1) One (1) year from the date of effectiveness of the Notice;~~

~~(2) Until the filing of a Superseding Notice relating to the particular Class of security; or~~

~~(3) Receipt by the Administrator of a request to terminate the Notice as to the particular Class of security.~~

~~(e) **Renewal of notice.** The effectiveness of a Notice may be renewed each year for an additional one (1) year period of effectiveness by submitting the following within thirty (30) days of the expiration of the effectiveness of the Notice:~~

~~(1) A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; and~~

~~(2) The examination and appropriate filing fees set forth in subsection (b) of Section 412 of the Securities Act.~~

~~(f) **Increased dollar amount of notice.** The aggregate dollar amount of securities for which a Notice relating to a definite amount of securities is applicable may be increased by submitting the following:~~

~~(1) A properly completed Form NF clearly indicating the state file number of the Notice for which the increased dollar amount is requested; and~~

~~(2) The appropriate fees set forth in paragraph (18) of subsection (a) of Section 412 of the Securities Act, excluding the $200.00 examination fee required by subsection (b) of Section 412 of the Securities Act.~~

~~(g) **No amendments to add Classes.** An effective Notice may not be amended to add a series, portfolio or Class of securities of an issuer.~~

660:10-17-3. Investment company sales report [REVOKED]

~~(a) **Notice for indefinite amount.** A sales report is not required in connection with a Notice relating to the offer of an indefinite amount of securities by an investment company.~~

~~(b) **Notice for definite amount.** A sales report is required in connection with a Notice relating to the offer of a definite amount of securities as follows:~~

~~(1) **Content.** A sales report for the securities described in the applicable Notice shall be submitted on a properly completed Form NF or Form USR-1 and shall:~~

~~(A) State the aggregate dollar amount of securities sold in the state of Oklahoma for the time period covered by the report; and~~

~~(B) Be accompanied by the issuer sales report fee set forth in subsection (a) of Section 412 of the Securities Act.~~

~~(2) **Due date.** A sales report shall be submitted according to the following:~~

~~(A) **Renewal.** The sales report required to be filed in connection with a Notice being renewed shall be made within thirty (30) days of the expiration of the Notice. Such report must reflect sales for a minimum of ten (10) months.~~

~~(B) **Nonrenewal.** The sales report required to be filed in connection with a Notice that will not be renewed shall be filed no later than thirty (30) days after the anniversary date of effectiveness of the Notice. Such report must reflect sales for the entire period of effectiveness.~~

[OAR Docket #04-1070; filed 5-26-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #04-1071]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 11. [NEW]
AUTHORITY:
Administrator, Oklahoma Department of Securities; 71 O.S., §§ 410 and 1-605
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
17 CFR §240.17a-3 (2003), books and records rules established by the SEC under the 1934 Act
Incorporating rules:
660:11-5-41
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

ANALYSIS:
The Oklahoma legislature enacted the Oklahoma Uniform Securities Act of 2004, 71 O.S., §§ 1-101 through 1-701, effective July 1, 2004 ("OUSA") to implement the Uniform Securities Act of 2004, and repealed 71 O.S., §§ 1-413,501,701-703, effective July 1, 2004, in S.B. No. 724 of the First Session of the 49th Oklahoma Legislature. The rule amendments will reflect this statutory change and clarify the procedures of the Securities Department.
CONTACT PERSON:
Faye Morton, General Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

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

660:11-1-1. Purpose

The provisions of this chapter have been adopted for the purpose of carrying out the provisions of the Oklahoma Uniform Securities Act of 2004 including, but not limited to, provisions governing the offer, sale and issuance of securities.

660:11-1-2. Statutory citations

Citations to statutes in this chapter refer to the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

660:11-1-3. Definitions

Unless the context otherwise requires, or unless defined in this section or in 660:11-5-2, terms used in this chapter, if defined in the Securities Act, shall have the meaning as defined in the Securities Act. The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Authorized to do business in Oklahoma" means authorized to do business in Oklahoma pursuant to the Oklahoma Uniform Securities Act of 2004.

"Audited financial statements" means **"Certified financial statements."**

"Certified financial statements" means financial statements prepared in accordance with generally accepted accounting principles and examined by Independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion as described in 660:11-15-1.

"CFR" means the Code of Federal Regulations.

"CRD" means the NASAA/NASD Central Registration Depository System.

"Date of filing" means the date on which a proper registration statement is filed for purposes of determining the dates of the statements of financial condition to be filed with a registration statement. If amendments to a registration statement are necessary to comply fully with the registration requirements, "date of filing" means the date on which the last amendment is filed.

"FDIC" means the Federal Deposit Insurance Corporation.

"Financial statements" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles.

"Independent accountants" means independent certified public accountants. The concept of independence shall be that promulgated by the American Institute of Certified Public Accountants.

"NASAA" means the North American Securities Administrators Association.

"NASD" means the National Association of Securities Dealers, Inc.

"NASDR" means the National Association of Securities Dealers Regulation, Inc.

"1933 Act" means the Securities Act of 1933, as amended.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"1940 Act" means the Investment Company Act of 1940, as amended.

"Predecessor of an issuer" means:

(A) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or

(B) a person from which the issuer acquired directly or indirectly the major portion of its assets.

"Promotional or developmental stage company" means an issuer for which any of the following conditions exist:

(A) the company and any predecessors were formed within the twelve-month period ending on the date of the filing of the application for registration;

(B) the company has no significant revenues from the line of business being undertaken with the offering proceeds;

(C) the principal operations to be conducted with offering proceeds have not commenced or have been commenced within the twelve-month period ending on the date of the filing of the application for registration; or

(D) the principal operations to be conducted with offering proceeds have commenced, but the issuer has not demonstrated profitable operations for two of the three fiscal years prior to registration, evidenced by net income determined in accordance with generally accepted accounting principles after taxes, and excluding extraordinary items.

"Prospectus" means a prospectus in a form and containing such information as may be required by the Administrator, including a prospectus filed under the 1933 Act or an offering circular used in connection with an exempt security or transaction regardless of the designation of the document (i.e., prospectus, offering circular, memorandum, etc.).

"Registration statement" means an application for registration of securities under Sections 1-303 and 1-304 of the Securities Act and all documents and exhibits related thereto, including a Prospectus.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"SIPC" means the Securities Investor Protection Corporation.

660:11-1-4. [RESERVED]

660:11-1-5. [RESERVED]

660:11-1-6. Amendments

The Administrator may by order amend the provisions of this chapter to conform references to the Securities Act or to rules promulgated thereunder to numerical redesignations occasioned by legislative or rulemaking activities.

SUBCHAPTER 3. INVESTMENT CERTIFICATE ISSUERS

PART 1. GENERAL PROVISIONS

660:11-3-1. Definitions

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

"Allowance" means an allowance for loan losses or a reserve against bad debts.

"Net loans outstanding" means total gross loans outstanding less unearned discount.

"Nonperforming loan" means a loan over 90 days past due with respect to principal and/or interest.

"Uncollectible" means the potential for collection is virtually nonexistent.

"Worthless" means lacking value.

PART 3. REPORTING AND ACCOUNTING REQUIREMENTS

660:11-3-21. Loans

(a) Classifications. Each investment certificate issuer shall observe the following prescribed classification standards of loans:

(1) Loss - all, or a portion, of the loan considered uncollectible or worthless.

(2) Doubtful - all, or a portion, of the loan the ultimate collection of which is doubtful and in which a substantial

loss is probable, but not as yet definitely ascertainable in amount.

(3) Substandard - all, or a portion, of the loan not classified as doubtful or loss and which involves more than normal risk due to the financial condition or unfavorable record of the borrower, insufficiency of security, or other factors.

(4) Special mention - loans not warranting classification as substandard, doubtful, or loss but which are of an unusual nature carrying more than the usual risk, and should have the careful attention of management.

(b) **Appraisals.** Each investment certificate issuer shall perform an in-house appraisal or obtain an appraisal by a licensed independent appraiser of collateral at the time of the origination of each loan. Said appraisal shall be updated by a licensed independent appraiser upon the Administrator's written request upon a change in the economic or market conditions or if the loan becomes nonperforming.

(c) **Aging schedules.**

(1) The provisions of this subsection shall apply to determining the age of loans. Loans shall be aged on the basis of contract terms in effect at the close of business each month. Account balances not in current status shall be classified in the following categories (assuming monthly payments):

(A) One installment or a portion in excess of 5% of an installment due and unpaid 0 to 30 days past due.

(B) Two installments or one and a portion in excess of 5% of an installment due and unpaid 31 to 60 days past due.

(C) Three installments or two and a portion in excess of 5% of an installment due and unpaid 61 to 90 days past due.

(D) Four installments or three and a portion in excess of 5% of an installment due and unpaid over 90 days past due.

(2) Amortizing real estate loans are to be reported as past due when the borrower is in arrears two or more monthly payments. Such obligations with payments scheduled other than monthly are to be reported as past due when one scheduled payment is due and unpaid for 30 days or more.

(3) Single payment and demand notes providing for the payment of interest at stated intervals are to be reported as past due after one interest payment is due and unpaid for 30 days or more.

(4) Single payment notes providing for the payment of interest at maturity are to be reported as past due after maturity if interest or principal remains unpaid for 30 days or more.

(d) **Interest.** Loans are to be reported as being in nonaccrual status if:

(1) said loans are maintained on a cash basis because of deterioration in the financial position of the borrower;

(2) payment in full of interest or principal is not expected; or

(3) principal or interest has been in default for a period of 90 days or more unless the obligation is both well secured and in the process of collection. A debt is "well secured" if it is secured (1) by collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt in full, or (2) by the guaranty of a financially responsible party. A debt is "in the process of collection" if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status.

(e) **Charge-offs.** Each investment certificate issuer shall charge-off the whole or any part of a loan at such times that said loan is classified by the Administrator as "loss" as defined in (a) above.

660:11-3-22. Valuation of other assets

(a) **Real property.** Real property shall be recorded on the balance sheet in accordance with generally accepted accounting principles. Each investment certificate issuer shall maintain an appraisal of all real property recorded on the balance sheet. Said appraisal shall be updated by a licensed, independent appraiser upon the Administrator's request if a change in the economic or market conditions occur. If said appraisal indicates that the value of the asset is materially overstated on the balance sheet such that the financial statements are materially misstated, said asset shall be written down to market value upon the written request of the Administrator.

(b) **Other assets.** All other assets of the investment certificate issuer shall be recorded on the balance sheet in accordance with generally accepted accounting principles.

(c) **Charge-offs.** Each investment certificate issuer shall charge-off the whole of any other asset, including real property, at such time that said asset is deemed to be lacking in value by the Administrator.

660:11-3-23. Reserve against bad debts

(a) **Requirement to maintain reserve.** Each investment certificate issuer shall at all times maintain a reserve against bad debts, that is, an Allowance for Loan Losses, in an amount equal to two percent (2%) of the total loans outstanding.

(b) **Determination of amount of reserve.** As of the end of each quarter, the management of each investment certificate issuer shall evaluate the collectibility of the loan portfolio to bring the Allowance, by means of a charge or credit, to a level adequate to absorb anticipated loan losses. Any recoveries during the reporting period should be credited to the Allowance, and any charge-offs should be charged to the Allowance. With respect to those loans classified as "doubtful" in accordance with 660:11-3-21, the Allowance shall be increased by an amount equal to fifty percent (50%) of the amounts classified as "doubtful." With respect to those loans classified as "substandard" in accordance with 660:11-3-21,

the Allowance shall be increased by ten percent (10%) of the amounts of the outstanding loans classified as "substandard."

660:11-3-24. Books and records

(a) **Maintenance of books and records.** Each investment certificate issuer shall maintain its books and records in such a manner that said books and records will facilitate preparation of financial statements in accordance with generally accepted accounting principles. Said books and records shall be maintained in sufficient detail to afford an analysis of all transactions.

(b) **Financial statements.** Each investment certificate issuer shall prepare a balance sheet and statement of income at the close of business on the last day of each month. Said financial statements shall be prepared not later than fifteen (15) business days after the end of the accounting period.

660:11-3-25. Reports

(a) **Reports required.** Each investment certificate issuer shall prepare and file with the Administrator quarterly reports for the quarters other than the quarter ending the fiscal year. Each report shall include the following:

(1) balance sheet and statement of income at the close of business on the last day of the quarter covered by said report;

(2) a schedule of the loans classified as loss, doubtful, substandard or special mention pursuant to 660:11-3-21, to include the loan balance amount of accrued interest and value of collateral for each loan appearing thereon; and

(3) aging schedules as prepared in accordance with 660:11-3-21.

(b) **When to file.** Each report shall be submitted to the Administrator within thirty (30) days of the end of the quarter for which the report applies.

PART 5. MISCELLANEOUS PROVISIONS

660:11-3-31. Qualifications of conservator or liquidator

A conservator or liquidator, who may be the Administrator of the Department, a member of his staff, or an independent party, appointed under Section 1-308.I.2. of the Securities Act shall be of legal age, of good moral character, a resident of the state of Oklahoma and competent to perform the duties of conservator or liquidator.

660:11-3-32. Acknowledgment

The purpose of Section 1-308.C of the Securities Act is to aid investment certificate issuers in applying for insurance by the FDIC. The prior issuance and continued effectiveness of a registration order shall constitute the written acknowledgment addressed by Section 1-308.C of the Securities Act. A formal acknowledgment for purposes of seeking insurance by the FDIC will be issued by the Administrator upon receipt of a written request therefor. Said request shall be accompanied by a copy of the application filed or to be filed with the FDIC. Upon obtaining membership in the FDIC, an investment certificate issuer shall not be subject to the prospectus preparation and delivery requirements set forth in Section 1-304.E of the Securities Act.

660:11-3-33. Examination standards

Examinations made by the Administrator or designated members of his staff may be performed in reliance upon the American Institute of Certified Public Accountants industry audit guides for financial institutions and federal regulatory guidelines for financial institutions.

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

PART 1. GENERAL PROVISIONS

660:11-5-1. Purpose

The rules in this subchapter have been adopted to provide procedures for complying with the provisions of Sections 1-401 through 1-402 of the Securities Act relating to the licensing of broker-dealers and agents under the Securities Act.

660:11-5-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Branch office" means any business location of a broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Complaint" means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

"Completion of the transaction" means:

(A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is

requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

"Customer" means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. **"Customer"** shall not include a broker-dealer.

"Direct participation programs" mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.

"Investment company and variable contracts products" means:

(A) redeemable securities of companies registered pursuant to the 1940 Act;

(B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and

(C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.

"Municipal securities" mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section 3(a)(29) of the 1934 Act.

"Nonbranch sales office" means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Office" means any location where a broker-dealer and/or one or more of its agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale, of any security.

"Option" means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the 1933 Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.

"OSJ" or **"Office of supervisory jurisdiction"** means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the broker-dealer;

(E) review and endorsement of customer orders pursuant to 660:11-5-42;

(F) final approval of advertising or sales literature for use by agents of the broker-dealer;

(G) responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.

"Principal" means:

(A) any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons; or

(B) any person associated with a non-NASD applicant for registration as a broker-dealer who is or will be actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions, and is designated as a principal by the broker-dealer applicant.

"Public offering price" shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.

"Selling group" means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.

"Selling syndicate" means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.

"Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" means the document entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.

PART 3. LICENSING PROCEDURES

660:11-5-11. Initial registration

(a) **Broker-dealer.** Each broker-dealer applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) who is contemporaneously applying for NASD membership or who is an NASD member:

(A) shall file with the CRD:

(i) a completed Form BD, including Schedules A-E; and

(ii) the filing fee specified in Section 1-612 of the Securities Act.

(B) shall file with the Department, within 60 days of becoming registered, a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma.

(2) who is not a current NASD member shall file with the Department:

(A) a completed Form BD, including Schedules A-E;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) audited financial statements as required by 660:11-5-45;

(D) documentation of compliance with the minimum capital requirement set forth in Section 1-406.E of the Securities Act and 660:11-5-17;

(E) designation, qualification and registration of a principal as defined in 660:11-5-2 pursuant to (c) of this section;

(F) a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma;

(G) a copy of the written supervisory procedures of the broker-dealer; and

(H) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(b) **Broker-dealer agent.**

(1) **Required documents.** Each broker-dealer agent applying for initial registration pursuant to Section 1-406 of the Securities Act shall file:

(A) a completed Form U-4;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) proof of successful completion of the applicable examinations specified in 660:11-5-16; and

(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(2) **Where to file.** An agent applying for registration with an NASD member shall file the documentation required by (1)(A) through (C) of this subsection with the CRD and shall file any additional documentation with the Department. Agents applying for registration with a non-NASD broker-dealer shall file the required documentation with the Department.

(c) **Broker-dealer principal.**

(1) **Required documents.** Each person applying for initial registration under the Securities Act as a principal of a broker-dealer who is not a member of the NASD shall file with the Department:

(A) a completed Form U-4;

(B) a $50.00 filing fee;

(C) proof of successful completion of the applicable examinations specified in 660:11-5-16;

(D) an executed Applicant/Management Certification for Non-NASD Principals Form; and

(E) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(2) **Effect of registration.** Registration under the Securities Act as a principal of a broker-dealer shall constitute registration as an agent.

(d) **Issuer agent.** Agents of issuers applying for initial registration in the state of Oklahoma pursuant to Section 1-406 of the Securities Act shall file the following with the Department:

(1) a completed Form U-4;

(2) the fee specified in Section 1-612 of the Securities Act;

(3) proof of successful completion of the applicable examinations specified in 660:11-5-16;

(4) an executed Applicant/Management Certification Form; and

(5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(e) **Requirement for continued registration.** 660:11-5-42, adopted pursuant to Section 1-411.D.13 of the Securities Act, sets forth the standards of ethical practices for broker-dealers and their agents. Paragraph (22) of said rule requires that each broker-dealer establish, maintain and enforce written procedures that will enable it to supervise properly the activities of each registered agent to assure compliance with applicable securities laws, rules, regulations and statements of policy. Therefore, the initial and continued

registration of a broker-dealer that is not an NASD member is conditioned upon the designation, qualification and registration of a principal who shall be responsible for the supervision of all agents of the broker-dealer who are registered under the Securities Act. A broker-dealer applicant or registrant may apply for registration of more than one person as a principal of said broker-dealer.

660:11-5-12. Renewal

(a) **Broker-dealer.** An NASD member shall renew its registration by submitting the renewal fee specified in Section 1-612 of the Securities Act to the CRD. A non-NASD member shall renew its registration by submitting to the Department an Application for Renewal of Non-NASD Broker-Dealer Registration and the renewal fee specified in Section 1-612 of the Securities Act.

(b) **Broker-dealer agent.** Agents of NASD members shall renew their registrations by submitting the renewal fee specified in Section 1-612 of the Securities Act to the CRD. Agents of non-NASD members shall renew their registrations by submitting an Application for Renewal of Non-NASD Broker-Dealer Agent Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

(c) **Broker-dealer principal.** Principals of non-NASD members shall renew their registrations by submitting an Application for Renewal of Non-NASD Broker-Dealer Principal Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

(d) **Issuer agent.** Issuer agents shall renew their registrations by submitting an Application for Renewal of Issuer Agent Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

660:11-5-13. Agent transfer

An agent who wishes to terminate his employment with one registered broker-dealer and thereafter commence employment with another broker-dealer may do so without causing a suspension in the agent's registration if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of the National Association of Securities Dealers, Inc.

(2) The transfer is effected in accordance with the terms and conditions of the NASAA/NASD Central Registration Depository Temporary Agent Transfer Program.

(3) The employing broker-dealer has executed and filed an "Undertaking for Participation in the NASAA/NASD Central Registration Depository TAT Program."

(4) The employing broker-dealer currently is not subject to an order of the Administrator which would otherwise make this section unavailable.

660:11-5-14. Agent termination

(a) **Filing requirement.** Termination notice pursuant to the requirements of Section 1-408.A of the Securities Act shall be given by filing within thirty calendar (30) days of termination, a completed Uniform Termination Notice For Securities Industry Registration, Form U-5. The Form U-5 for an agent terminating registration with a NASD member shall be filed with the CRD. The Form U-5 for agents terminating registration with a non-NASD broker-dealer shall be filed with the Department.

(b) **Responsibility for filing.** A completed Form U-5 signed by the employer will be accepted as fulfilling the statutory requirements of both parties. Upon verification that the Form U-5 has not been filed by the broker-dealer, the agent shall notify the Department in writing of said termination.

(c) **Effect of failure to file.** In the event of termination, the filing of a future application for registration shall not be considered complete until compliance with the termination notice requirements of Section 1-408.A and this section.

660:11-5-15. Categories of registration

(a) **Broker-dealers.** The Administrator shall register broker-dealers in accordance with the following categories:

(1) General securities - an applicant whose activities in the securities business are not limited.

(2) Investment company and variable contracts products - an applicant whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.

(3) Direct participation programs - an applicant whose activities in the securities business are limited solely to marketing, on behalf of the issuer, direct participation programs.

(4) Options - an applicant whose activities in the securities business include transactions in put or call options with the public.

(5) Municipal securities - an applicant whose activities in the securities business are limited solely to effecting transactions in municipal securities.

(6) Multiple categories - an applicant may be registered in more than one category if qualified to be so registered.

(b) **Principals and agents.** The Administrator shall register principals of broker-dealers and agents in accordance with the following categories of registration as applicable:

(1) General securities principal or agent - an applicant representing a broker-dealer whose activities in the securities business are not limited.

(2) Investment company and variable contracts products principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.

(3) Direct participation programs principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to marketing, on behalf of the issuer, direct participation programs.

(4) Options principal or agent - an applicant representing a broker-dealer whose activities in the securities business are limited to transactions in put or call options with the public.

(5) Municipal securities principal or agent - an applicant representing a broker-dealer whose activities in the

securities business are limited to effecting transactions in municipal securities.

(6) Limited agent - corporate securities - an applicant representing a general securities broker-dealer in the solicitation, purchase, and/or sale of a security, as that term is defined in Section 1-102.32 of the Securities Act, however, such person's activities do not include activities with respect to the following securities unless such person is separately qualified and registered in the category or categories of registration related to these securities:

(A) Municipal securities;

(B) Option securities;

(C) Redeemable securities of companies registered pursuant to the 1940 Act, except for money market funds; and/or,

(D) Direct participation programs.

(7) Issuer agent - an applicant whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer as that term is defined in Section 1-102.19 of the Securities Act.

(8) Multiple categories - an applicant may be registered in more than one category provided he is qualified to be so registered. An applicant qualified solely within one category of registration shall not be qualified to transact business as an agent in any area not prescribed by said category.

660:11-5-16. Qualification examination requirements

(a) **Examination requirement.** Proof of compliance with the examination requirements of this rule is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examination.** Each applicant for registration as a broker-dealer agent, broker-dealer principal or issuer agent must pass the applicable examinations for the desired category of registration. The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by the NASDR as applicable to each individual registrant by category of registration as the required examinations.

(c) **Limitations on licenses.** Without regard to the category of registration of one's broker-dealer, if any, the activities of each person registered as a principal or agent are limited to the corresponding category for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act.

(d) **Examination categories.** Examination categories are as follows:

(1) General securities or government securities - NASD members:

(A) Principals--Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66.

(B) Agents--Series 7 and 63 or 66

(2) General securities - Non-NASD Members/Issuers:

(A) Principals--Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66

(B) Agents--Series 7 and 63 or 66

(3) Investment company and variable contract products:

(A) Principals--Series 6, 26 and 63 or 66

(B) Agents--Series 6 and 63 or 66

(4) Direct participation programs:

(A) Principals--Series 22, 39 and 63 or 66

(B) Agents--Series 22 and 63 or 66

(5) Options:

(A) Principals--Series 4, 7 and 63 or Series 4, 62 and 63 or 66

(B) Agents--Series 7 or 42 and 63 or 66

(6) Municipal securities:

(A) Principals--Series 52, 53 and 63 or 66

(B) Agents--Series 52 and 63 or 66

(7) Limited agent - corporate securities--Series 62 and 63 or 66

(8) Assistant agent - order processing--Series 11 and 63 or 66

(e) **Change in series number.** Should NASDR examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(f) **Validity of prior examination scores.** The Department will not recognize for purposes of qualification for registration under the Securities Act any NASDR examination score which predates an initial application for registration by more than two (2) years in the absence of continuous NASD registration since examination. The Department will not recognize for purposes of qualification for registration in this state the examination score(s) of any person whose most recent registration as an agent or principal has been terminated with the NASD for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.

(g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-5-17. Net capital for broker-dealers

(a) **General requirement.** All broker-dealers registered under the Securities Act shall at all times have and maintain net capital of no less than the highest minimum requirement applicable to each broker-dealer as established by the SEC in 17 CFR 240.15c3-1.

(b) **Calculation of "net capital. "** As used in this subchapter, net capital shall mean the net worth of a broker-dealer calculated according to the formula established by the SEC.

660:11-5-18. [RESERVED]

660:11-5-19. Piecemeal filings

An application for initial registration or renewal of registration as a broker-dealer, broker-dealer agent, broker-dealer principal or issuer agent shall not be deemed to have been

filed until all of the documentation required by 660:11-5-11 or 660:11-5-12 is submitted, or is otherwise made available, to the Department and payment of the proper fees is made. Such documentation shall be in completed form.

660:11-5-20. Cross-border licensing exemption

By authority delegated to the Administrator in Section 1-401.B.1.h of the Securities Act, a Canadian broker-dealer meeting all of the following conditions is determined to be exempt from the registration requirement in Section 1-401.A of the Securities Act:

(1) The broker-dealer is domiciled in Canada, does not have an office or other physical presence in the United States, and is not an office or branch of a broker-dealer domiciled in the United States.

(2) The broker-dealer is registered with or a member of a Canadian self-regulatory organization, stock exchange, or the Bureau des Services Financiers and maintains that registration or membership in good standing.

(3) The broker-dealer and its agents effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

(A) an individual from Canada that temporarily resides or is temporarily present in this state and with whom the broker-dealer had a bona fide broker-dealer-customer relationship before the individual entered the United States; or

(B) an individual present in this state whose transactions relate to a self-directed, tax advantaged Canadian retirement plan of which the individual is the holder or contributor.

(4) The broker-dealer prominently discloses in writing to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirement of the Securities Act.

(5) Neither the broker-dealer nor its agents disclaim the applicability of Canadian law or jurisdiction to any transaction conducted pursuant to this exemption.

(6) The broker-dealer and its agents comply with the antifraud provisions of the Securities Act and of federal securities laws.

(7) Prior to or contemporaneously with the first transaction in Oklahoma, the broker-dealer must file a consent to service of process on Form U-2 in a manner that effectively appoints the Administrator as agent for service of process.

(8) Any Canadian broker-dealer or agent relying on this exemption shall, upon written request, furnish the Department any information relative to a transaction covered by this Section that the Administrator deems relevant.

PART 5. REPORTING REQUIREMENTS

660:11-5-31. Post-registration reporting requirements

(a) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, all broker-dealers registered under Section 1-406 of the Securities Act who are not NASD members must make post-registration filings with the Department. The Department will not accept incomplete or piecemeal filings. Failure to file a complete report when due may result in the suspension or revocation of registration.

(b) **Report content.** Such registered broker-dealers shall make one (1) post-registration filing each fiscal year. Said filing shall contain audited financial statements as of the broker-dealer's fiscal year end and the report filing fee specified in Section 1-612 of the Securities Act.

(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal period to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-41. Books and records requirements for broker-dealers

17 CFR §240.17a-3 and 17 CFR §240.17a-4 (2003), books and records rules established by the SEC under the 1934 Act, are hereby incorporated by reference as if fully set forth into this Chapter.

660:11-5-42. Standards of ethical practices for broker-dealers and their agents

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

(2) In recommending to a customer the purchase, sale or exchange of any security, the broker-dealer and his agents shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to

a customer a broker-dealer shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such broker-dealer or registered agent in making such recommendation.

(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

(4) In "over-the-counter" transactions, whether in "listed" or "unlisted" securities, if a broker-dealer or agent of a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:

(A) whether such broker-dealer is acting as a broker for such customer and some other person; and

(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.

(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

(13) The following standards shall apply to discretionary accounts:

(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's

account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with (22) of this subsection.

(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.

(D) This section shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.

(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

(16) The following standards shall apply to the use of customer funds:

(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.

(B) No broker-dealer or agent of a broker-dealer shall lend, either to himself or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.

(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.

(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.

(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.

(17) The following standards shall apply to customer credit:

(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer over a period of time in installments or by a series of partial payments, unless:

(i) in the event such broker-dealer acts as an agent or broker in such transaction, he shall immediately, in the regular course of his business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of his business, take possession or control of such security and shall maintain possession or control thereof so long as he remains under obligation to delivery of the security to the customer;

(ii) in the event such broker-dealer acts as a principal in any such transaction, he shall, at the

time of such transaction own such security and shall maintain possession or control thereof so long as he remains under obligation to deliver the security to the customer; and

(iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.

(B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with his customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.

(18) The following standards shall apply to books and records:

(A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:11-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.

(19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.

(20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.

(21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

(23) The following standards shall apply to financial information:

(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, prepared in accordance with generally accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.

(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided

for in (A) of this paragraph available and shall, upon request, furnish same to the Department.

(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 1-301 of the Securities Act.

(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained in this Section shall be construed to limit the powers of the Administrator under Section 1-204 of the Securities Act.

660:11-5-42.1. Standards of ethical practices--issuer agents

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for issuer agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of issuer agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) An issuer agent, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. Issuer agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which he is a member with respect to any customer, transaction or business effected in this state.

(2) In recommending to a customer the purchase, sale or exchange of any security, an issuer agent shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer an issuer agent shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such registered agent in making such recommendation.

(3) No issuer agent shall guarantee a customer against loss in any securities transaction effected by the issuer agent with such customer.

660:11-5-43. Examination of broker-dealers

(a) **Periodic examinations.** The business and records of each broker-dealer registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. A report of each such examination shall be prepared.

(b) **Department access.** Each broker-dealer scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each broker-dealer shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to provide such access shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

660:11-5-44. [RESERVED]

660:11-5-45. Financial statements for broker-dealers

(a) **Audited statements.** Applications for registration for broker-dealers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have been in operation for less than twelve (12) months shall submit an audited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and an audited statement of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.

(b) **Unaudited interim financial statements.** If the audited financial statements required by (a) of this section are not current to within ninety (90) days of the date of filing of the application, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.

(c) **Net capital computation.** Financial Statements submitted by or on behalf of a broker-dealer shall include a statement of the amount of net capital required by the SEC for the broker-dealer and a schedule presenting a computation of net capital as of each statement of financial condition date. The computation of net capital shall be calculated according to the formula established by the SEC.

(d) **Waiver.** The Administrator in his discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 1. GENERAL PROVISIONS

660:11-7-1. Purpose

The rules in this subchapter are adopted to provide procedures for complying with the provisions of Sections 1-403 and 1-404 of the Securities Act relating to the licensing of investment advisers and investment adviser representatives under the Securities Act.

660:11-7-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Impersonal advisory services" means investment advisory services provided solely:

(A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(C) any combination of the foregoing services.

"Investment company contract" means a contract with an investment company registered under the 1940 Act that meets the requirements of Section 15(c) of that Act.

"Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

PART 3. LICENSING PROCEDURES

660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) shall file with the IARD:

(A) a completed Form ADV, including Schedules A-I; and

(B) the filing fee specified in Section 1-612 of the Securities Act;

(2) shall file with the Department within 30 days from the effective date of registration:

(A) Part 2 of the Form ADV;

(B) audited financial statements as required by 660:11-7-44 unless exempt therefrom;

(C) a copy of the investment advisory contract to be executed by Oklahoma clients; and

(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

(1) shall file with the CRD:

(A) a completed Form U-4 if the information on the Form U-4 is not maintained in current form on the CRD;

(B) the filing fee specified in Section 1-612 of the Securities Act; and

(C) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and

(2) must have passed the applicable examinations specified in 660:11-7-13.

660:11-7-12. Renewal

(a) **Investment adviser.** An investment adviser registered under the Act shall renew its registration by submitting to the IARD the renewal fee specified in Section 1-612 of the Securities Act.

(b) **Investment adviser representative.** Investment adviser representatives registered under the Act shall renew their registrations by submitting to the CRD the renewal fee specified in Section 1-612 of the Securities Act.

660:11-7-13. Qualification examination requirements

(a) **Examination requirement.** Proof of compliance with the written examination requirements of this rule is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examinations.** Any natural person seeking registration as an investment adviser or investment adviser representative must pass the Series 65, or both the Series 66 and Series 7, or such other examination(s) or certifications determined by the Administrator to be acceptable in lieu thereof. The Administrator adopts the examinations as administered by the NASDR as the required examinations.

(c) **Change in series number.** Should NASDR examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(d) **Validity of prior examination scores.** For purposes of qualification for registration under the Securities Act, the Department will not recognize any NASDR examination score that predates an application for registration by more than two (2) years in the absence of

(1) continuous registration as an investment adviser representative in another jurisdiction since examination; or

(2) continuous registration as an agent with the NASD since examination.

(e) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-7-14. [RESERVED]

660:11-7-15. Piecemeal filings

An application for initial registration or renewal of registration as an investment adviser or investment adviser representative shall not be deemed to have been filed until all of the documentation required by 660:11-7-11 or 660:11-7-12 is submitted, or is otherwise made available, to the Department and payment of the proper fees is made. Such documentation shall be in completed form.

660:11-7-16. Solicitor exemption

By authority delegated to the Administrator in Section 1-404.B.2 of the Securities Act, an individual whose only activity on behalf of an investment adviser is to solicit clients for same is exempt from the requirement to register as an investment adviser representative of such investment adviser if the individual is separately registered as an investment adviser representative of another investment adviser or is individually registered as an investment adviser.

PART 5. REPORTING REQUIREMENTS

660:11-7-31. Post-registration reporting requirements

(a) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, all investment advisers registered under Section 1-406 of the Securities Act must make post-registration filings with the Department. The Department will not accept incomplete or piecemeal filings. The post-registration filing shall contain the financial or operating report fee set forth in Section 1-612 of the Securities Act. Failure to file a complete report when due may result in the suspension or revocation of registration. The Administrator will consider requests that no enforcement action be taken regarding a delinquent filing pursuant to the provisions of 660:2-13-1.

(b) **Report content.** Registered investment advisers who have custody or possession of clients' funds or securities or require prepayment of advisory fees six (6) months or more in advance and in excess of $500.00 per client shall make one (1) post-registration report each fiscal year. Said filing shall contain the report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal year to which they apply; however a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records relating to his investment advisory business:

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.

(3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security; provided, however:

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement

a memorandum describing the list and the source thereof.

(8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) A record of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor the investment adviser representative has any direct or indirect influence or control, and transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(13) A record of each customer account containing the name, address, date of birth, net worth and investment objectives of the beneficial owner of such account.

(14) Ledgers or other records itemized separately as to each account of every investment adviser representative of such investment adviser reflecting all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such accounts. Said records shall reflect transactions as of the date they occur and should be prepared no later than the day following the transaction.

(15) A copy of the written supervisory procedures of the investment adviser.

(b) Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements. For purposes of this subsection, the term "principal place of business" means "the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser."

(c) All books and records required to be maintained under the provisions of (a) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years, the first two (2) years in the principal office of the investment adviser.

660:11-7-42. Standards of ethical practices

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this section and the disclosure delivery requirement set forth in 660:11-7-43 shall apply to all investment advisers and investment adviser representatives.

(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the

price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Charging a client an unreasonable advisory fee.

(10) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees.

(11) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(12) Publishing, circulating and distributing any advertisement which does not comply with Reg. § 275.206(4)-1, under the Investment Advisers Act of 1940.

(13) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(14) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action is subject to and does not comply with the requirements of Reg. § 275.206(4)-2 under the Investment Advisers Act of 1940.

(15) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(16) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

660:11-7-43. Disclosure requirements

(a) **Disclosure delivery requirement.** In furtherance of compliance with the standards of ethical practices specified in 660:11-7-42, every investment adviser, registered or required to be registered under the Securities Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV including Schedule F, if applicable, or written documents containing at least the information then so required by Part II of the Form ADV including Schedule F, if applicable; provided however, delivery of the required statement need not be made in connection with entering into an investment company contract or a contract for impersonal advisory services.

(b) **Time of delivery.** An investment adviser shall deliver the statement required by (a) of this section to an advisory client or prospective advisory client

(1) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or

(2) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) For purposes of this section, "entering into" does not include an extension or renewal without material change of any investment advisory contract which is in effect immediately prior to such extension or renewal.

(d) **Annual delivery requirement.** Unless exempted as provided in (a) of this section, an investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement

required by this section. Any statement requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.

660:11-7-44. Financial statements for investment advisers

(a) **Audited statements.** Applications for registration as investment advisers shall contain audited financial statements for the applicant as of the end of its last fiscal year.

(b) **Unaudited interim financial statements.** If the audited financial statements required in the preceding (a) are not current to within ninety (90) days of the date of filing, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.

(c) **Sole proprietors.** Investment advisers who are individuals or sole proprietorships, in lieu of audited financial statements, may provide financial statements that have been prepared in accordance with generally accepted accounting principles and which have been reviewed and reported upon by independent accountants in accordance with the standards for the review of financial statements promulgated by the American Institute of Certified Public Accountants.

(d) **Exemption.** The financial statement requirements specified in this section shall not apply to an investment adviser unless the investment adviser has custody or possession of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of $500.00 per client.

(e) **Waiver.** The Administrator in his discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-7-45. Examination of investment advisers

(a) **Periodic examinations.** The business and records of each investment adviser registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. A report of each such examination shall be prepared.

(b) **Department access.** Each investment adviser scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each investment adviser shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to provide such access shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

660:11-7-46. [RESERVED]

660:11-7-47. Payments for client solicitations

(a) **Prohibition.** An investment adviser required to be registered pursuant to Section 1-403 of the Securities Act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) the investment adviser is registered under the Securities Act;

(2) the solicitor is registered as an investment adviser representative of this or another investment adviser registered under the Securities Act or separately registered as an investment adviser or under the Securities Act; and

(3) such cash fee is paid pursuant to a written agreement to which the investment adviser is a party.

(b) **Written agreement.** If soliciting clients is the only service rendered on behalf of an investment adviser, the written agreement required by (a)(3) of this section shall:

(1) describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;

(2) contain an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Securities Act and the rules thereunder; and

(3) require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the customer with a current copy of the investment adviser's written disclosure statement required by 660:11-7-43 and a separate written disclosure document described in (d) of this section.

(c) **Investment adviser responsibilities.** The investment adviser shall receive from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. In addition, the investment adviser shall ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(d) **Disclosure by solicitor.** The separate written disclosure document required to be furnished by the solicitor to the customer pursuant to (b) of this section shall contain the following information:

(1) the name of the solicitor;

(2) the name of the investment adviser;

(3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(6) the amount, if any, for the cost of obtaining his account the customer will be charged in addition to the advisory fee, and the differential, if any, among customers with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor

for soliciting customers for, or referring customers to, the investment adviser.

PART 9. SEC COVERED INVESTMENT ADVISERS

660:11-7-51. SEC covered investment adviser notice filing

(a) **Initial filing.** A federal covered investment adviser making its initial notice filing in the state of Oklahoma pursuant to Section 1-405 of the Securities Act:

(1) shall file with the IARD:

(A) a new or amended Form ADV, including Schedules A-I, designating Oklahoma on Item 2.B of Part 1A; and

(B) the investment adviser notice filing fee set forth in Section 1-612 of the Securities Act; and

(2) shall comply with existing federal requirements with regard to the Part 2 of the Form ADV.

(b) **Renewal.** Federal covered investment advisers who have made a notice filing pursuant to Section 1-405 of the Securities Act may renew their notice by submitting to the IARD the investment adviser notice filing fee set forth in Section 1-612 of the Securities Act.

SUBCHAPTER 9. REGISTRATION OF SECURITIES

PART 1. GENERAL PROVISIONS

660:11-9-1. [RESERVED]

660:11-9-2. Amendments

The Administrator may by order amend the provisions of this subchapter to conform references to the Securities Act or to rules promulgated thereunder to numerical redesignations occasioned by legislative or rulemaking activities.

PART 3. REGISTRATION PROCEDURES

660:11-9-11. Filing by coordination

An offering of securities for which an application for registration is not filed with and received by the Department prior to SEC effectiveness shall not be deemed to be in connection with the same offering of securities and therefore shall not be eligible for registration in the state of Oklahoma pursuant to Section 1-303 of the Securities Act.

660:11-9-12. Content of registration statement

In addition to the other requirements set forth in the Securities Act and the rules and regulations promulgated thereunder, a registration statement filed under the provisions of Sections 1-303 and 1-304 of the Securities Act shall contain the information that would be required in a registration statement filed with the SEC under Section 5 of the 1933 Act, as amended. Except for offerings attempting to register by use of the Form U-7, the registration statement shall be on the form that the issuer would be entitled to use if filing under the 1933 Act and in accordance with the specified instructions of said form.

660:11-9-13. Amendments to registration statements

(a) **Requirement to amend.** A correcting amendment to an effective Registration Statement shall be prepared and submitted to the Department any time that the information contained therein becomes inaccurate or incomplete in any material respect. The responsibility for identifying and reporting a material change lies with the registrant. Any of the following changes are likely to be the basis for filing a correcting amendment; however, the following is not intended to be a comprehensive listing of specific events or conditions which might give rise to such a filing:

(1) changes in officers, directors and other management personnel identified in the Registration Statement, including those persons who would have been identified in the Registration Statement had the change occurred prior to making the initial filing;

(2) a change of 10% or more in the equity ownership of the issuer by persons identified in the Registration Statement as principal security holders or by persons who would have been so described had the change occurred prior to making the initial filing;

(3) changes in the issuer's aims, objectives, business enterprise, operations or activities;

(4) a change in any designated Use of Proceeds item;

(5) impairment of the issuer's assets, the issuer's insolvency or the filing of a petition for bankruptcy by or for the issuer;

(6) management's intention to dispose of a significant portion of an issuer's assets, or the actual occurrence of such disposal;

(7) changes in the compensation arrangements described in the Registration Statement for promoters, general partners or sponsors of the issuer, including controlling persons of such promoters, general partners or sponsors, who are identified in the Registration Statement, or who would have been so identified had a change occurred prior to making the initial filing;

(8) changes in underwriting terms;

(9) any agreement in principle to enter into a business combination;

(10) changes in the industry, the economy, or in laws or regulations governing the industry, if disclosures in the Registration Statement are affected by the changes or if the condition resulting from such changes would have resulted in a disclosure requirement had the changes occurred prior to making the initial filing.

(b) **Time of filing and undertaking.**

(1) Every Registration Statement shall contain an undertaking by the applicant to file correcting amendments to the Registration Statement whenever the information in

the Registration Statement becomes inaccurate or incomplete in any material respect by the earlier of:

(A) two business days after filing such amendment with the SEC, or

(B) fifteen business days following the event giving rise to the amendment.

(2) If not registered with the SEC, registrants shall file an amended Registration Statement if required within fifteen (15) business days following the event giving rise to the amendment, and in no event, not less often than annually as a part of the Annual Report required by 660:11-9-51.

(c) **Contents of filing.** Each filing of a correcting amendment to a Registration Statement shall contain a copy of each item of the Registration Statement which has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the Registration Statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. Neither the Administrator nor any member of his staff shall be held to have taken notice of any item of material change not summarized in such a report.

(d) **Effect of failure to amend.** Solicitation of prospective investors through utilization of a Prospectus containing information which is inaccurate or incomplete in any material respect is a violation of Section 1-501 of the Securities Act and constitutes a basis for suspending or revoking the effectiveness of a Registration Statement under Section 1-306.A.7.a of the Securities Act. Failure to report to the Department and disclose to prospective investors a material change that occurs after the effective date of a Registration Statement and prior to the sale of a security is a violation of Section 1-501 of the Securities Act and a basis for the suspension or revocation of the registration under Section 1-306.A.7.a of the Securities Act. Nothing in this section shall be construed to require any open-end investment company registered under the 1940 Act and the Securities Act to disclose fluctuations in its investment portfolio.

660:11-9-14. Financial statements

(a) **Section 1-304 filings.** Except for applications made on the Form U-7, registration statements filed pursuant to Section 1-304 of the Securities Act shall contain Audited Financial Statements of the issuer for its last two (2) fiscal years. Registration statements filed with applications made on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7.

(b) **Unaudited interim financial statements.** If the Audited Financial Statements or unaudited Financial Statements required in (a) of this section are not current to within four (4) months of the Date of Filing of the registration statement, additional unaudited Financial Statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included.

(c) **Multiple financial statements.** If more than one balance sheet or more than one statement of income is required to be filed pursuant to (a) of this section, the statement shall be in comparative columnar form, the date or periods applicable to each column shall be clearly shown, and columns relating to unaudited Financial Statements shall be clearly designated "Unaudited."

(d) **Acquisitions.** If any part of the proceeds of the offering is to be applied to the purchase of any business, the same Financial Statements required in (a) of this section shall be filed for the business to be acquired. When appropriate for full and fair disclosure, the Administrator may require pro forma combined Financial Statements.

(e) **Application of Regulation S-X.** As to definitions, qualifications of accountants, content of accountant's certificates, requirements for consolidated or combined statements, and actual form and content of Financial Statements, the Administrator shall apply Regulation S-X of the SEC (17 C.F.R. Part 210) in its most currently amended form as of the date of the filing of the application to all Financial Statements filed with the Department in connection with the registration of securities.

(f) **Financial statements incorporated by reference.** Where Financial Statements in a prospectus are incorporated by reference from another document, the Administrator may require that such other document be filed with the Department and be delivered to investors with the prospectus.

(g) **Application of antifraud provisions.** Any Financial Statement distributed in connection with the offer or sale of securities under the Act shall be subject to the provisions of Section 1-501 of the Act. Any Financial Statement filed with the Department shall be subject to the provisions of Section 1-505 of the Act.

660:11-9-15. Change of accountant preceding or during effectiveness

(a) **Materiality of event.** One of the foundations of the administration of the disclosure requirements of securities law is reliance upon the reports of independent accountants regarding the financial statements of registrants. These reports provide the assurance of an outside expert's examination and opinion, thereby substantially enhancing the reliability of financial statements. Consequently, the resignation or dismissal of the principal auditing firm during a period immediately preceding or contemporaneous with an application for registration of securities in this state is considered to be of material importance.

(b) **Procedure.** If during the 18 months preceding registration and/or during the period of effective registration, the principal accountant or firm auditing the registrant's financial statements resigns or is dismissed, the following shall be required:

(1) Issuers which are SEC reporting companies shall file a copy of all Form 8-K's filed with the SEC during the 18 months preceding their filing with the Department as well as any that may be filed during the period of registration with the Department.

(2) All other issuers as a condition for initial and continuing registration, shall provide the following information to the Department:

(A) the date of such resignation or dismissal;

(B) disclosure of any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure to which the accountant

would have made reference in his report in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding the dismissal or resignation. Each disagreement should be disclosed whether it was resolved to the accountant's satisfaction or not;

(C) any principal accountant's report on the financial statements for any of the past two years containing a disclaimer of opinion or an adverse or qualified opinion; and

(D) a statement that the decision to change accountants was recommended or approved by either:

(i) the Audit Committee of the Board of Directors, if the issuer has such a committee; or,

(ii) the Board of Directors, if the issuer has no such committee.

(3) The registrant shall request the former accountant to furnish a letter addressed to the Administrator stating whether or not he agrees with the statements made by the registrant and, if not, stating the respects in which he does not agree. The former accountant's letter shall be attached as an exhibit to the information required in (b)(2) of this Section.

660:11-9-16. Abandoned filings

An application for registration of securities pursuant to Sections 1-303 or 1-304 of the Securities Act shall be deemed abandoned if such registration is not effective in the state of Oklahoma within one year from the date of receipt by the Department of the initial filing of the application for registration. Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees shall be required.

PART 5. GUIDELINES AND POLICIES APPLICABLE TO OFFERINGS OF REGISTERED SECURITIES

660:11-9-31. Prospectus delivery requirement

No offer or sale of any security registered under the Securities Act may be made unless concurrent with the initial solicitation or immediately thereafter there is furnished to the prospective purchaser, a prospectus, in such form and containing such information as may be required pursuant to the Securities Act or the rules and regulations promulgated thereunder or by order of the Administrator, which prospectus has been previously filed with and approved by the Administrator for use; provided, no prospectus shall be required in connection with offers or sales of securities or transactions exempted by Sections 1-201 through 1-203 of the Securities Act, except as may be specifically required by such Act or the rules and regulations promulgated thereunder or by order of the Administrator. In addition, after the effective date of the registration statement in the state of Oklahoma, all broker-dealers and agents effecting transactions in the securities registered under the Securities Act shall be required to deliver a prospectus prior to or concurrently with any transaction in said securities for the same time periods specified in Section 4(3) of the 1933 Act and Rule 174 adopted by the SEC (17 C.F.R. 230.174) in its most currently amended form as of the date of the filing of the application. Nothing in this rule obviates the need for registrants to comply with the provisions of Section 1-501 of the Securities Act.

660:11-9-32. Impound agreements

(a) **General requirements.** In any instance where impoundment of the proceeds of sale of securities is determined to be in the public interest and necessary for the protection of investors, as a condition of registration the Administrator may require that the registrant deposit a specific percentage or amount of the proceeds from the sale of the registrant's securities in an acceptable depository pursuant to a written agreement between the registrant issuer and the depository. The proceeds shall be retained therein until a specific sum has been accumulated and the terms and conditions of the agreement have been performed.

(b) **Filing requirement.** Each impound agreement shall be negotiated between the depositor and the depository and an executed copy filed with the Administrator.

(c) **Required provisions.** Each such impound agreement shall substantially comply with the following guidelines and shall contain the following terms or information:

(1) the date of the agreement;

(2) the names and addresses of the depositor and the depository;

(3) the specified percentage or amount of gross proceeds from the sale of the securities involved to be deposited;

(4) the aggregate sum to be accumulated;

(5) the date on or before which such accumulation shall be completed;

(6) the conditions under which the impounded funds are to be released to the depositor, or are to be refunded to the persons entitled thereto, and by whom and in what manner such refunding is to be effected;

(7) a provision that interest and other earnings, if any, from the impounded funds shall be distributed to the public investors if the impounded offering proceeds are refunded;

(8) a statement that neither release nor refunding of the impounded funds is to be effected unless and until the depositor has given the Administrator and/or Commission ten (10) days written notice of the action to be taken. To be complete, such notice shall contain a sworn affidavit from the applicant that all the terms of the escrow agreement have been properly fulfilled.

(d) **Prohibited provisions.** An impound agreement will not be acceptable, except upon unusual circumstances with prior approval of the Department, if the agreement:

(1) provides for the depositor to make any levy or assessment or to apply any lien on or against the impounded funds. It is the intent and purpose hereof that all charges, fees, and costs incurred in respect to the impound agreement and its performance be charged to and be borne by the depositor;

(2) provides for or permits credit towards or inclusion in the specific sum to be accumulated of any monies deposited in the account, including interest or other earnings directly attributable to the impounded funds, if such monies constitute proceeds of any transaction or were derived from sources other than sales of the depositor's securities;

(3) provides for any rights of the depositor to require release of, or obligation on the part of the depository to release all or any part of the impounded funds, except after accumulation in the fund of a specific sum on or before the date fixed by the impound agreement for the accumulation to be completed.

660:11-9-33. Special requirements for promotional or developmental stage companies

(a) **Definition.** For purposes of this section a "promotional or developmental stage company" means any entity that meets the definition in 660:11-1-3.

(b) **Requirements.** Registration statements filed under Section 1-305 of the Securities Act or any exhibits filed therewith relating to securities of a promotional or developmental stage company must demonstrate in addition to meeting any other requirements that may apply, the issuer's ability to meet the following requirements:

(1) Taking into consideration the minimum net proceeds of the offering, past earnings, and accounts receivable, of the issuer, the prospectus must demonstrate the issuer's ability to operate for a period of at least six months without additional capital; or based on a business plan filed supplementally, the issuer must demonstrate its ability to operate for a period of at least 12 months. Any registrant may request that such business plan not be deemed filed with the registration statement and may request that it be held in confidence. A prospectus relating to an offering of debt securities must demonstrate the issuer's ability to service the debt. This can be demonstrated by submission of a compilation.

(2) No more than 25% of the proceeds of the offering net of offering costs shall be paid as remuneration to promoters, executive officers, directors or shareholders owning 10% or more of any class of outstanding stock of the issuer.

(3) The prospectus must demonstrate compliance with 660:11-9-35 regarding limitations on offering expenses and remuneration and with the NASAA statement of policy regarding promotional shares.

(4) Issuers shall not have granted, and shall agree not to grant in the future, options to acquire securities of the same class as those being offered, at an exercise price that is less than 85% of the fair market value of the securities at the time of the grant of the option. The prospectus shall disclose the dilution that would result from the exercise of all outstanding warrants or options to acquire securities of the same class as those being offered.

(5) The use of offering proceeds must be disclosed with specificity in the prospectus.

(c) **Waiver provisions.** The Administrator in his or her discretion may waive any of the above requirements upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.

660:11-9-34. NASAA guidelines

(a) **Application of guidelines.** The Administrator in his discretion may apply any Statements of Policy or guidelines adopted by NASAA, or its successors, to a registration of securities pursuant to the Securities Act.

(b) **Cross-reference sheet.** Issuers, or interested persons on the issuer's behalf, shall prepare a cross-reference sheet setting out each section of the statement of policy or guideline applied by the Administrator pursuant to this rule, and reflecting the document and page numbers where compliance with each section of the statement of policy or guideline is disclosed. Any variance or failure to comply with particular sections of an applicable statement of policy or guideline shall be noted by the issuer or his attorney, and the reasons for the variance shall be fully stated.

(c) **Waiver provisions.** The Administrator in his discretion may waive any of the requirements of the statements of policy or guidelines upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.

660:11-9-35. Limitations on offering expenses and remuneration

(a) **Issuer expenses.** Expenses incurred by an issuer of securities (including the sponsor or general partners of a limited partnership expended or being reimbursed from partnership funds) in connection with an offering of securities shall not exceed 20% of the amount of securities actually sold. Such expenses shall include, but are not necessarily limited to, the following:

(1) Sales commissions or discounts, including expense allowances and warrants issued gratis or at nominal prices.

(2) Finders fees, advisory fees and similar fees however designated.

(3) Promotional or carried interests granted, or sold at a price substantially different from the public offering price, to an underwriter, broker-dealer or agent.

(4) Organizational expenses of recently formed issuers.

(5) Advertising directly associated with the sale of the public offering being registered.

(6) Accountant's and attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations.

(7) The cost of prospectuses, circulars and other documents required to comply with such laws and regulations.
(8) Other expenses directly incurred in connection with such qualifications and compliance with such laws and regulations (filing fees and investigation fees prior to registration).
(9) Cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps.
(10) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, auditors, and of engineers, appraisers, and other experts.
(11) Those expenses required to be itemized in Part II of a registration statement filed with the SEC, and with an application for registration by coordination pursuant to Section 1-303 of the Securities Act.

(b) **Underwriters' or broker-dealers' remuneration.** Remuneration received directly or indirectly by any underwriter, broker-dealer, agent, or any other person performing similar functions, for effecting or attempting to effect transactions in securities, shall not exceed 15% of the sales price of the securities sold in each transaction, regardless of by whom such remuneration is paid. Further, the aggregate amount of remuneration received directly or indirectly by all underwriters, broker-dealers, agents, or other persons performing similar functions for effecting or attempting to effect transactions in securities, shall not exceed 15% of the aggregate amount of securities actually sold. For the purpose of this rule (including (a) of this section and 660:11-9-36) an interstate (or other jurisdiction) offering of securities shall be viewed in its entirety. Remuneration shall include, but is not necessarily limited to, the following:
(1) Sales commissions or discounts, including expense allowances and warrants issued gratis or at nominal prices.
(2) Finders fees, advisory fees and similar fees, however designated.
(3) Promotional or carried interests granted, or sold at a price substantially different from the public offering price.

(c) **Disclosure of expenses and remuneration.** The aggregate amounts (or good faith estimates of such amounts) of sales commission and offering expenses paid by an issuer of securities as discussed in (a) of this section and remuneration to be received by the seller of securities as discussed in (b) of this section, shall be clearly disclosed in the prospectus, offering circular, private placement memorandum or other offering document.

(d) **Waiver.** Where good cause is shown, the Administrator may waive or modify the percentage limitations set forth in this section. Consideration of such requests shall be on a case-by-case basis and only pursuant to a written request setting forth the reasons therefor.

660:11-9-36. Promoters' and organizers' equity contributions

(a) **Requirement.** Where an issuer is a promotional or developmental stage company as defined in 660:11-1-3, the ratio of equity investment by promoters or insiders must be determined as reasonable and equitable in light of the facts and circumstances presented in each particular case. Cases where the fair value of such equity investment is less than 10% of the total offering are discouraged, and in such instances, the proponents of the registration shall have the burden of establishing that the offering is being made without unfair or unreasonable amounts of promoters' profits or participation, as provided in Section 1-306.A.7.b of the Securities Act.

(b) **Presumption.** In those instances where only 5% or more has been contributed by promoters or organizers, but where they have entered into bona fide and binding subscription contracts exercisable within one year with the new enterprises for capital stock representing the difference between the amount contributed and 10%, then the burden of proof will be deemed to have been satisfied.

(c) **Determination of equity investment.** The fair value of equity investment shall be deemed to mean the total of all sums conveyed to the issuer in the form of paid-in or contributed cash or other assets with an established or determinable value. In those cases where the issuer has experienced losses from operations, the fair value of equity investment shall be the net worth of the issuer as of the date of the proposed offering determined in accordance with generally accepted accounting principles.

(d) **Burden of proof.** The burden of justifying as equitable the quantity of promotional securities to be issued for assets so conveyed, and of establishing reasonable or market value of said assets, shall rest with the applicant.

PART 7. REPORTING REQUIREMENTS

660:11-9-51. Registration renewal and sales reporting requirements

(a) **Registration renewal.** Pursuant to Section 1-305.H of the Securities Act, every registration statement ordered effective is effective for one (1) year after its effective date, and certain registration statements may be effective for any longer period during which the security is being offered. Registration statements, the effectiveness of which is to continue beyond one (1) year from their effective date, must have their effectiveness renewed annually. A renewal of the effectiveness of a registration statement may be obtained by submitting a registration renewal report to keep the information contained in the registration statement reasonably current and by paying appropriate fees.
(1) **Time of filing.** Each registration renewal report shall be submitted no more than thirty (30) days before or thirty (30) days after each anniversary of the registration effective date.
(2) **Content.** Each registration renewal report submitted shall contain:
(A) a written summary of any substantive changes in the registration statement since the later of the date of registration or the latest filing of a registration renewal report; and
(B) a copy of the latest post-effective amendment to the registration statement as filed with the SEC that

has been marked for changes from the prior version of the registration statement as filed with the SEC; or, if not registered with the SEC, the proposed amendment to the registration statement that has been marked for changes from the prior version of the registration statement as filed with the Department.

(3) **Examination of report.** The Department shall conduct a special examination of each registration renewal report filed. The purpose for such special examination shall be to evaluate the reported changes in the registration statement and to determine whether the registration should continue. The examination report shall consist of notification to the registrant of the status of the registration.

(4) **Fee.** Each registration renewal report filed shall include the examination fee set forth in Section 1-612.B of the Securities Act.

(b) **Sales reporting.** Pursuant to Section 1-305.I of the Securities Act, and so long as a registration statement is effective, the Administrator may require the applicant, the issuer, or the broker-dealer to file reports not more often than quarterly to disclose the progress of the offering. Unless the Administrator requires more frequent sales reporting by request as to a specific registered security, a person who has filed a registration statement that has been ordered effective shall file one (1) registration sales report to disclose the progress of the offering for the initial one (1) year period of effectiveness and for each one (1) year renewal period of effectiveness thereafter.

(1) **Time of filing.** Each registration sales report shall be submitted no later than thirty (30) days after each anniversary of the effective date of the registration, or no later than thirty (30) days after the termination of the offering, whichever is earlier.

(2) **Content.** Each registration sales report submitted shall contain:

(A) the file number of the registration of securities to which the registration sales report relates;

(B) a statement as to whether the offering has been completed; and

(C) the dollar amount of each class of securities sold in the state for the entire one (1) year period of the registration, or from the beginning of the one (1) year period of registration through the completion of the offering, as applicable, in substantially the following form: Balance unsold at beginning of period $ ADD: Additional authorizations LESS: Amount sold during period Balance unsold at end of period $

(3) **Fee.** Each registration sales report filed shall include the issuer sales report fee as required in Section 1-612 of the Securities Act.

(c) **Piecemeal filings.** Any report required under this section is not considered filed if it is incomplete. Piecemeal filings shall not be accepted.

660:11-9-52. [RESERVED]

660:11-9-53. Special examinations of registrations

(a) **Examination of application.** The Department shall conduct a special examination of each application for registration under Sections 1-303 and 1-304 of the Securities Act to determine the adequacy of disclosure and to fulfill the Department's obligations under Section 1-306 of the Securities Act. This examination shall be based upon material contained in the Registration Statement and any other documentation which the applicant may be required to submit. Each application for registration shall be accompanied by the examination fee set forth in Section 1-612.B of the Securities Act. The examination report shall consist of the Department's written comments regarding the filing.

(b) **On-site examinations of issuers.** The business and records of issuers registered pursuant to Sections 1-303 and 1-304 of the Securities Act may be subject to periodic on-site examinations by the Administrator, and/or his designee, at such times as he determines necessary for the protection of the public. The Division of Registrations shall prepare a special report of every such examination.

(c) **Department access.** Each issuer scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each issuer shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to comply with any provision hereof shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION

PART 1. GENERAL PROVISIONS

660:11-11-1. Definitions

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

"Class" means the lowest level of subdivision of the securities offered by an issuer.

"Enterprise" means a corporation, general partnership, limited partnership, joint venture and any other formal or informal entity, association or arrangement (other than a sponsor) in which the investors' rights, interests or participation constitute "securities" as defined by Section 1-102 of the Securities Act.

"Sponsor" means any natural person, corporation, general partnership, limited partnership, joint venture or other entity which is directly or indirectly instrumental in organizing an enterprise or which will manage or participate in the management of an enterprise.

660:11-11-2. Commissions

(a) **Definition.** As used in Sections 1-202 and 1-402 of the Securities Act, the term "commission" shall mean any economic benefit paid or given, directly or indirectly, for the offering, selling or purchasing of a security whether in the form of money or its equivalent, or any real or personal property or interest therein, or otherwise. Such economic benefit shall be presumed to be paid or given for the offer, sale or purchase of a security if the amount of such benefit is based on the amount of securities offered, sold or purchased or is an inducement for an offer, sale or purchase.

(b) **Exceptions.** Notwithstanding (a) of this section, the following do not constitute a commission:

(1) **Benefit for property purchased or services performed.**

(A) A benefit paid or given, whether or not such benefit is paid from the proceeds of the sale of a security of an enterprise or is related to the sale of a security of an enterprise, if such benefit is paid or given for property purchased or services performed so long as:

(i) the property or services are reasonably related to the present or proposed business of the enterprise, and

(ii) the amount or value of the benefit paid or given is competitive with the amounts charged or paid in the same or comparable areas by persons not affiliated with the enterprise who are engaged in the business of rendering comparable services or providing comparable property.

(B) Payment to independent third party professional engineers, geologists, accountants, attorneys, or such other persons for professional services rendered or to be rendered for the enterprise does not constitute a commission.

(2) **Promotional or other interest of sponsor.**

(A) Any promotional or other interest of a sponsor of an enterprise in the revenues, assets or equity of the enterprise which is proportionately greater than the capital invested by such sponsor in the enterprise or the total costs and expenses of the enterprise borne by or charged to such sponsor, if:

(i) the interest received is reasonable or customary in the industry in which the enterprise operates or proposes to operate; and

(ii) the sponsor or entity receiving such interest has or will have substantial duties unrelated to the sale of a security in connection with the enterprise.

(B) For the purpose of this paragraph, the type and amount of interests allowed under any applicable guidelines adopted by NASAA or any other guidelines adopted by the Department for public offerings registered with the Department shall be presumed reasonable and customary.

(3) **Compensation to officer, director, partner or employee.** The payment of compensation to an officer, director, partner or employee of an enterprise or its sponsor if:

(A) such payment is not directly or indirectly related to the offer or sale of a security;

(B) the officer, director, partner or employee is a bona fide officer, director, partner or employee who has substantial duties that are unrelated to the sale of a security; and

(C) the officer, director, partner or employee's activity involving the offer or sale of a security is strictly incidental to such person's bona fide primary work duties.

(c) **Presumptions.** No presumption shall arise that a benefit constitutes a commission if the relevant conditions described in (b) of this section are not satisfied. The burden of proving that the conditions of this rule have been met remains with the person claiming an exemption addressed by this rule.

660:11-11-3. Number of purchasers

(a) **Exclusions.** For purposes of computing the number of persons to whom sales of the issuer's securities are made pursuant to Sections 1-202.14 and 1-202.16 of the Securities Act, sales to the following purchasers shall be excluded:

(1) any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as such purchaser;

(2) any trust or estate in which a purchaser and any of the persons related to him as specified in (1) of this subsection or (3) of this subsection collectively have more than 50% of the beneficial interest (excluding contingent interests);

(3) any corporation or other organization of which a purchaser and any of the persons related to him as specified in (1) or (2) of this subsection collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests.

(b) **Entities as purchasers.** A corporation, partnership, or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor as defined in Section 501 of Regulation D, then, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(c) **Sales to certain clients or customers.** Sales to clients of an investment adviser, customers of a broker or dealer, a trust administered solely by a bank trust department or persons with similar relationships, shall be considered as separate sales for purposes of this section regardless of the amount of discretion given to the investment adviser, broker or dealer, bank trust department, or other persons to act on behalf of the client, customer or trust.

(d) **Joint or common ownership.** A sale to persons who acquire the securities as joint tenants, or as tenants in common, shall be counted as sales to each tenant unless otherwise covered by the rules of attribution provided by this section.

660:11-11-4. Integration of offerings

(a) **General.** An offering made by an issuer attempting to rely on the exemptions from registration provided by Sections

1-202.14 of the Securities Act and/or 660:11-11-43 must be separate and distinct from any other offering. Offers and sales of an offering will be deemed integrated with offers and sales of another offering when a review of the integration factors provided by (b) of this section indicates that the offers and sales are part of a larger offering. Integration may occur between two (2) claimed exempt offerings as well as between a claimed exempt offering and a registered offering.

(b) **Factors.** The following five (5) factors are deemed relevant to a determination as to whether or not two (2) different offerings are in fact integrated and thus part of a larger offering:

(1) the different offerings are part of single plan of financing;

(2) the offerings involve the issuance of the same class of security;

(3) the offerings are made at or about the same time;

(4) the same type of consideration is to be received;

(5) the offerings are made for the same general purpose.

(c) **Case by case determination.** Determination as to whether or not integration has occurred between two offerings shall be made on a case by case basis. The presence of all the integration factors shall not be required to establish the integration of two (2) offerings.

PART 3. EXEMPT SECURITIES

660:11-11-21. Not for profit debt securities notice filing

(a) **Securities exempt.** With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 1-201.7 of the Securities Act shall file a notice with the Administrator at least ten (10) full business days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective ten (10) full business days after the filing of a complete notice if the Administrator has not disallowed the exemption.

(b) **Notice information.** The notice required in (a) shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following:

(1) the identity of the issuer;

(2) the amount and type of securities to be sold pursuant to the exemption;

(3) a description of the use of proceeds of the securities; and

(4) the person or persons by whom offers and sales will be made.

(c) **Notice requirements.** The following items must be included as a part of the notice in (a):

(1) the offering statement, if any;

(2) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(3) the fee required by Section 1-612 of the Securities Act.

(d) **Sales and advertising literature.** All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request.

(e) **NASAA Statements of Policy or guidelines.** The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 1-201.7 of the Securities Act.

(f) **Waiver.** The Administrator may waive any term or condition set forth in this rule.

PART 5. EXEMPT TRANSACTIONS

660:11-11-40. Manual exemption

(a) **Recognized securities manuals.** The publications which shall be recognized by the Administrator for purposes of the exemption from registration set forth in Section 1-202.2.d of the Securities Act shall be as follows:

(1) Best's Insurance Reports, Life-Health

(2) Mergent's Industrial Manual

(3) Mergent's International Manual

(4) Standard & Poor's Corporation Records

(b) **Additional requirements.** To be eligible for the exemption from registration provided by Section 1-202.2.d of the Securities Act, the following additional conditions must be met:

(1) All information specified as required to be contained in the recognized securities manuals pursuant to Section 1-202.2.d of the Securities Act must be given to the purchaser with the confirmation by providing the purchaser with a copy of either:

(A) the information contained in the manual listing; or

(B) the information maintained by the broker-dealer effecting the transaction that is required to be kept by such broker-dealer pursuant to the requirements of SEC Rule 15c2-11 promulgated under the provisions of the 1934 Act.

(2) The information required under (1) of this subsection must be reasonably current in all material respects. The time for determining whether the information is current is at the date of the particular sale not the date the manual listing is published. For purposes of this paragraph, the term "reasonably current" shall have the meaning set forth in SEC Rule 15c2-11.

(3) The financial statements of the issuer required pursuant to Section 1-202.2.d of the Securities Act must be audited by an independent public accountant in accordance with generally accepted auditing standards, presenting fairly, in all material respects, the financial condition of the issuer; provided, if the issuer is an entity formed and operating under the laws of a foreign jurisdiction, the financial statements shall be audited in accordance with the auditing standards applicable in its jurisdiction of formation and operation.

(4) The issuer of the security, including any predecessors, has either:

(A) been in continuous business or operations for at least two (2) years, unless the issuer is an insurance company in which event it shall have been in business for at least five (5) years; or

(B) had a class of equity securities registered under Section 1-301 of the Securities Act within the past five (5) years.

(C) As used in this paragraph, "business or operations" means actual activities related to its current business or operations and shall not include merely holding funds or assets for future use.

(5) Sales must be made by a broker-dealer, either as principal or agent, who is registered under the provisions of Section 1-401 of the Securities Act.

(6) The securities must be offered or sold at a price reasonably related to the current market price of such securities.

(7) The securities must be issued and outstanding. The exemption is not available for issuer transactions. For purposes of this paragraph, "issuer" shall include all officers, directors and controlling (5% or more) shareholders of the issuer.

(8) The security does not constitute the whole or any part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security.

(c) **Restriction for promotional or developmental stage companies.** This exemption may not be used to evade the registration requirements of Section 1-301 of the Securities Act. Accordingly, transactions in reliance on this exemption for the securities of an issuer which is a promotional or developmental stage company as defined in 660:11-1-3, involving securities that have not been registered for offer or sale in the state of Oklahoma and which securities would not have met the requirements for registration set forth in Sections 1-303 or 1-304 of the Securities Act and the rules promulgated thereunder, had the securities been filed for registration pursuant to such sections of the Securities Act, may be deemed to have violated this requirement unless proven otherwise.

(d) **Exemption.** The requirements of (b)(1) of this section, shall not apply to the sale of the securities of an issuer who has net tangible assets in excess of $10,000,000.00 (U.S.) as determined by its most recent audited financial statements. For foreign issuers, the net tangible asset value may be determined by applying the exchange rate in effect as of the date of the financial statement relied upon unless there has been a material change in such exchange rate after the date of the financial statement that would reduce by greater than 20% the value in U.S. dollars. In that event, the exchange rate applied should be the rate effective as of the last day of the preceding month. Nothing in this Section shall release the broker-dealer effecting the transaction from its obligation to maintain the information required by SEC Rule 15c2-11 and to deliver any such information to any person involved in a transaction effected in the security, upon request by such person.

660:11-11-41. [RESERVED]

660:11-11-42. Interpretation of 'existing security holders'

For purposes of the exemption from registration set forth in Section 1-202.15 of the Securities Act, the term "existing security holder" shall not include a person who is a security holder of an issuer only by the receipt of securities as a gift by said issuer; consequently, the exemption from registration set forth in Section 1-202.15 of the Securities Act would not be available in connection with transactions to such security holders. For purposes of this rule, a distribution of securities shall be deemed to be a gift if the security holder does not give consideration in exchange for the securities.

660:11-11-43 Coordinated limited offering exemption

(a) **Preliminary notes.**

(1) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities laws.

(2) In view of the objective of this section and the purposes and policies underlying the Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Section.

(3) Nothing in this section is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.

(b) **Terms of the exemption.** By authority delegated to the Administrator in Section 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: any offer or sale of securities exempted from Section 5 of the 1933 Act pursuant to Section 4(6) thereof; or any offer or sale of securities offered or sold in compliance with the 1933 Act, Regulation D, Rules 230.504 and/or 230.505, including any offer or sale made exempt by application of Rule 508(a); provided the following further conditions and limitations are satisfied:

(1) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this title;

(2) no general advertising or general solicitation is used; and

(3) the issuer files with the Administrator no later than fifteen (15) days after the first sale of securities subject to the Securities Act one (1) signed copy of the notice of sales on Form D as most recently filed with the SEC, including the Appendix thereto. Such filing shall also include the following:

(A) an undertaking by the issuer to furnish to the Administrator, upon written request, the information furnished by the issuer to offerees;

(B) unless otherwise available, a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(C) the notice of exemption fee required by Section 1-612.A.12 of the Securities Act.

(c) **Substantial compliance.** A failure to comply with a term, condition or requirement of (b)(3) of this section will not result in the loss of the exemption from the requirements of Section 1-301 of the Securities Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of (3)(b) of this section.

(d) **Action by Administrator.** Where an exemption is established only through reliance upon (c) of this section, the failure to comply shall nonetheless be actionable by the Administrator under the Securities Act.

(e) **Reliance on other exemptions.** Transactions that are exempt under this section may not be combined with offers and sales exempt under any other rule or any section of the Securities Act; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions of this exemption, the issuer may claim the availability of any other applicable exemption.

(f) **Waiver of terms.** The Administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(g) **Title.** The exemption authorized by this section shall be known and may be cited as the "Oklahoma Coordinated Limited Offering Exemption".

660:11-11-44. [RESERVED]

660:11-11-45. [RESERVED]

660:11-11-46. [RESERVED]

660:11-11-47. [RESERVED]

660:11-11-48. [RESERVED]

660:11-11-49. Nonissuer transaction exemption for certain exchange-listed securities

By authority delegated to the Administrator in Section 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: any nonissuer transaction involving a security issued and outstanding and listed or approved for listing upon notice of issuance on Tier 1 of the Chicago Stock Exchange or involving any security of the same issuer that is of senior or substantially equal rank, or that differs only in terms of voting rights, from the security so listed, or any warrant, option or right to purchase or subscribe to any such security so long as the standards for such listing remain substantially the same.

660:11-11-50. [RESERVED]

660:11-11-51. Cross-border transactions exemption

By authority delegated to the Administrator in Section 1-203 of the Securities Act, transactions effected by a Canadian broker-dealer and its agents that meet the requirements for exemption from registration pursuant to 660:11-5-20 are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act.

660:11-11-52. Oklahoma Accredited Investor Exemption

(a) **Preliminary statement.** On April 27, 1997, the NASAA adopted the Model Accredited Investor Exemption ("MAIE"). MAIE provides exemption from securities registration only for offers and sales to accredited investors. The MAIE rests on the premise that accredited investors are capable of fending for themselves in information gathering and conducting "due diligence" on potential investments in companies before making an investment. Under authority of Section 401(b)(22) of the Oklahoma Securities Act, 71 O.S. §§ 1-17, 101-103, 201-204, 301-307, 401-413, 501, 701-703 (Supp. 1998), repealed effective July 1, 2004, the Administrator issued an order granting such an exemption, effective March 8, 1999, that is known as the Oklahoma Accredited Investor Exemption.

(b) **Definitions.** The following terms, when used in this section, shall have the meanings as such terms are defined in the NASAA Statement Of Policy Regarding Corporate Securities Definitions, adopted April 27, 1997.

(1) "Issuer in the Development Stage"; and

(2) "Promoters"

(c) **Exemption.** Under the authority of Section 2-103 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

(1) **Sales only to accredited investors.** Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. For purposes of this order, an "accredited investor" is a person who meets the definition set forth in 17 CFR §230.501(a).

(2) **Investment intent.** The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for

investment, except a resale pursuant to a registration statement effective under Sections 1-303 or 1-304 of the Securities Act or to an exemption from securities registration under the Securities Act.

(3) **When exemption is unavailable.**

(A) The exemption is not available to an Issuer that is in the Development Stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(B) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's Promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(i) within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

(ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(C) Subparagraph (3)(B) shall not apply if:

(i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(ii) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

(4) **General announcement.**

(A) A general announcement of the proposed offering may be made by any means.

(B) The general announcement shall include only the following information, unless additional information is specifically permitted by the Administrator:

(i) The name, address and telephone number of the issuer of the securities;

(ii) The name, a brief description and price (if known) of any security to be issued;

(iii) A brief description of the business of the issuer in 25 words or less;

(iv) The type, number and aggregate amount of securities being offered;

(v) The name, address and telephone number of the person to contact for additional information; and

(vi) A statement that:

(I) sales will only be made to accredited investors;

(II) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(III) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

(5) **Additional information.** The issuer, in connection with an offer, may provide information in addition to the general announcement under (5), if such information:

(A) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(B) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(6) **Telephone solicitation.**

(A) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(B) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this order.

(7) **Notice filing.** The issuer shall file a notice of the transaction with the Department within 15 days after the first sale of securities subject to the Act. The notice must include the following: an executed copy of the NASAA Model Accredited Investor Exemption Uniform Notice of Transaction; the Oklahoma Accredited Investor Exemption Supplemental Information Form; a consent to service of process on Form U-2 and (if applicable) Form U-2A; a copy of the general announcement; and a fee as set forth in Section 1-612 of the Securities Act.

(8) **Disqualifying provision.** Failure to comply with (7) of this section shall not result in the loss of availability of the subject exemption unless the issuer, any of its predecessors or affiliates have been subject to a cease and desist order of the Administrator or any order, judgment, or decree by another state securities agency, the SEC or

any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with a notice filing requirement for a comparable exemption. This provision shall not apply if the Administrator determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Requests for waivers of the disqualifying provision of this subsection shall be in writing setting forth the reasons therefor.

660:11-11-53. Exemption for offers but not sales

Terms of the exemption. By authority delegated to the Administrator in Sections 1-202 and 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: an offer to sell, but not a sale, of a security exempt from registration under the 1933 Act if:

(1) a registration statement has been filed under this act, but is not effective,

(2) the offeror is not aware of a stop order that has been issued by the Administrator under this act and does not know of an audit, inspection, or proceeding by the Department that may culminate in a stop order is by the offeror to be pending; and

(3) the offer consists only of:

(A) publication or distribution of a solicitation of interest document that complies with the requirements of 17 CRF §230.254; and any subsequent oral communications with prospective investors and other broadcasts, also permitted by said section;

(B) a preliminary offering circular that complies with the requirements of 17 CRF §230.255; or

(C) an offering document that contains the information required to be furnished in 17 CRF §230.502(b)(2).

PART 7. FEDERAL COVERED SECURITIES

660:11-11-60. Investment company notices

(a) **Notice requirement.** Pursuant to Section 1-302.A of the Securities Act, prior to the offer in this state of a Class of security of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 1-201 through 1-203 of the Securities Act, the issuer must file a notice with the Administrator relating to such Class of security.

(b) **Content of notice.** Each required notice shall include the following:

(1) a properly completed Form NF;

(2) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(3) the filing fee set forth in Section 1-612.C of the Securities Act.

(c) **Other documents.** Documents other than those required in (b) of this section, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature.

(d) **Renewal of notice.** The effectiveness of a notice required pursuant to (a) of this section may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice:

(1) a properly completed Form NF clearly indicating the state file number of the Notice to be renewed; and

(2) the filing fee required by Section 1-612.C of the Securities Act.

660:11-11-61. Regulation D Rule 506 notice filing

(a) **Notice requirement.** Issuers offering a security in this state in reliance upon Section 1-301.1 of the Securities Act by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, shall be required to file a notice with the Administrator pursuant to the authority of Section 1-302.C of the Securities Act if a sale of a security in this state occurs as a result of such offering.

(b) **Terms of notice filing.** The issuer shall file with the Administrator no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under (a) of this section:

(1) one copy of the notice of sales on Form D as most recently filed with the SEC, and the Appendix thereto;

(2) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and,

(3) the notice filing fee required by Section 1-612.A.19 of the Securities Act.

SUBCHAPTER 13. SALES LITERATURE

660:11-13-1. Purpose

The rules of this subchapter are adopted to provide procedures for complying with the provisions of Section 1-504 of the Securities Act relating to sales literature.

660:11-13-2. Definitions

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

"Sales literature" means material published, or designed for use, in a newspaper, magazine or other periodical, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to customers or the public including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports

or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format.

"Sales literature package" means all submissions of Sales Literature to the Department under one posting or delivery relating to a specific issue of securities.

660:11-13-3. Filing requirements

(a) **Requirement of filing.** Section 1-504 of the Securities Act requires a filing of all Sales Literature for review and response by the Administrator before use or distribution in Oklahoma. A complete filing shall consist of the Sales Literature Package, the fee specified in Section 1-612 of the Securities Act and a representation by the applicant, issuer or broker-dealer, that reads substantially as follows: "I ------hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Oklahoma Department of Securities on or about-----."

(b) **Exemption from filing.** The following types of Sales Literature are excluded from the filing requirements set forth in this Section:

(1) Sales Literature which does nothing more than identify a broker-dealer and/or offer a specific security at a stated price;

(2) Internal communications that are not distributed to the public;

(3) Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such;

(4) Sales Literature solely related to changes in a name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers; and

(5) Sales Literature filed with and approved by the NASD.

(c) **Piecemeal filings.** The Department will not approve any Sales Literature Package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith.

660:11-13-4. Content

(a) **Application of antifraud provisions.** Sales Literature used in any manner in connection with the offer and sale of securities is subject to the provisions of Section 1-501 of the Securities Act, whether or not such Sales Literature is required to be filed pursuant to Section 1-504 of the Securities Act or 660:11-13-3. Further, Sales Literature filed with the Department is subject to the provisions of Sections 1-501 and 1-505 of the Securities Act. Sales Literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor.

(b) **Prohibited disclosures.** Unless stating that the Commission, Administrator or Department has not approved the merits of the securities offering or the Sales Literature, no Sales Literature shall contain a reference to the Commission or the Department unless such reference is specifically required in a Departmental Prospectus Guide or requested by the Administrator.

SUBCHAPTER 15. MISCELLANEOUS PROVISIONS

660:11-15-1. General rules for presentation of financial statements

(a) **Asset values.** The following rules shall apply in presenting asset values in all Financial Statements filed with the Department:

(1) A unilateral "write-up" of assets above historical cost is not considered in accordance with generally accepted accounting principles. Financial Statements containing a "write-up" of assets to appraisal values (irrespective of the soundness of the appraisal) shall not be accepted.

(2) A registrant acquiring assets in an "arms-length" transaction, solely or partly for its own capital stock, should record the transaction in its Financial Statements at either:

(A) the fair market value of the shares of stock given in consideration, or

(B) the fair market value of the asset so acquired.

(C) The amount selected should be one that has the preponderance of evidence substantiating its selection.

(3) Where a parent company (one owning more than 50% of other companies) or a subsidiary company or an affiliated company is the registrant, consolidated or combined Financial Statements shall be submitted. The consolidated statements must conform to generally accepted accounting principles and result in the elimination of "write-ups" or appraisal amounts not represented by "arms-length" transactions.

(4) Where the "promoters" of a registrant have transferred assets to the registrant solely or partly for capital stock, the tests referred to in (1), (2) and (3) of this subsection must be applied so as to result in either no "write-up" or one not greater than would have resulted from a transaction carried out at "arms-length." The registrant shall make full disclosure of all pertinent facts and substantiate the values used in its Financial Statements if not representing "historical cost" of acquisition from third parties.

(b) **Opinion of independent accountants.** Audited Financial Statements shall be accompanied by an opinion of the Independent Accountant. The opinion letter shall be dated, shall be manually signed, shall identify without detailed enumeration the Financial Statements covered by the opinion, shall state that the examination was conducted in accordance with generally accepted auditing standards and shall express the Independent Accountant's opinion as to the fairness or unfairness

of the Financial Statements in accordance with generally accepted accounting principles or his inability to express such an opinion.

[OAR Docket #04-1071; filed 5-26-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #04-926]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Manufacturing Facilities
710:10-7-2. [AMENDED]
710:10-7-2.1. [AMENDED]
710:10-7-6. [AMENDED]
710:10-7-15. [AMENDED]
710:10-7-16. [AMENDED]
710:10-7-22. [AMENDED]
Subchapter 9. Manufactured Homes
710:10-9-3. through 710:10-9-5. [AMENDED]
710:10-9-8. [AMENDED]
710:10-9-9. [AMENDED]
710:10-9-12. [AMENDED]
710:10-9-13. [AMENDED]
Subchapter 13. Valuation Exclusion for Desulphurization Equipment [NEW]
710:10-13-1. through 710:10-13-13. [NEW]
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Oklahoma Tax Commission; 68 O.S. §§ 203, 2817, 2817.3, 2875, 2891, 2898, and 2902
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Subchapter 7, dealing with Manufacturing Facilities, has been amended to implement statutory changes set out in Senate Bill 300 and House Bills 1816(72,73) and 1251(3) of the 49th Legislature, First Regular Session, (2003). The referenced legislation made several modifications to the qualification requirements and expanded some exemptions, assuming certain payroll and capital investment criteria are met; the rules have been modified to conform thereto. [68:2902]

Amendments to Subchapter 9, dealing with Manufactured Homes, have been made to clarify procedures, to correct references, terminology, and scrivener's errors.

New Subchapter 13, entitled "Valuation Exclusion for Desulphurization Equipment", has been added to implement the provisions of House Bill 1712 of the 49th Legislature, First Regular Session, (2003). This legislation created an exemption from ad valorem taxation for property used wholly as a facility, device, or method for the desulphurization of gasoline or diesel fuel. [**68:2917.3**]
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

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 25, 2004:

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2. Requirements for exemption for qualified manufacturing facilities established, expanded, or acquired, on or before ~~December 31, 1999~~ July 1, 2003

(a) **Manufacturing.** In order to be approved as a **"manufacturing facility,"** the facility must be engaged in an activity defined as "manufacturing" by the **Standard Industrial Classification (SIC) Manual** or the **North American Industrial Classification System (NAICS)**, published by the U.S. Office of Management and Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6(B) of the Oklahoma Constitution. Businesses holding a Manufacturers Sales Exemption Certificate from sales and/or use tax are not necessarily eligible for the ad valorem five (5) year Manufacturers Exemption.

(b) **Research and development.** In order to be approved as **"research and development"** the facility must be engaged in activities so defined by 68 O.S.1994, § 2902(B)(4), which states that "*research and development shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*". The **qualifying** Industrial Group Number in the SIC or NAICS Manual will be determined by the Commission.

(c) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in this subsection.

(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** ~~68 O.S. 1994, §2902~~ 68 O.S. § 2902]

(2) ~~The investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more. An increase over the preceding year, of~~ **fifteen (15)** ~~or more full time employees must occur in the year for which the~~

~~exemption is initially granted. The level of new employees will be maintained for the full five years of the exemption. The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [**See:** 68 O.S.1997, § 2902(D)(4)(b)]. Calculation of the number of employees shall be made in the same manner as required under 68 O.S.Supp.1997, § 2357.4 for an investment tax credit.~~ For applications received by the county assessor:

(A) **On or before July 1, 2003.** The net increase in payroll shall be Two Hundred Fifty Thousand Dollars ($250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) in capital improvements, while maintaining or increasing payroll;

(B) **After July 1, 2003.** The net increase in payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than fifty thousand (50,000) persons; or at least One Million Dollars ($1,000,000.00) for applicants located in counties with populations of fifty thousand (50,000) persons or more. In the case of applications made pursuant to 68 O.S. § 2902(C)(6), there must be a net increase in payroll at the facility of at least Two Hundred Fifty Thousand Dollars ($250,000.00) attributable to the capital improvements, or a net increase of Seven Million Dollars ($7,000,000.00) in capital improvements, while maintaining or increasing payroll.

(C) **Health care benefit plan required.** All facilities must offer, within one-hundred eighty (180) days of employment, a basic health benefits plan to the full time employees of the facility, pursuant to 68 O.S.Supp.2003, § 2902(C)(4)(b).

(3) A manufacturing concern, which does not meet the ~~fifteen (15) FTE~~ payroll requirement, shall submit with the initial application for exemption, an affidavit to the Oklahoma Tax Commission, signed by an officer. This affidavit will state that from the start of the initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for up to three (3) years, whichever occurs first, will result in a net increase ~~of **fifteen (15) or more full-time employees.**~~ in payroll that meets the qualification criteria. ~~An~~ The affidavit will not be valid ~~or accepted by the Tax Commission if not~~ unless submitted with and at the same time as the initial application.

(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(5) The amount of increased payroll may include payroll for FTE in this State who are employed by an entity other than the facility which has otherwise qualified for the exemption. The Tax Commission shall audit all payroll submissions.

(6) **"Annualized payroll"** when used in this Section means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.

(d) ~~**Additional requirement**~~ **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S.Supp.2003, § 2902(A)]

(e) ~~**Non-transferability of program.** The five (5) year Manufacturers Tax Exemption program is a non-transferable program. In the event a participating manufacturing facility is sold, the exemption is terminated.~~ **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

710:10-7-2.1. Manufacturing facility exemption for facilities which are established, expanded, or acquired on or after January 1, 2000

(a) **Manufacturing facility.** **"Manufacturing facility"** means a facility engaged in mechanical or chemical transformation of materials or substances into new products. . . which have received a manufacturers exemption permit pursuant to the provisions of 68 O.S.Supp.1999, § 1359.2, and all the facilities and establishments described in 68 O.S. § 2902(B)(1)(b)-(d). [**See:** 68 O.S.Supp.1999, 2902(B)(1)]

(b) **Facilities with sales tax exemptions.** The Tax Commission shall honor all manufacturer's limited exemption certificates issued prior to November 1, 1998. However, holders of such certificates shall apply for a Manufacturers Sales Exemption Certificate pursuant to the provisions of 68 O.S. § 1359.2. Businesses holding a Manufacturers Sales Exemption Certificate from sales and/or use tax must qualify for all conditions of eligibility in 68 O.S.Supp.1999, § 2902.

(c) **Research and development.** **"Research and development"** means activities directly related to and conducted for the purpose of discovering, enhancing, or increasing or improving future or existing products or processes or productivity. [**See:** 68 O.S.Supp.1999, § 2902(B)(4)]

(d) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in (1) through (4) of this subsection.

(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S.Supp.1994, § 2902]

(2) For applications submitted on or before July 1, 2003, the ~~The~~ investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Facility or facilities shall mean and include the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process. Equipment that is a direct replacement is not eligible for exemption.

(3) While maintaining the number of FTE's required by previous statutes:

(A) For applications submitted after Dec. 31, 1999, and before July 1, 2003, a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in payroll, or a net increase of Five Hundred Thousand Dollars ($500,000.00) or more, in capital improvements in the calendar year in which the construction, acquisition, or expansion has occurred, while maintaining or increasing payroll is required. Payroll shall remain level or be increased for the full five years of the exemption.

(B) For applications submitted after Dec. 31, 2000, and before July 1, 2003, a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) or more, in capital improvements in the calendar year in which the construction, acquisition, or expansion has occurred, while maintaining or increasing payroll is required during the full five years of the exemption.

(C) For applications submitted after July 1, 2003, a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll for facilities located in counties with a population of fewer than Fifty Thousand (50,000) persons in the calendar year in which the construction, acquisition, or expansion has occurred. For facilities located counties with a population of Fifty Thousand (50,000) persons or greater, the net increase in annualized payroll is One Million Dollars ($1,000,000.00) in annualized payroll. [**See:** 68 O.S.Supp.2003, § 2902]

(D) To determine base-line payroll, the Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission (OESC) by using the average of the third and fourth quarter OESC reports of the calendar year immediately preceding the year for which initial application is made. [**See:** 68 O.S.Supp.1999, § 2902(C). For subsequent year applications for exemption, payroll shall also be calculated using the average of the preceding third and fourth quarters' payroll, as certified by the OESC, immediately preceding the January application date.

(i) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Commission, with the initial application for exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion - to the completion of said construction, acquisition, or expansion, or for three (3) years, which ever occurs first, the establishment or expansion of the facility will result in a net increase of the required annualized payroll. The amount of increased payroll may include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section. ~~An affidavit will not be valid or accepted by the Tax Commission if not submitted with the initial or subsequent years application.~~

(ii) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility [**See:** 68 O.S.Supp.2000, § 2902(C)(4)(b).] Calculation of the number of employees shall be made in the same manner as required under 68 O.S.Supp. 1997, § 2357.4 for an investment tax credit.

(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(e) ~~**Additional requirement**~~ **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition. [**See:** Art. 10, Section 6B, Okla. Const.] This requirement shall be construed as a qualification for a facility to initially receive an exemption and not as a qualification for that facility to continue to receive an exemption in each of the four (4) subsequent years following the year that the exemption was granted. [**See:** 68 O.S.Supp.2003, § 2902(A)] The FTE or payroll requirements for eligibility will be determined based on the year in which the acquisitions were obtained.

(f) ~~**Termination**~~ **Transfer of exemption.** ~~The five (5) year Manufacturers Tax Exemption program is a non-transferable program. In the event a participating manufacturing facility is sold, the exemption is terminated. However, a sale, merger, or reorganization of the company owning a qualifying manufacturing concern does not terminate the exemption under this Section.~~ If a facility has initially qualified for an exemption on or after January 1, 1999, and ownership of the facility changes during the five-year period of the exemption, the exemption shall continue in effect for the balance of the five-year period, provided all qualification criteria set by statute are met by the new owners of the facility. Annual application for the exemption must be filed with the county assessor as required by statute. [**See:** 68 O.S.Supp.2003, § 2902(C)(1)]

710:10-7-6. Beginning date of exemption; failure to claim

The five-year period of allowable ad valorem manufacturing exemption for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process as provided by law. Failure to claim an exemption for which a qualifying manufacturing concern may be eligible shall not

toll or extend the five-year period of allowable exemption. ~~Unclaimed acquisitions for a year that previously had been approved cannot be added to future applications.~~ Any remaining eligibility for previously acquired assets may be claimed for the following year based on the initial year of acquisition.

710:10-7-15. Review; protest; appeal

(a) **Notice of erroneous exemption; assessment.** If the Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, it shall notify the appropriate County Assessor, who shall immediately value and assess the property and place the property on the tax rolls for Ad Valorem taxation.

(b) **Notice to applicant.** The Commission shall mail a copy of the notice pursuant to the terms of 68 O.S.~~Supp.1996,~~ §208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.

(c) **Protest.** Within ~~thirty (30)~~ sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S.~~1991,~~ §207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the County Assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provision of the Uniform Tax Procedure Code. [**See:** 68 O.S.~~1991,~~ §§201, et seq. and the Rules of Practice and Procedure before the Commission, promulgated at 710:1-5-20 through 710:1-5-48 of the **Oklahoma Administrative Code.**]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S. ~~1991,~~ §225]

710:10-7-16. County recording procedure for ~~real, personal,~~ assessment and tax rolls

The county recording procedure will be to separately show each approved "exempt manufacturing" facility, which shall include exempt research and development facilities, in its proper place on each real or personal assessment and tax roll, as if it were taxable property. Exempt property shall be designated as "exempt manufacturing" property, the tax calculated, and charged to the treasurer. The Treasurer **will not** bill the owner, because the tax for all "exempt manufacturing" property in the county will be paid by the State Treasurer at the end of the fiscal year, based upon a county claim for reimbursement. The current year's taxes will be reimbursed ~~by June of the following year~~ pursuant to 62 O.S. § 193.

710:10-7-22. Owner not billed for tax

The County Treasurer shall not bill the owner of a manufacturing concern for the portion of ad valorem tax on "exempt manufacturing" property. The county treasurer shall send a copy of the tax bill to the Oklahoma Tax Commission Ad Valorem Division for notification purposes at the same time the tax bill would be otherwise sent to the taxpayer.

SUBCHAPTER 9. MANUFACTURED HOMES

710:10-9-3. Transfer of manufactured home with real property

When ownership of the manufactured home is transferred with the land upon which it is located with real property, the registration and certificate of title will be transferred in the new ownership as follows:

(1) The new owner will obtain a "Manufactured Home Certificate 936" (OTC Form 936) from the county assessor's office; and

(2) The new owner will present the "Manufactured Home Certificate 936" (OTC Form 936) to the Oklahoma Tax Commission or a motor license agent (tag agent) who will prepare the registration and certificate of title pursuant to the rules and regulations of the Motor Vehicle Division of the Oklahoma Tax Commission. A registration would not be issued unless ~~that~~ the initial registration fee was never collected.

(3) All taxes due, as required by this Subchapter and the statutes of Oklahoma, including the current year's ad valorem taxes, will be collected before issuance of the "Manufactured Home Certificate 936" (OTC Form 936). However, there will be no excise tax due on the change in registration and certificate of title.

(4) If the manufactured home owner has surrendered the title in accordance with 47 O.S.Supp.2002, § 1110, no title work or OTC Form 936 will be required, provided the home is not being moved.

710:10-9-4. Used manufactured homes held for resale; dealers

Used manufactured homes shall be exempt from ad valorem taxation if all the following requirements are met:

(1) The used manufactured home must be registered or assigned to a licensed Oklahoma manufactured home dealer.

(2) The used manufactured home is held for resale on a sales lot by a licensed Oklahoma manufactured home dealer ~~by~~ on January 1st of the assessment year. The dealer shall be required, however, to obtain a current certificate of title (Title must be brought up in dealer's name.) and registration decal for any used manufactured home held for resale by January 31st in lieu of payment of ad valorem taxes. No certificate of title and registration decal shall be issued to the dealer without a completed "Manufactured Home Certificate 936" (OTC Form 936) in the dealer's name from the assessor's office in the county in which the manufactured home is located. A manufactured home held for resale without a current certificate and registration decal is subject to ad valorem tax ~~by~~ on January 1st of the assessment year.

(3) A licensed Oklahoma manufactured home dealer must meet these qualifications:

(A) A lawful dealers license obtained from the Used Motor Vehicle and Parts Commission. The license permits the buying, selling, or exchange of manufactured homes;

(B) The licensed manufactured homes are bought, sold and exchanged at an established place of business in this state. An established place of business shall include the sales lot. A sales lot is an established place of business at which:

(i) The licensed manufactured home dealer places his inventory;

(ii) The licensed manufactured home dealer maintains his books and records on the sale of manufactured homes; and

(iii) The licensed manufactured home dealer buys for resale and sells or exchanges used manufactured homes.

710:10-9-5. Exemption for persons in active military service-owned manufactured homes

(a) **Manufactured homes.** The manufactured home of an active duty nonresident service person residing in the State of Oklahoma in compliance with military orders is exempt from ad valorem taxation and is to be registered with the Motor Vehicle Division of the Oklahoma Tax Commission annually for a fee of twenty dollars ($20.00). A U.S. Armed Forces Affidavit (OTC Form 779) must be submitted with the OTC copy of the registration receipt. **Snapp v. Neal**, 382 U.S. 398, 86 S.Ct. 485 (1966).

(b) **Personal property.** Section 574 of the Civil Relief Act of 1940 exempts household personal property from ad valorem taxation for servicemen qualifying under this act.

(c) **When exemption not applicable.** The provisions of (a) and (b) of this Section do not apply when a serviceman establishes residency by the filing of a homestead exemption.

710:10-9-8. Manufactured homes subject to ad valorem assessment on real property; real property ~~identification cards~~ assessment records

(a) **Property subject to this regulation.** A manufactured home which is located on land owned by the owner of the manufactured home is subject to real property assessment.

(b) **Separation of records of value kept by county assessor.** [**See**: 68 O.S. §2813(B)] Records kept by the county assessor must comply with the following:

(1) The calculation of fair cash value will be located in a area on the ~~card~~ record separate and apart from other improvement calculations.

(2) Compliance with this Section is met if the manufactured home is separately described and the value is set out separately from the land and other improvements located on the property.

(3) The Vehicle Identification Number (VIN) must be shown on an assessment ~~card~~ record.

(c) **Applicability of this Section.** The requirements of this Section are subject to any superseding legislation or rulemaking governmental subdivision created by law to regulate the valuation and assessment of manufactured homes.

710:10-9-9. Homestead exemption requirements; improper registration of title

(a) **Qualification for homestead.** An owner of a manufactured home may apply for homestead exemption if all the following requirements are met:

(1) The land and the manufactured home are in the ownership of the same person; or,

(2) The applicant for homestead exemption is ~~living~~ residing in a manufactured home ~~which shows a different ownership~~ that is owned by someone else. The applicant must own the land that the manufactured home is located on to qualify for homestead exemption. ~~However, the applicant for homestead~~ The owner or agent of the owner must render the manufactured home to the county assessor as personal property ~~as an agent of the owner, or the lawful owner must render the manufactured home as personal property to the county assessor~~; [**See:** *OAC* 710:10-9-10 and 710:10-9-11] and,

(3) The owner of the land and manufactured home is residing upon the property and domicile thereon; and

(4) The owner meets the record ownership requirements for the land as set out in the Ad Valorem Tax Code to qualify for homestead exemption; and

(5) The land, improvements and manufactured home are valued and assessed as real property.

(b) **Registration and certificate of title.** The county assessor should refer any applicant for a homestead which presents improper registration of title to the local motor licensing agent (tag agent) before approving the homestead application with an OTC Form 936 for proof of all taxes paid.

710:10-9-12. Manufactured homes not registered or assessed for ad valorem taxation

(a) **Manufactured homes escaping ad valorem taxation for previous years.**

(1) The county assessor shall value and assess all manufactured homes in his/her county at fair cash value (market value) as prescribed by law.

(2) The county assessor or a duly appointed and authorized deputy is empowered to go upon any premises to view and appraise any manufactured home as prescribed by law.

(3) The county assessor or a duly appointed and authorized deputy may examine a person under oath in regard to the value of a manufactured home.

(4) A manufactured home shall not be valued and assessed for any assessment year in which the manufactured home was previously assessed for ad valorem taxation in any other county in this state.

(b) **Assessment as omitted property; manufactured homes; omitted property; valued and assessed.**

(1) The county assessor shall place a value upon a manufactured home for each prior year omitted from the assessment and tax rolls. Upon the determination of the valuation for each prior year omitted, the county assessor shall assess the manufactured home by applying the assessment ratio percentage of the applicable prior year omitted against the valuation of the applicable prior years omitted. The number of prior years which a manufactured home shall be determined to be omitted from the assessment and tax rolls shall not exceed three (3) years. [**See:** Attorney General Opinion 00-23]

(2) When presented to the county assessor, county treasurer, Motor License Agent (tag agent) or the Department of Public Safety, a properly completed OTC Form 936 shall be conclusive as to the proper payment of ad valorem taxes for the current year of issuance and all prior years.

(3) A tax receipt shall not be conclusive as to the payment of current or prior years' taxes.

(c) **Manufactured homes not properly registered.** A manufactured home not properly registered as required by the Motor Vehicle Code will be entered upon the assessment roll and the tax roll as omitted property pursuant to the Ad Valorem Tax Code. A manufactured home not properly registered will be treated as omitted property for the prior years not to exceed three (3) years preceding the current year.

710:10-9-13. Adding manufactured homes omitted in previous years to assessment and tax rolls

The procedure for adding manufactured homes to the ad valorem assessment and tax rolls, which has been omitted for previous years, shall be as follows: [**See:** Attorney General Opinion 00-23]

(1) **Notice of assessment.** The county assessor shall value the omitted manufactured home and give notice as prescribed by law.

(2) **Certificate of assessment (Extension of taxes against tax rolls).** The county assessor will complete a certificate of assessment of omitted property. Thereafter, the county assessor will forward the certificate of assessment to the county treasurer.

(3) **Calculation.** Calculation of taxes due is made in the following fashion:

(A) A fair cash value is to be placed on the manufactured home for each of the years omitted.

(B) The fractional assessment percentage of the years omitted is to be applied to the fair cash value of the years omitted.

(C) The mill levy of the appropriate years omitted is to be placed against the assessment for that particular year.

(D) If the manufactured home is omitted for more than one year, a certificate of assessment of omitted property will be calculated by the county assessor.

(E) The assessor will place the amount of taxes due upon the appropriate tax roll. The amounts will be noted by the year omitted. The treasurer will prepare a separate tax statement for each taxable year.

(4) **Proper mill levy.** The prior year(s) taxes will be calculated using the mill levy for the year omitted from the assessment and tax roll. The current year taxes will be calculated using the preceding year's mill levy unless the excise board has set the mill levy for the current year.

SUBCHAPTER 13. VALUATION EXCLUSION FOR DESULPHURIZATION EQUIPMENT

710:10-13-1. Purpose

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S. § 250 et seq., and to facilitate the valuation of certain locally-assessed oil refinery assets for ad valorem tax purposes.

710:10-13-2. Requirements for qualification of certain assets for valuation exclusion

An eligible facility must be one which:

(1) Is a ***"facility, device or method for the desulphurization of gasoline or diesel fuel"*** *including any device or method for the desulphurization of gasoline or diesel fuel, including any structure, building, installation, excavation, machinery, equipment, or device and any attachment or addition to, or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed on or after January 1, 2003*; and

(2) Is *used, constructed, acquired or installed wholly or partly to meet or exceed rules adopted by the Oklahoma Environmental Quality Board or by the United States Environmental Protection Agency with respect to any program which has been delegated to the Department of Environmental Quality for the prevention, monitoring, control, or reduction of the amount of sulfur in gasoline or diesel fuel.* 68 O.S. § 2817.3

710:10-13-3. Strict compliance

All persons claiming, utilizing, or administering the valuation method detailed in 68 O.S.Supp.2003, § 2817.3 shall strictly comply with the law and this subchapter, under penalty of law, to the end that the objectives of the law be accomplished.

710:10-13-4. Application for valuation exclusion of assets

(a) The firm, company, facility, or person seeking the exclusion shall make a written request to the Executive Director of the Department of Environmental Quality for a determination that certain assets qualify for valuation exclusion.

(b) The request shall be made in accordance with rules promulgated by the Department of Environmental Quality.

710:10-13-5. Notification to County Assessor and Tax Commission

(a) On or before March 15 of the year in which valuation exclusion is sought, all persons requesting valuation exclusion pursuant to this Subchapter shall provide a copy of the letter issued by the Department of Environmental Quality certifying specific assets for valuation exclusion to the County Assessor and to the Director of the Ad Valorem Division of the Oklahoma Tax Commission.

(b) The County Assessor or the Ad Valorem Division may require a person that has been granted a valuation exclusion in a prior year to file a new application or letter of continued qualification by March 15 of each year to confirm the continuation of the qualification for the exclusion.

(c) The qualification letter from the Department of Environmental Quality shall be conclusive evidence that the assets are used wholly for the desulphurization of gasoline and diesel fuel.

710:10-13-6. Further determination by the County Assessor or Ad Valorem Division

(a) The County Assessor or the Director of the Ad Valorem Division shall further determine if the property for which the exclusion is sought is qualified as provided by law.

(b) The County Assessor or the Ad Valorem Division may request any additional information from the Department of Environmental Quality, from another state or federal agency, or from the applicant, as required to determine qualification or valuation of any assets used in the desulphurization process. All information shall be held confidential by the Tax Commission and the County Assessor pursuant to 68 O.S. § 205.

710:10-13-7. Further determination of eligibility by the County Assessor

The County Assessor shall examine each application or letter of qualification and shall determine whether the application and supporting documentation is sufficient and valid. In making this determination the Assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law. The Ad Valorem Division and Department of Environmental Quality shall assist the Assessor in the determination, if requested.

710:10-13-8. Exclusion of valuation for qualified assets

Qualified assets, as defined in 68 O.S.Supp.2003, § 2817.3, shall not be included in the valuation used in determining the fair market value of oil refineries if such property would qualify as exempt property pursuant to 68 O.S.Supp.2003, § 2902, whether or not an application for such exemption is made by an otherwise qualifying manufacturing concern owning the property described by 68 O.S.Supp.2003, § 2817.3. The County Assessor shall indicate on the permanent property record the amount of any valuation exclusion and any other information that the Assessor deems necessary.

710:10-13-9. Denial by the County Assessor

If an application is rejected the applicant shall be notified in writing and advised of the procedure provided by law to protest the denial. The protest procedure for contesting denial by the county assessor is found at 68 O.S. §§ 2894 and 2895.

710:10-13-10. Hearings before the County Board of Equalization

If the County Assessor or County Board of Equalization disallows or rejects an application for valuation exclusion, the applicant may obtain a hearing before the County Board of Equalization by filing a written complaint with the secretary of the board (County Clerk) within ten days of the receipt of the notice of denial. The complaint shall specify the grievances and the pertinent facts in relation to the matter, and the board shall conduct hearings as provided by law. [**See:** 68 O.S. § 2895]

710:10-13-11. Appeal from Board of Equalization to district court

The decision of the Board of Equalization as to the valuation exclusion may be appealed to the district court by either the applicant or the County Assessor, as provided by law. [**See:** 68 O.S. § 2879]

710:10-13-12. Erroneous adjustment or assessment; review; protest; appeal

(a) **Determination of erroneous or unlawful exclusion.** If the Tax Commission or the County Assessor determines that an valuation exclusion has been erroneously or unlawfully granted, in whole or in part, the Commission shall so notify the appropriate County Assessor, who shall immediately value and assess the property which was previously excluded from value.

(b) **Notice to applicant.** The Tax Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the address shown on the application or certification letter from the Department of Environmental Quality. The copy shall notify the applicant of the right to protest the Tax Commission's decision.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file a written protest, under oath, with the Oklahoma Tax Commission, signed by an authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. The applicant shall mail or deliver a copy of the protest to both the County Assessor and the Tax Commission.

(d) **Law governing protest procedure.** The applicant's right of protest, hearing, and procedure to be followed shall be governed by the provisions of the Uniform Tax Procedure Code, 68 O.S. § 201 et seq., and the Rules of Practice and Procedure before the Tax Commission, *OAC* 710:1-5-20 through 710:1-5-48.

(e) **Appeal.** Appeals from the decision of the Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S. § 225]

710:10-13-13. County recording procedure for real and personal assessment and tax rolls

The County recording procedure for properties which are determined to qualify for valuation exclusion pursuant to this Subchapter will be no different from that applicable to other real and personal property. Property that has a valuation exclusion will be carried forward on the assessment and tax rolls at the net valuation after any valuation adjustments have been made.

[OAR Docket #04-926; filed 5-18-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #04-1055]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 8. Exemption for Certain Oil and Gas Property upon which Oklahoma Gross Production Tax is Paid [NEW]
710:10-8-1. General provisions [NEW]
710:10-8-2. Exempt properties [NEW]
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Oklahoma Tax Commission; 68 O.S. §§ 203, 1001.1
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These new rules establish written guidelines for the determination of which properties are relieved from ad valorem taxes by payment of the "in lieu" gross production tax, as provided by 68 O.S. § 1001(R) and (S).
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

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 25, 2004:

SUBCHAPTER 8. EXEMPTION FOR CERTAIN OIL AND GAS PROPERTY UPON WHICH OKLAHOMA GROSS PRODUCTION TAX IS PAID

710:10-8-1. General provisions

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S. § 250 et seq., and to establish guidelines, as authorized by 68 O.S. § 1001.1, for the determination of properties exempt from ad valorem taxes under the terms of 68 O.S. §§ 1001(R) and (S) by payment of the "***in lieu***" gross production tax.

710:10-8-2. Exempt properties

(a) The following property shall be eligible for exemption from ad valorem taxation pursuant to the provisions paragraphs (R) and (S) of Section 1001 of Title 68:

(1) Wellhead equipment, including compression equipment that is used for injection purposes on enhanced oil and gas recovery projects or compression equipment actually used in the process of bringing oil or gas, or both, to the surface;

(2) Pumping units and any other devices designed to raise hydrocarbons to the surface;

(3) Tubing, casing and other downhole equipment;

(4) Lease production tanks, including flow tanks and water tanks;

(5) Production units, separators, heaters, treaters, and any other devices designed to remove water and contamination from the hydrocarbons which are located upstream from lease production tanks, custody transfer points, or where production is commingled with that of other leases;

(6) Flow lines going from the wellhead to production units, separators, heaters, treaters, and lease production tanks, including flow tanks and water tanks;

(7) Residue lines used to return processed gas to the lease for use in powering production equipment or for injection purposes. If the lines transport gas which is sold or used for any other purpose, only that percentage of the value of the lines that equals the percentage of the volume of gas used to power production equipment or for injection shall qualify for the exemption;

(8) Lease production meters;

(9) Miscellaneous production equipment, including but not limited to valves, piping, and electrical accessories; and,

(10) Disposal systems which are not for commercial purposes. The value of property in a disposal system used for both commercial and non-commercial purposes shall be exempted on a pro rata basis according to its use.

(b) Items enumerated in (a) of this Section are not intended to be exclusive or exhaustive.

[OAR Docket #04-1055; filed 5-26-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #04-927]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-40. Husbands and wives [AMENDED]
710:50-3-46. Electronic filing requirement for tax return preparers [NEW]
Part 7. Other Required Reporting
710:50-3-54. Income tax withholding for pass-through entities [NEW]
Subchapter 11. Intercept of Refunds
710:50-11-2. Notice to taxpayer [AMENDED]
710:50-11-3. Notice of protest [AMENDED]
Subchapter 13. Estimated Tax
710:50-13-6. Payment of estimated tax [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 1. General Provisions
710:50-15-2. Application of the Oklahoma Individual Income Tax to Native Americans [NEW]
Part 5. Other Adjustments to Income
710:50-15-55. Depletion [AMENDED]
710:50-15-60. Inventors assistance income exclusion [AMENDED]
Part 7. Credits Against Tax
710:50-15-72. Credit for taxes paid other states [AMENDED]
710:50-15-74. Credit for investment/new jobs [AMENDED]
710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property [AMENDED]
710:50-15-93. Credit for Qualified Oklahoma Space Transportation Vehicle Providers [NEW]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations [AMENDED]
Subchapter 19. Oklahoma Taxable Income for Partnerships
710:50-19-1. Partnership return [AMENDED]
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Section **710:50-3-40**, "***Husbands and wives***", has been amended to provide more filing flexibility for married taxpayers who file a joint federal return, where one spouse is non-resident (and non-military). The amendment is the result of a change in policy. [***68:2361***]

New Section **710:50-3-46**, implements the provisions of House Bill 1356, § 21 of the 49th Legislative Session, which required electronic filing by certain tax preparers. The rule also addresses an exception to insure that individual taxpayers are aware that they may elect **not** to have a return filed electronically, even if their paid tax-preparer is statutorily required to do so. [***68:2385***]

New Section **710:50-3-54**, entitled, "***Income tax withholding for pass-through entities***" has been promulgated to implement the provisions of House Bill 1356 of the 49th Legislature, 1st Regular Session. [***68:2385.29-2385.31***]

Sections **710:50-11-2** and **710:50-11-3**, dealing with the ***interception of taxpayer refunds***, have been amended for clarity and to improve readability. [***68:205.1***]

Section **710:50-13-6**, dealing with ***payment of estimated tax***, has been amended to clarify procedures, at the recommendation of the Office of the General Counsel. [***68:217(A) and 2385.10***]

New Section **710:50-15-2**, ***Application of the Oklahoma Individual Income Tax to Native Americans***, was previously adopted, in part, through emergency rulemaking procedures, effective June 26, 2003. The amendments being promulgated in this rulemaking action are an effort to provide guidance to the public regarding the broad policies applicable to the income taxation of Native Americans, as reflected in case law and in the decisions of Commission. [***Citation omitted.***]

Sections **710:50-15-55** and **710:50-17-51(11)**, dealing with ***depletion***, have been amended to conform with Senate Bill 535 (L.2003, Ch.463) which extended the sunset date for the modification required of major oil companies claiming the Oklahoma depletion deduction. [***68:2353(10)***]

Section **710:50-15-60**, dealing with the ***inventors assistance income exclusion***, has been amended only to add an internal cross-references to the rule. [***74:5064.1 et seq.***]

Section **710:50-15-72**, "***Credit for taxes paid other states***", has been amended to reflect a new Form for use with this credit. [***68:23657(B)(1)***]

Section **710:50-15-74**, entitled "***Credit for investment/new jobs***", has been amended to reflect the provisions of Senate Bill 440, which modified the carryover provisions of unused "investment/new jobs" credit. [***68:2357.4***]

Section **710:50-15-81**, "***Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property***", has been amended to conform to the provisions of House Bill 1085, which modified the definition of "qualified electric vehicle property" to provide for a modified basis for the credit on vehicles which are also equipped with an internal combustion engine. [***68:2357.22***]

Section **710:50-15-93**, "***Credit for Qualified Oklahoma Space Transportation Vehicle Providers***" has been added to implement the provisions of Senate Bill 55. The rule was previously adopted through emergency rulemaking procedures, effective December 10, 2003. [***Laws 2001, c. 266, § 1 and Laws 2002, c. 379, §1***]

Section **710:50-19-1**, "***Partnership return***", has been amended to conform to statute (68 O.S. § 2362) as to the manner of computing a tax base for partnership returns and to require electronic filing in certain instances. [***68:2358;2362***]

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 25, 2004:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-40. Husbands and wives

~~In the case of a Joint Federal Income Tax Return, where one spouse is an Oklahoma resident and the other is a non-resident, Oklahoma Income Tax Return Form 511NR must be used. **"Married Filing Separate"** tax rates must be used, unless the filing of a joint return is elected and all income is reported as though both spouses were residents. If a joint return is elected, all income is to be reported and a credit may be claimed for tax paid another state.~~

(a) **Filing methods of married taxpayers, where one is resident and the other is non-resident.** Married taxpayers who file a joint federal return, where one spouse is an Oklahoma resident (civilian or military), and the other is a nonresident civilian (non-military), must file using one of the following methods:

(1) **File as Oklahoma residents, married, filing separately.** The Oklahoma resident, filing a joint Federal return with a nonresident civilian spouse, may file their Oklahoma return as "married, filing separately". If the nonresident civilian spouse has an Oklahoma filing requirement, OTC Form 511NR is to be utilized for filing purposes, using "married, filing separately" rate charts, and reporting only the nonresident civilian's income and deductions. The resident spouse will file on OTC Form 511, using the "married, filing separately" rates, and reporting only his or her income and deductions. OTC Form 574 "Allocation of Income and Deductions" must be filed with the return(s).

(2) **File as though both spouses were residents.** The spouses may file as if both the resident and the nonresident civilian were Oklahoma residents, on OTC Form 511, using the "married, filing jointly" filing status, and reporting all the income. A tax credit (OTC Form 511TX) may be used to claim credit for taxes paid to the other state, if applicable, under this method. A statement should be attached to the return stating that the nonresident is filing as a resident for tax purposes only.

(b) **When (a)(1) and (a)(2) do not apply.** The filing methods described in (a) of this Section do not apply if either spouse is a **part-year resident**, or an Oklahoma resident (civilian or military) files a joint Federal return with a nonresident **military** spouse. In these instances, they must use the same filing status as used on the Federal income tax return. In these instances, OTC Form 511NR shall be completed and must include all Oklahoma source income of both spouses in the "Oklahoma" amount column.

710:50-3-46. Electronic filing requirement for tax return preparers

(a) **Definitions.** For purposes of this section, ***"tax return preparer"*** *means any person who prepares, for compensation, any return of tax imposed under Title 68 of the Oklahoma statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The term* ***"tax return preparer"*** *also includes any person who employs one or more person to prepare, for compensation, any return of tax imposed under Title 68 of the Oklahoma Statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes.*

The preparation of a substantial part of a return or a claim for refund is deemed to be the preparation of the entire return or claim for refund.

(b) **General provisions.** *Any tax return preparer who prepared more than fifty (50) Oklahoma tax returns for the previous tax year must file* Oklahoma individual income tax *returns prepared for the current year by electronic means.* The requirement to file returns electronically applies only to those individual income tax returns for which the Tax Commission is set up to accept by electronic means, and *does not apply to any return on which the taxpayer has indicated a desire that the return* ***not*** *be filed electronically.*

(c) **Check-off box.** Oklahoma Individual Income Tax Returns will have a check-off box for use by those taxpayers who wish to designate that their individual income tax return **not** be electronically filed. [68 O.S.Supp.2003, § 2385]

PART 7. OTHER REQUIRED REPORTING

710:50-3-54. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from each distribution being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;
(B) A partner in a general partnership;
(C) A partner in a limited partnership;
(D) A partner in a limited liability partnership;
(E) A member of a limited liability company; or,
(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity

which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes.

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the cash distribution or the Oklahoma net distributed income if determinable at the time of distribution. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the cash distribution or the Oklahoma distributed net income if determinable at the time of distribution.

(e) **Non-resident members not subject to withholding.** Persons, other than individuals, who are exempt from federal income tax are not subject to having income tax withheld under this Section. Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code are not subject to having income tax withheld under this Section. Also, insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax under 68 O.S. § 2359(c) are not subject to having income tax withheld under this Section.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

(4) When a distribution made by a pass-through entity is determined to be not subject to the provisions of this Section by the Commission; or,

(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt.

(g) **Due dates for payment of pass-through withholding.** Pass-through entities that withhold on distributions are required to file an Oklahoma Tax Commission Form OW-9-C and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) **First quarter.** For distributions made during January, February, and March, the amount withheld is due no later than April 30;

(2) **Second quarter.** For distributions made during April, May, and June, the amount withheld is due no later than July 31;

(3) **Third quarter.** For distributions made during July, August, and September, the amount withheld is due no later than October 31; and

(4) **Fourth quarter.** For distributions made during October, November, and December, the amount withheld is due no later than January 31 of the following year.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of the distribution, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with an Oklahoma Tax Commission Form 500-B, by last day of the second month after the end of its taxable year, showing the member's respective amount of income and the tax withheld.

(2) Each non-resident member must enclose a copy of the Form 500-B to the Oklahoma income tax return as verification for this withholding. Copies of Form 500-Bs, along with the Oklahoma Tax Commission Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

SUBCHAPTER 11. INTERCEPT OF REFUNDS

710:50-11-2. Notice to taxpayer

~~The referring agency, that is, the~~ The state or federal agency to whom a debt is owed must notify the taxpayer/debtor ~~of~~ that an income tax refund intercept has been claimed, pursuant to ~~the provisions of the Administrative Procedures Act. [**See:** 75 O.S. §§309 et seq.]~~ 68 O.S. § 205.2(A)(2).

710:50-11-3. Notice of protest

(a) Notice of the right of protest shall be made to the ~~referring agency by the~~ taxpayer/debtor by the referring agency within ~~thirty (30)~~ seven (7) days of ~~receipt of notice of~~ making a claim to the Commission for an income tax refund intercept ~~from a referring agency~~.

(b) The referring agency must notify the Tax Commission of the status of a debtor's account within ninety (90) days of initial notice of refund intercept by the Tax Commission, whether or not any protest proceeding shall have been completed. Intercepts not updated due to the referring agency's failure to provide status reports will be purged from the Warrant Intercept System and funds will be released to the taxpayer.

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-6. Payment of estimated tax

(a) The first installment of Oklahoma Estimated Income Tax is to be paid on April 15 of the taxable year. Other payments must be made by the dates shown on the vouchers or corresponding dates for fiscal-year filers. The filer's Social Security Number or Federal I.D. Number is to be written on the check and the check is to be attached to the completed voucher. The estimated tax is to be applied to the succeeding tax year's Oklahoma Income Tax liability, and may be claimed on the succeeding tax year's Oklahoma Income Tax Return.

(b) Refunds will be applied, at the taxpayer's request, to Oklahoma Estimated Income Tax for the following year, on the original Return only, and may not be adjusted, except as provided in this Section.

(c) Refunds applied to the following year's Oklahoma Estimated Income Tax (at the taxpayer's request) may not be adjusted except in the following case: When a taxpayer claims on the Oklahoma Income Tax Return, a total estimated tax in excess of the amount actually paid and requests the resultant refund be applied to the next year's estimated tax, this produces an erroneous estimated tax figure for the following tax year. In this instance, the amount of credit to be applied to the following year and/or the figure reported for total Oklahoma Estimated Tax for the current year, may be adjusted to the correct amounts.

(d) Provided, however, that when a refund is applied, at the Taxpayer's request, to the following year's Oklahoma Estimated Income Tax and either the Tax Commission or the Internal Revenue Service subsequently determines that additional tax is due for the original tax year, no delinquent interest shall be due on the difference between the original tax paid and the subsequently-determined amount of tax, so long as the refund applied exceeds the additional tax due and the taxpayer makes payment of the additional tax within sixty (60) days of the notice of assessment. In the event that the additional tax due exceeds the refund applied, delinquent interest shall be assessed on the amount of additional tax due from the date the original tax was due, until the total additional tax is paid.

(~~d~~e) All estimated tax payments should be paid under the Social Security Number listed first on the Oklahoma Income Tax Return.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 1. GENERAL PROVISIONS

710:50-15-2. Application of the Oklahoma Individual Income Tax to Native Americans

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

(1) **"Indian Country"** means and includes formal and informal reservations, dependent Indian communities, and Indian allotments, the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. [**See:** 18 U.S.C. § 1151]

(2) **"Informal reservations"** means and includes lands held in trust for a tribe by the United States and those portions of a tribe's original reservation which were neither allotted to individual Indians, nor ceded to the United States as surplus land, but were retained by the tribe for use as tribal lands.

(3) **"Dependent Indian communities"** means and refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy the following two requirements:

(A) They have been set aside by the federal government for the use of the Indians as Indian land; and,

(B) They are under federal superintendence.

(b) **Instances in which income is exempt.** The income of an enrolled member of a federally recognized Indian tribe shall be exempt from Oklahoma individual income tax when:

(1) The member is living within "Indian Country" under the jurisdiction of the tribe to which the member belongs; and, the income is earned from sources within "Indian Country" under the jurisdiction of the tribe to which the member belongs; or,

(2) The income is compensation paid to an active member of the Armed Forces of the United States, if the member was residing within his tribe's "Indian Country" at the time of entering the Armed Forces of the United States, and the member has not elected to abandon such residence.

(c) **Instances in which income is not exempt.** The income of an enrolled member of a federally recognized Indian tribe shall not be exempt from Oklahoma individual income tax when:

(1) The income is derived from sources outside of "Indian Country", regardless of the taxpayer's residence.

(2) The member resides in Oklahoma, but not within "Indian Country", regardless of the source of the income.

(3) Either the source of the income or the place of residence is under the jurisdiction of a tribe of which the taxpayer is not a member.

(4) The member claims residence within "Indian Country" primarily by virtue of various Indian health, social, educational, welfare and financial programs. Even though administered by the Tribe within its own service area, these are merely forms of general federal aid, and are not sufficient to support a finding of "Indian Country" for purposes of this Section.

(5) The member claims residence on unrestricted, non-trust property, owned by an Indian Housing Authority. Such property does not fall within the definition of "Indian Country," nor does residence thereon constitute residence within a dependent Indian community.

(d) **Part-time residency.** If an enrolled member of a federally recognized Indian tribe resides within "Indian Country" for a portion of the year, and resides outside "Indian Country" for a portion of the year, such enrolled member shall be taxed based upon where such enrolled member resided when the income in question was earned.

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-55. Depletion

(a) The Oklahoma depletion deduction from income for oil and gas produced in Oklahoma is twenty-two percent (22%) of the gross income from the property, provided that for tax years beginning on or after January 1, 1997, and ending on or before December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, ~~2004,~~ 2006, in the case of major oil companies, as defined by 52 O.S.Supp.1996, §288.2, the allowance may not exceed fifty percent (50%) of the net income from the property computed without the allowance for depletion. During years not specified herein, for all taxpayers, the allowance shall not exceed fifty percent (50%) of the net income from the property (computed without allowance for depletion). This allowance is allowable in the amount so computed minus the Federal depletion claimed. The applicable Federal schedule and a detailed depletion schedule must be enclosed.

(b) Lease bonus depletion of 22% is allowable; any such depletion claimed must be restored to income in the case of non-producing properties upon expiration of the lease. Individuals claiming lease bonus depletion may be required to furnish a copy of the lease and division order. [**See:** 68 O.S. §2353(10)]

710:50-15-60. Inventors assistance income exclusion

(a) Royalty earned by an inventor from a product developed and manufactured in this State shall be exempt from Oklahoma Income Tax for a period of seven (7) years, from January 1, of the first year in which the royalty is received, as long as the manufacturer remains in the State.

(b) An investment/new jobs credit may be available to the manufacturer of new inventions when manufactured in this State. ~~(See 710:50-15-74)~~ [**See:** *OAC* 710:50-15-74]

(c) In addition, the manufacturer may exclude from Oklahoma taxable income sixty-five percent (65%) of the cost of depreciable property purchased and utilized directly in manufacturing the product. The maximum exclusion shall not exceed Five Hundred Thousand Dollars ($500,000.00). If the exclusion exceeds the Oklahoma taxable income, the excess may be carried forward for a period not to exceed four (4) years ~~(4)~~. **"Depreciable property"** means machinery, fixtures, equipment, buildings, or substantial improvements placed in service in this State during the taxable year.

(d) Requirements for qualification, certification and records required are as follows:

(1) A copy of the Fee Agreement between the inventor and the Oklahoma Center for the Advancement of Science and Technology (OCAST) must be provided to the Commission by the inventor or owner of the rights.

(2) A certification by the Division Director or designee of the Technology Development Programs Division of OCAST must be provided to the Commission, specifying the certification date, product/process or service, inventor, manufacturer, and contract numbers.

(3) A certification by the Division Director or designee of the Technology Development Programs of OCAST must be provided to the Commission, specifying the date of first commercial product sale.

(4) The inventor must furnish annually a schedule of all income inuring to the benefit of the inventor attributable to the certified product/process or service.

(5) Manufacturers in this State must furnish annually a copy of the contract with the inventor and a schedule of all payments, disbursements, salaries, wages, benefits, and anything else of value paid, distributed or transferred to the inventor.

(6) Manufacturers in this State must furnish a schedule of receipts and expenses, including any overhead properly attributable to the product/process or service.

(7) Commission auditors will be available to assist in determining if the terms of the contracts are being fulfilled if requested by OCAST. [**See:** 74 O.S. Sections 5064.1 et seq.]

PART 7. CREDITS AGAINST TAX

710:50-15-72. Credit for taxes paid other states

(a) OTC Form 511 ~~Schedule "E"~~ TX shall be used by residents and part-year residents who work in other states after becoming an Oklahoma resident and who are required to file Income Tax Returns with those states.

(b) This credit is available only on taxes paid in another state for wages and compensation for personal service. For this credit, retirement income and the proceeds from gambling are considered compensation for personal services.

(c) A copy of the Income Tax Return for each state in which a return was required to be filed must be filed and attached to a completed ~~Oklahoma Schedule "E"~~ OTC Form 511 TX. A separate ~~Schedule E~~ OTC Form 511 TX must be filed for each state. [**See:** 68 O.S. § 2357(B)(1)]

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.

(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on the investment or new employees when other qualifications are met. (See OTC Form 506).

(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [**See:** 68 O.S. §§ 2357.4, 2357.5]

(d) **"Processing" defined.** For purposes of this Section, **"processing"** means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.

(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exits between the employer manufacturing or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

(1) The right of the employer to control the details of the employees work;

(2) The employer furnishing the tools and the workplace;

(3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;

(4) The employer's right to discharge the employee; and

(5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used ~~in any taxable year~~ may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act) or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. [**See:** 68 O.S. §§ 3607, 3909]

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, **"motor vehicle"** includes forklifts and other similar self-propelled vehicles. **"Vehicle"** shall not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit.

(b) **Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S.Supp.1993, §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [**See:** 68 O.S. §§ 3607, 3909]

(c) **Electric vehicle property.** For vehicles placed in service after December 31, 1995, the credit shall also be available for qualified electric vehicle property. **"Qualified electric vehicle property"** means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. ~~, but only~~ For "qualified electric vehicle property" propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the ~~extent of the~~ portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go-carts", or other

motor vehicles which are manufactured principally for use off the streets and highways.

710:50-15-93. Credit for qualified Oklahoma space transportation vehicle providers

(a) **General provisions.** There shall be allowed a transferable credit against the tax imposed by 68 O.S. § 2355 or 36 O.S. §§ 624 or 628, for an investment in qualifying Space Transportation Vehicle Providers ("Providers"). In order to qualify for the credit Providers must meet certain eligibility requirements.

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

(1) **"Eligible investment"** means an unencumbered investment in a qualified Space Transportation Vehicle Provider made between January 1, 2001, and December 31, 2003.

(2) **"Equity capitalization"** means assets minus liabilities.

(3) **"Qualified space transportation vehicle provider"** means *any commercial provider organized under the laws of this state as a corporation or a limited liability company and engaged in designing, developing, producing, or operating commercial space transportation vehicles in this state*. [68 O.S. § 2357.42(C)(2)]

(4) **"Space transportation vehicles"** means *all types of vehicles or orbital or suborbital spacecraft, whether now in existence, developed in the future, or currently under design, development, construction, reconstruction, or reconditioning, constructed in this state and owned by a qualified space transportation vehicle provider, for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle or spacecraft not specifically designed or adapted for a payload*. [68 O.S. § 2357.42(C)(3)]

(5) **"Subsequently refunded or returned"**, *when used in reference to an eligible investment, means an actual redemption by the qualified space transportation vehicle provider of the securities or other indicia of ownership in the qualified space transportation vehicle provider received by the investor from the investor's investment.* [68 O.S. § 2357.42(C)(4)]

(c) **Eligibility requirements.** In order to qualify for the credit, application must be made to the Oklahoma Tax Commission, along with supporting documentation outlining certain minimum qualifications. The Tax Commission must certify that the applicant meets the following minimum qualifications:

(1) The applicant must be headquartered in this state or ultimately controlled by an entity headquartered in this state;

(2) The applicant must have been pre-approved by the Oklahoma Department of Commerce to receive incentive payments under the Quality Jobs Program Act or the Former Military Facility Development Act as a basic industry. Determination of eligibility under the Quality Jobs Programs Act or the Former Military Facility Development Act is under the discretion of the Oklahoma Department of Commerce.

(3) The applicant must have at least Ten Million Dollars ($10,000.000) in equity capitalization.

(4) The applicant must have received a commitment from a local governmental entity in the aggregate amount of Fifteen Million Dollars ($15,000,000) under the terms outlined in 68 O.S. Section 2357.42(C)(1)(b)(3).

(d) **Certification process.** Upon a written request, the Tax Commission will certify, in writing, to an authorized agent or representative of a qualified provider that the eligibility requirements for the credit set out in Subsection (c) have been met. The Tax Commission, through its General Counsel, will review the documents submitted, which will vary on a case-by-case basis. Determination of the adequacy and sufficiency of all documentation provided to determine eligibility for the credit pursuant to this Section is at the discretion of the Office of the General Counsel.

(e) **Maximum credit.** The maximum amount of investment eligible for the credit is Thirty Million Dollars ($30,000,000). If more than one applicant is certified as eligible by the Tax Commission:

(1) Investors in the first approved qualified space transportation vehicle provider will be eligible for a credit based on the lesser of:

(A) Their eligible investment; or,

(B) Thirty Million Dollars ($30,000,000).

(2) Investors in the second and subsequent qualified space transportation vehicle providers approved will be eligible for the credit based on the lessor of:

(A) Their eligible investment; or,

(B) The difference between the total investments in previously approved Providers and Thirty Million Dollars ($30,000,000).

(f) **Amount of credit.** The credit will be available as a percentage of the eligible investment, as follows:

(1) In the first tax year after the eligible investment, ten and six-tenths of one percent (10.6 percent) of the eligible investment may be claimed and is redeemable.

(2) In the second tax year after the eligible investment, eleven and two-hundred-thirty-six one thousandths of one percent (11.236 percent) of the eligible investment may be claimed and is redeemable.

(3) In the third tax year after the eligible investment, eleven and ninety-one hundredths of one percent (11.91 percent) of the eligible investment may be claimed and is redeemable.

(4) In the fourth tax year after the eligible investment, twelve and six-hundred-twenty-four- one-thousandths of one percent (12.624 percent) of the eligible investment may be claimed and is redeemable.

(5) In the fifth tax year after the eligible investment, thirteen and three-hundred-eighty-one- one-thousandths of one percent (13.381 percent) of the eligible investment may be claimed and is redeemable.

(g) **Record retention.** Any qualified space transportation vehicle provider must maintain a record of the investments made in the qualifying space transportation vehicles between January 1, 2001, and December 31, 2003. Qualifying space transportation vehicle providers must submit to the Tax Commission the amount of total investment for this period not later than January 31, 2003. Qualifying space transportation vehicle providers must notify the Tax Commission in writing of any amounts refunded or returned to an investor. Such notification must include the amounts refunded, the recipient and the recipient's tax identification number.

(h) **Transferability.** The credit provided shall be freely transferable and failure to allow the tax credits or the recapture of the tax credits shall not affect the validity of the tax credits in the hands of a transferee of the initial investor or subsequent transferees.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax

will not be allowed on the amount of Oklahoma taxable income that is covered by the credit. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [**See:** 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U. S. obligations.** Interest income from U.S. obligations are excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, ~~2004,~~ 2006, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [**See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent

or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-1. Partnership return

(a) **General provisions.** The Oklahoma distributive share of partnership income shall be the same portion of that reported for Federal Income Tax purposes. OTC Form 514 is used to report income. [**See:** 68 O.S. §§ 2358, 2362, 2363]

(1) **Oklahoma source income or loss.** When a partnership has source income or loss then that partnership must file a return showing the income or loss applicable to Oklahoma. The partnership shall also furnish a detailed schedule stating the amount of income distributable to each partner from Oklahoma sources.

(2) **Duty to file and report; determination of shares.** All resident partners must file individual income tax returns with Oklahoma if they are required to file individual Federal Income Tax Returns. All nonresident partners that have gross income of $1,000.00 must file an Oklahoma Return even though their net may actually be a loss. The partnership income for Oklahoma may be apportioned using the three factor formula unless its operations are from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property; then the income or loss shall be allocated in accordance with the situs of such property. The partner's distributive share of Oklahoma income or loss shall be the same proportion to the partner's distributive share of income or loss shown on the Federal Partnership Return.

(3) **No credit for income taxes paid other jurisdictions.** Neither residents nor nonresidents are allowed a credit for income taxes paid to other jurisdictions on partnership income.

(4) **Composite returns.** Oklahoma will allow partnerships to file composite returns for nonresident partners ~~when the following requirements are adhered to:~~ as described in this paragraph. Any nonresident partner that is not an S-Corporation or a partnership, nor electing to be treated as such, may be included in the composite return so long as the partner has no income from an Oklahoma source other than the partnership.

~~(A) Compute each partner's share of Oklahoma income.~~

~~(B) Deduct a standard deduction of fifteen percent (15%), for individuals, of the Oklahoma income, limited to $2,000.00, with no minimum amount or proration thereof. When the filing status for federal purposes is known, the maximum allowable shall not exceed $1,000.00 for any partner using married, filing separate, status. This deduction is only available to individuals.~~

~~(C) No allowance for personal exemption, Federal Income Tax, or deductions for dependents is permitted.~~

~~(D) Reporting and payment is to be made by the partnership on a fiduciary return (OTC Form 513).~~

~~(E) The tax is to be computed using the proper schedule for filing status, i.e. single, married, corporate, etc. If the status is not known, rates on the fiduciary return must be used.~~

~~(F) Any partners having Oklahoma income from other sources should file their individual returns. Partners may elect to file their own returns with the State of Oklahoma.~~

~~(G) A schedule must be provided, showing the name, social security number, Oklahoma income, deduction, and taxable income of each partner.~~

~~(H) The listing of nonresident individual partners may be provided on magnetic media, electronic, or other format which meets Tax Commission guidelines.~~

(A) **Individual partners and trust partners.** Compute each nonresident individual or trust partner's share of Oklahoma distributive income and income tax as follows:

(i) Calculate the Oklahoma distributive share of each nonresident individual and trust partner's income as if all of the partnership income was earned in Oklahoma.

(ii) Deduct a standard deduction for each individual partner, to determine the taxable income for the partner. The standard deduction is fifteen percent (15%) of the partner's share of Oklahoma distributive share of income determined in (i) of this subparagraph, not to exceed Two Thousand Dollars ($2,000.00). When a partner's federal income tax filing status is known, the maximum standard deduction cannot exceed One Thousand Dollars ($1,000.00) for any partner using "married, filing separately" filing status.

(I) In determining taxable income of partners filing a composite return, no deductions for personal exemptions, federal income tax paid, or dependents is permitted.

(II) For trust partners, taxable income is each partner's share of the Oklahoma distributive income in (i) of this subparagraph.

(iii) Using the Oklahoma individual income tax rates and the partner's federal income tax filing status, compute a **base tax** for each partner, based on the taxable income from (ii) of this subparagraph. If the partner's federal filing status is not known, use the individual tax rates for single taxpayers.

(iv) Calculate the **actual** Oklahoma distributive share of income of each partner.

(v) The **base tax** determined from (iii) of this subparagraph is to be prorated to determine the Oklahoma income tax of each partner. Divide the each partners **actual** Oklahoma distributive share as determined in (iv) of this subparagraph, by each partner's distributive income from all sources as determined by (i) of this subparagraph. Multiply this percentage times the **base tax** to calculate the actual Oklahoma income tax of each partner. Nothing in this section shall be construed to allow for more than one hundred percent (100%) of a nonresident partner's income to be taxed.

(B) **Corporate partners.** Compute each nonresident corporate partner's share of Oklahoma distributive income, using the partner's share of Oklahoma distributive income and the Oklahoma corporate income tax rates, to compute each partner's Oklahoma tax.

(C) **Form.** The income and tax of all partners included in the composite return must be combined on Oklahoma Tax Commission Form 514.

(D) **Schedule to be provided.** Oklahoma Tax Commission Form 514 PT must be enclosed with the Form 514 to show the computation of each nonresident partner's Oklahoma distributive income and Oklahoma tax. The schedule of nonresident partner's information may be provided on magnetic media, electronically, or in another format which meets Tax Commission guidelines.

(b) **When electronic filing is required.** For tax years beginning on or after December 31, 2004, partnerships with more than one hundred (100) partners are required to electronically file their Schedule K-1's with the Oklahoma Tax Commission. The format for filing electronically will be in either a spreadsheet format, such as Lotus 1-2-3 or Excel); or a database format, such as DBF or Access. A partnership is deemed to have "**more than one hundred (100) partners**" if, over the course of the partnership's tax year, the partnership had more than one hundred (100) partners at any time.

(c) **When electronic filing is not permitted.** Partnerships filing the following types of returns are not required to file Schedule K-1's electronically:

(1) A non-calendar year return;

(2) Returns with a non-U.S. address; or,

(3) Amended returns.

(d) **Waiver of electronic filing requirement for hardship.** Partnerships may also obtain a waiver from the electronic filing requirement if the partnership demonstrates that a hardship would result if it were required to file electronically.

[OAR Docket #04-927; filed 5-18-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #04-928]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

Subchapter 1. General Provisions

710:65-1-2. Definitions [AMENDED]

710:65-1-3. Computation of sales and use taxes to be collected and remitted [NEW]

710:65-1-6. "Tax-included" prices [AMENDED]

710:65-1-7. Consumer/user defined; specific applications [AMENDED]

710:65-1-8. Established place of business; maintaining a place of business [AMENDED]

710:65-1-9. Gross receipts ~~and~~ , gross proceeds, and sales price [AMENDED]

710:65-1-11. Rentals and leases of tangible personal property [AMENDED]

Subchapter 3. Reports and Returns; Payments and Penalties; Records

Part 1. General Provisions

710:65-3-1. Reports, payments, and penalties [AMENDED]

710:65-3-4. Contents of monthly sales report [AMENDED]

710:65-3-9. Final sales tax return when business is discontinued [AMENDED]

710:65-3-10. Election to participate in electronic funds transfer and electronic data interchange programs [AMENDED]

Part 3. Records and Recordkeeping

710:65-3-34. Administration of electronically-claimed exemptions [NEW]

Subchapter 7. Duties and Liabilities

710:65-7-13. Vendors' responsibility - sales to contractors [AMENDED]

710:65-7-16. Vendors' reliance on erroneous information [NEW]

Subchapter 9. Permits
710:65-9-1. Obtaining a sales tax permit to do business [AMENDED]
710:65-9-8. Special event permits and reporting [AMENDED]
710:65-9-9. Administration of the Streamlined Sales and Use Tax Agreement online database [AMENDED]
Subchapter 11. Credits and Refunds
710:65-11-2. Sales tax ~~credit~~ deduction for bad debt [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 9. Computers; Data Processing; Telecommunications
710:65-13-51. Exemption for sales of computers, data processing, telephonic and certain related equipment and services to a qualified aircraft maintenance or manufacturing facility [AMENDED]
710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development [AMENDED]
710:65-13-54. Exemption for sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing [AMENDED]
Part 15. Hazardous Wastes
710:65-13-80. Exemption for purchases to reduce hazardous waste [AMENDED]
Part 23. Gas and Electricity
710:65-13-120. Sales tax exemption for residential use [AMENDED]
Part 29. Manufacturing
710:65-13-150.1. Manufacturing exemption; taxable and exempt transactions [AMENDED]
710:65-13-153. Exemption for "qualified manufacturers" [AMENDED]
710:65-13-154. Limitation on credits [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-169. Definitions [AMENDED]
710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally [AMENDED]
710:65-13-171. Sales of prosthetic devices to individuals [AMENDED]
710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210. Exemption for public and private schools and institutions of higher education [AMENDED]
Subchapter 17. City and County Sales Taxes [REVOKED]
710:65-17-1. Administration of city and county sales taxes [REVOKED]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act [NEW]
710:65-18-1. Purpose [NEW]
710:65-18-2. Definitions [NEW]
710:65-18-3. Sourcing of retail sales [NEW]
710:65-18-4. Sourcing for lease or rental of tangible personal property [NEW]
710:65-18-5. Sourcing of telecommunications services [NEW]
710:65-18-6. Sourcing of sales involving direct mail [NEW]
710:65-18-7. [RESERVED]
710:65-18-8. [RESERVED]
710:65-18-9. Effective date for taxable services which span a rate change [NEW]
710:65-18-10. Effective dates of sales and use tax rate changes and of municipal boundary changes [NEW]
Subchapter 19. Specific Applications and Examples
Part 1. "A"
710:65-19-4. Alarm systems [AMENDED]
Part 5. "C"
710:65-19-52. Computers and related systems; "hardware" and "software" defined [AMENDED]
710:65-19-56. Contractors and subcontractors [AMENDED]
Part 7. "D"
710:65-19-70. Delivery~~, shipping, and handling~~ charges [AMENDED]
710:65-19-72. Deposits, core charges and trade-ins [AMENDED]
710:65-19-74. Discounts [AMENDED]
Part 17. "I"
710:65-19-156. Internet-related services and transactions [AMENDED]
Part 29. "O"
710:65-19-241. Fractionation tanks (frac tanks) [NEW]
Part 31. "P"
710:65-19-258. Registered pharmacists and druggists [AMENDED]
Part 35. "R"
710:65-19-294. Research and development [AMENDED]
Part 39. "T"
710:65-19-330. Telecommunications services [AMENDED]
Part 41. "U"
710:65-19-341. Natural or artificial gas and electric utility services [AMENDED]
Subchapter 21. Use tax
710:65-21-2. Definitions [AMENDED]
710:65-21-7. Reports, payments, and penalties [AMENDED]
710:65-21-20. Use tax exemptions [AMENDED]

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n/a

ANALYSIS:
Amendments to the existing rules have been made to conform to the provisions of L.2003, c. 472, §§ 13-18 (HB 1356), which made numerous changes to the sales tax code, including authorizing the Tax Commission to require persons who file reports or returns to file electronically; reduction of the "vendor discount", i.e. that percentage of tax which is retained by sales tax vendors for timely filing, from 2.25 percent to 1.25 percent, for vendors who do not file electronically, except for those vendors who are unable to do so; modification of the definition of manufacturing and manufacturing operation; exemption from sales tax sales for the Broken Bow Economic Development Authority; addition of a new permit requirement for promoters or organizers of special events for a fee of $50, and definitions pertaining to special events.

Amendments to the existing rules have been made to conform them to the provisions of L.2003, c. 376, §§ 2-3 (HB 1593), added the requirement that persons owing an average of $2,500 or more per month in sales and/or use taxes remit electronically, twice monthly and providing for a different schedule for the sale of lumber and building materials.

Amendments to the existing rules have been made to conform to the provisions of L.2003, c. 431, § 1 (HB 1712), which enacted an exemption for the Broken Bow Economic Development Authority or its agents.

Finally, the majority of the amendments to the existing rules have been made to adapt them to the provisions of L.2003, c. 413, §§ 1-29 (SB 708), which enacted the "Streamlined Sales and Use Tax Administration Act", and authorized entering into the "Streamlined Sales and Use Tax Agreement" with sister states. Multiple amendments have been made to the existing rules to

conform them to the statutory changes which were made in keeping with the Agreement, including adding definitions, clarifying application of tax rates and exemptions, modifying deadlines and procedures, requiring registration of certain vendors, modifying procedures for remittance and apportionment of local sales taxes, modifying procedures for changing state and local tax rates, providing for sourcing of certain sales, providing amnesty for certain tax remitters, and specifying certain duties of the Tax Commission.

Other amendments remedy certain ambiguous language, update or correct citations, and give additional applications or examples.

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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 25, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-2. Definitions

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

"Business" means any activity with the potential to generate a profit even if the business actually operates at a loss. This category also includes non-profit, religious and other organizations and persons who are otherwise exempt when they are conducting activities for a profit in competition with other businesses.

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

"Consideration" means and includes, but is not limited to:

(A) The price arrived at between purchaser and vendor.

(B) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(C) No deduction from gross receipts is permitted for services performed or work done on behalf of the vendor prior to transfer of such tangible personal property. [**See:** 68 O.S. ~~§1352(L)~~ § 1352(11)]

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. **"Delivery charges"** does not include charges for the delivery of **"direct mail"** if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

"Gross receipts", ***"gross proceeds"***, *or* ***"sales price"*** *means the total amount of consideration including cash, credit, property, and services, for which personal property or services are sold, leased, or rented; valued in money, whether received in money or otherwise, without any deduction for the following:*

(A) *The seller's cost of the property sold;*

(B) *The cost of materials used, labor, or service cost;*

(C) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*

(D) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

(E) *Delivery charges and installation charges, unless separately stated on the invoice, billing, or similar document given to the purchaser; or,*

(F) *The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.*

"Gross receipts", ***"gross proceeds"***, *or* ***"sales price"*** *shall not include:*

(A) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*

(B) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or*

(C) *Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.* [68 O.S.Supp.2003, § 1352(11)]

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) **"Lease or rental"** does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of One Hundred Dollars or one (1) percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this unit, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) **"Lease or rental"** does include agreements covering motor vehicles and trailers where the

amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined by 26 U.S.C. § 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provisions of federal, state, or local law.

"Sale" means, for the purpose of this Chapter, transfer of title or possession of tangible personal property for consideration. All consideration received for the sale is included in gross receipts subject to tax. **"Sale"** does not include sale and leaseback. [**See:** 710:65-1-11(b)]

"Sales tax" means all applicable state, city and county sales tax.

"Sales value" means:

(A) In the case of a manufacturer, the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing; or

(B) In the case of a person holding a mixed beverage tax permit or other permit issued in accordance with 37 O.S. § 577, the total retail sales price for sales of alcoholic beverages only, calculated pursuant to *OAC* 710:20-5-4; or

(C) In the case of sales of prepared food, the sales value of a free, reduced price, or complimentary meal is presumed to be the greater of the consideration received for the meal, if any, or the cost paid by the vendor of the food for the food items included in the free, reduced price, or complimentary meal; or

(D) In the case where an inventory of goods, originally purchased exempt for resale, is being held for rental or leasing purposes, the regular rental charges which would be charged to the vendor's best customer, if the goods are to be returned to inventory. Where the goods are not to be returned to inventory held for rental or leasing purposes, the lesser of the original purchase price of the goods, or the current market price will be presumed to be the sales value; or

(E) Otherwise, **"sales value"** means the larger of either the vendor's cost at the time the exempt purchase of goods was made, or the price at which it would be sold to the vendor's best customer in the ordinary course of business.

"Tangible personal property" means ~~all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged.~~ *personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. For purposes of the Oklahoma Sales Tax Code, "**tangible personal property**" includes electricity, water, gas, steam and prewritten computer software.* [68 O.S.Supp.2003, § 1352(23)] The term does not include real property, such as land and buildings, tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, or tangible personal property which is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property. **"Tangible personal property"** does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit, or uncancelled United States postage or revenue stamps sold for postage or revenue purposes. [**See:** 68 O.S. § 1352; 68 O.S. § 1354; See Also: 60 O.S. §§ 7,8]

"Tax" means all state, applicable city and applicable county tax.

"Use tax" means all applicable state and city use tax.

"User" or **"consumer"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

710:65-1-3. Computation of sales and use taxes to be collected and remitted

(a) **Determination of tax rate.** To determine the amount of tax to be collected and remitted, the gross receipts or gross proceeds of each sale is to be multiplied by the applicable percentage. The *applicable percentage shall equal the combination of the state and any applicable municipal and county sales tax rates.*

(b) **Computation of tax.** *In computing the tax to be collected or remitted as the result of any transaction, the tax amount must be carried to the third decimal place when the tax amount is expressed in dollars. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. The vendor or direct payment permit holder may elect to compute the tax due on transactions on an item or invoice basis.* [**See:** 68 O.S.Supp.2003, § 1362(B)]

710:65-1-6. "Tax-included" prices

(a) Certain vendors, in an effort to arrive at a sum for the tangible personal property being sold which may be conveniently handled as cash, have calculated the price of the property and collected a **"tax-included"** amount. In some cases the vendor has made signs, price lists, etc. on the premises advising that the prices include tax; in others no apparent mention of taxes has been made to the public.

(b) Although certainly desirable from an accounting and auditing standpoint, neither the statutes nor Commission rules require a vendor to state the sale price separately from the applicable tax. 68 O.S. 1361(B) provides that sales tax shall be added to the sales price, *"and when added such tax shall constitute a part of such price."* Under present law, taxes collected as part of a tax-included price, if so charged and collected, may be "backed out" of the total receipts to arrive at the amount of gross receipts or gross proceeds subject to tax. [68 O.S. §1361(B)]

(c) Whether the vendor added and collected the tax or whether the vendor truly failed to collect any tax at all, is always a fact to be determined. Such factual determination must be made in light of all circumstances, documents, records and information available. No single factor will be relied on to the exclusion of other evidence. As always in tax matters, the burden of proving that the tax was added and collected is on the vendor. The vendor must keep sufficient documentary evidence, i.e. books, records, price lists, signs, to sustain this burden. ~~[**See:** 68 O.S. §1361(B),(C)]~~

710:65-1-7. Consumer/user defined; specific applications

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, except those operated by the Federal Government, the State, or a political subdivision thereof, including those owned or operated by churches, fraternities, cooperatives, or any other organization.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its **"sales value"**, as defined in *OAC* 710:65-1-2. The business withdrawing tangible personal property from inventory should include the **"sales value"** of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [**See:** 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, or the Oklahoma Department of Veterans Affairs, may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [**See:** 68 O.S. § 1352]

710:65-1-8. Established place of business; maintaining a place of business

(a) **"Established place of business" defined.**

(1) An **"established place of business"** means a location at which:

(A) Any person regularly engages in, conducts, or operates a business:

(i) in a continuous manner,

(ii) for any length of time,

(iii) that is open to the public during hours customary for the type of business; and

(B) Merchandise for resale is maintained, and not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent sales tax liability.

(2) A location used in conducting a hobby is not considered an **"established place of business"** even though occasional taxable sales are made from the location; i.e., a garage set up as a wood working shop. The occasional sales are taxable and are to be reported by the seller on a sales tax report as casual sales.

(b) **"Maintaining a place of business" defined. "Maintaining a place of business in this state"** means and includes the following:

(1) Having or maintaining in this state, directly or through subsidiary:

(A) an office (to include a home office),

(B) a distribution house,

(C) a sales house (such as a shop or store),

(D) a warehouse (could be in a home's garage), or

(E) any other physical place of business (a hot dog stand on wheels, a barbecue wagon parked on the roadside, or an ice cream truck travelling a route); or

(2) Having agents operating in this state such as salesmen, brokers, or wholesale buyers; or

(3) Whether the place of business, or agent is within this state temporarily (traveling salesman, buyers for out-of-state firms) or permanently (shop or store in a mall); or

(4) Whether the person is authorized to do business within this state. Example: A broker, who is self-employed, operates his business from an office he has established in a spare bedroom of his home in this state. He does not have an "established place of business" but he does "maintain a place of business in this state." [**See:** 68 O.S. ~~§§1352(G), 1401~~ §§ 1352(9),(12); 1401(10)]

710:65-1-9. Gross receipts ~~and~~ , gross proceeds, and sales price

(a) **General provisions.** The gross proceeds, gross receipts, or sales price reported by the taxpayer must include the total receipts from all sources, including cash from sales, charge sales, credits, services, and property other than cash accepted as consideration. Sales tax reports are to be filed on an accrual accounting basis. Sales tax should be reported and remitted for the month that the sale is made regardless of whether payment is received, charged, deferred, or otherwise to be made in the future, and regardless of the time or manner of payment.

(b) **Scope of "gross receipts", "gross proceeds", or "sales price".** *"Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:*

(1) *The seller's cost of the property sold;*

(2) *The cost of materials used, labor, or service cost;*

(3) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*

(4) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

(5) *Delivery charges and installation charges, unless separately-stated on the invoice, billing, or similar document given to the purchaser; and,*

(6) *The value of exempt personal property given to the purchaser, where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.*

(c) **Excluded items and transactions. "Gross receipts", "gross proceeds", or "sales price"** *shall not include:*

(1) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*

(2) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately-stated on the invoice, bill of sale, or similar document given to the purchaser; and,*

(3) *Any taxes legally imposed directly on the consumer that are separately-stated on the invoice, bill of sale, or similar document given to the purchaser.* [68 O.S.Supp.2003, § 1352(11)]

(~~c~~d) **Examples and illustrations.** Examples and illustrations of common situations and transactions are set out in this subsection, with information as to how gross receipts, gross proceeds, or sales price should be determined in each instance:

(1) **Trade-ins.** The value of trade-ins accepted by a taxpayer in lieu of money or other consideration may not be deducted from the gross proceeds~~, except in the case of certain parts for motor vehicles as outlined in this Chapter~~.

(2) **Sales value.** The gross proceeds must also include the sales value, as defined in *OAC* 710:65-1-2, of any goods, wares, merchandise or property withdrawn or used from the established place of business or from the stock in trade.

(3) **Charge accounts.** Sales tax applies to credit sales at the time the sale is made, regardless of the time or manner in which payment is to be made. Sales tax is due upon transfer of title or possession regardless of method or time of payment.

(4) **Conditional sales.** The tax applies to conditional sales of tangible personal property and taxable services. The gross proceeds reported by the taxpayer must include

all conditional sales made during the month for which the report is filed.

(5) **Coupons.** The procedure regarding the use of coupons used to purchase tangible personal property will be as follows:

(A) If the coupon is redeemable by a manufacturer or another third party, the original price of the item, before the allowance offered by the coupon, is subject to tax.

(B) If the coupon offering a reduced price is issued by the retailer, it is a method of promotion and the reduced price is subject to tax.

(C) The purchase of the right to receive specific manufacturer's coupons, which coupons can then be redeemed at a retailer when purchasing the item(s) described in the coupon, is not subject to sales tax.

~~(6) **Early payment discounts.** Discounts which are granted by a vendor, for the purpose of encouraging prompt payment on an account, known as "early payment discounts", are not deductible from gross receipts in computing sales tax.~~

~~(7) **Trade discounts.** Discounts used to reduce the selling price of tangible personal property and/or taxable services at the time of the sale, are not taxable. However, discounts are taxable unless the discount is agreed upon at the time of contracting. [**See:** 68 O.S. § 1352(F)]~~

710:65-1-11. Rentals and leases of tangible personal property

(a) **Rental or lease of tangible personal property taxable.** The gross receipts or gross proceeds derived from the rental or lease of tangible personal property are subject to sales tax.

(b) **"Rental" or "lease" defined.** ~~**"Rental"** or **"lease"** means the agreement by the owner to give exclusive use of property to another for a consideration and for any period of time under any one agreement. **"Rental"** or **"lease"** does not include sale and leaseback, the sale of an asset to a vendee who immediately leases the asset back to the vendor.~~ **"Lease"** or **"rental"**, as used in this Section, shall have the same meaning as set out in 710:65-1-2.

(c) **Computation of the tax.** The tax shall be computed on the gross amount without any allowance for service, laundering, cleaning, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee. However, if the rental or lease charge is based on the retail value of the property at the time of entering the lease agreement and the life expectancy of the property, and the rental charge is separately stated from the service in the bill or invoice delivered to the lessee, tax shall be due only on the rental amount.

(d) **Taxability of vendor payments for insurance and property taxes.** The tax must be computed on the gross amounts of any charges billed to the purchaser to reimburse the vendor for insurance premiums or for property taxes paid.

(e) **Payment of tax by a contractor or lessor on equipment subsequently leased or rented.** Payment of a sales or use tax by a contractor or other lessor on equipment purchased for his/her own use and so used does not exempt subsequent rentals or leasing of the equipment from the sales tax.

(f) **Furnishing equipment with an operator.** The furnishing for a charge of equipment with an operator shall be considered a service and not subject to sales tax. Persons purchasing equipment for the purpose of furnishing said equipment with an operator must pay sales or use tax at the time the equipment is purchased.

(g) **Purchases by a vendor for renting or leasing.** Purchases by a vendor of tangible personal property for purposes of renting or leasing same are exempt from sales tax. If such equipment purchased exempt from taxation is rented with an operator or the vendor uses such equipment to perform a service, but the equipment remains in the rental inventory, the vendor should pay sales tax on the **"sales value"**, pursuant to *OAC* 710:65-1-2.

(h) **Purchases of repair parts.** Purchases of repair parts made by a vendor who is engaged in renting or leasing tangible personal property, where the parts are to be incorporated into the tangible personal property subsequently rented or leased, are considered purchases for resale and may be purchased exempt from sales tax. Items such as oil, filters, and the like, which are purchased by the lessor, and are incorporated into the property transferred to the lessee, whether as part of the rental or lease agreement, or as separately billed items, are also included in the exemption described in this subsection.

(i) **Time of incidence of tax on leases.**

(1) A lease of tangible personal property is a series of transactions in time units defined by the agreement of the parties. Gross receipts generated therefrom are taxable at the rate in effect at the time the payment must be or is made. The initial obligation to pay becomes fixed upon the transfer of possession of the tangible personal property unless the agreement specifically sets forth another time. Subsequent obligations to pay become fixed either by the terms of the agreement, trade practices of the lessor, or practice in a course of dealing.

(2) A lease of tangible personal property normally imposes upon the lessee multiple obligations. Each of these obligations may be treated separately by the agreement. The incidence of taxation upon each payment under the agreement will be determined by the obligation for which payment is made and the time at which such obligation to pay in fact arose.

(3) Some obligations to pay arise by the execution of an agreement while other obligations arise by reason of the voluntary activities of the parties during the term of the agreement. For example, the lease of an automobile for a fixed period of months may give rise to an unconditional obligation to pay a minimum monthly amount and an additional obligation to pay for all miles driven in excess of a specified amount. [**See:** 68 O.S. §§1352, 1354]

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-1. Reports, payments, and penalties

(a) **Monthly reporting.** Every vendor, except as noted in (b) and (c) of this Section, shall file with the Commission on or before the ~~15th~~ 20th day of each month, a report on forms to be obtained from the Commission, covering sales for the previous calendar month.

(b) **Semiannual reporting.** Any vendor who is classified as a Group Three vendor or whose total tax liability for any one (1) month does not exceed Fifty Dollars ($50.00) must notify the Commission of its intent to file a Semiannual return and remittance in lieu of a monthly return and remittance, provided the vendor qualifies.

(1) **Qualification.** To qualify, the vendor must substantiate that the vendor is in business making sales incidental to that business, or is seasonal or transient, or makes sales through peddlers, solicitors or other salesmen without an established place of business. Otherwise, to qualify, filing records will have to substantiate the fact that the vendor's sales tax liability, for the past six (6) consecutive months immediately preceding the date of the application, has not exceeded Fifty Dollars ($50.00) in any one month.

(2) **Commencement of semiannual reporting.** It should be clearly understood that semiannual filing should not be commenced until the Commission notifies taxpayer, in writing, that Commission records have been amended to reflect semiannual filing status. Failure to follow this procedure may result in taxpayer receiving assessments, adjustments, etc. for the months of February through June and August through December.

(3) **Semiannual reporting due dates.** When the application for semiannual filing has been approved, returns shall be filed on or before the ~~15th~~ 20th day of January and July of each year for the preceding six (6) months' period.

(4) **Revocation of authorization.**

(A) Conditions that could cause revocation of the authorization to report semiannually are:

(i) In the event that the vendor filing the return on a semiannual basis becomes delinquent in either the filing of the return or the payment of the taxes due thereon, or

(ii) In the event that the liability of a vendor, who has been authorized to file returns and to make payments on a semiannual basis, exceeds Fifty Dollars ($50.00) in sales tax for any one month, or

(iii) In the event that the Commission determines that any semiannual filing or return or any payment of tax due thereon would unduly jeopardize the proper administration of the Oklahoma Sales Tax Law.

(B) If the Commission decides it is necessary to revoke the authorization to file semiannually in relation to any of the conditions in (A) of this paragraph, the taxpayer will be required to file returns and to pay the tax due on a monthly basis.

(c) **Semimonthly electronic reporting.** Persons owing an average of ~~Twenty-Five~~ Two Thousand Five Hundred Dollars ~~($25,000.00)~~ ($2,500.00) or more, per month, in total sales taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

(1) For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent ~~(90%)~~ of the liability for that fifteen-day period, or at least fifty (50) percent ~~(50%)~~ of the liability incurred during the immediate preceding calendar year for the same month; and

(2) ~~For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer;~~ *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer*; [**See:** 68 O.S. § 1365(D)(2)]

(d) **Electronic reporting; due dates; delinquency dates.** Persons required to remit the tax due pursuant to subsection (c) shall file a monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the sales occurred. Taxes not paid on or before the due dates specified in subsection (c) shall be delinquent from such dates.

(e) **Payment.** Remittances covering the sales tax liability reported shall accompany the sales tax return. Sales taxes will be considered delinquent and interest as provided by law will be charged, if payment is not received or postmarked by the date the return is due.

(f) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(g) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(h) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day

of delinquency from the date the tax becomes delinquent until it is paid. ~~Interest shall be computed on the total amount of tax due through the date immediately preceding the date of any overpayment.~~

(i) **Penalty for failure to file and remit.** Penalties - A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent ~~(10%)~~ of the amount of tax due.

(j) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after written demand has been served upon the taxpayer by the Commission ~~by registered or certified letter with return receipt requested~~, a penalty of twenty-five (25) percent ~~(25%)~~ may be assessed and collected.

(k) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent ~~(50%)~~ shall be added, collected, and paid.

(l) **Waiver of penalty; interest.** At the discretion of the Commission, the interest ~~and/or~~ or penalty ~~(penalties) assessed~~, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or ~~inability~~ that the taxpayer is unable to pay the interest or penalty ~~resulting from~~ due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [**See:** 68 O.S. §§ 217, 1365, 1405]

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The **"sales value"** of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

~~(A) When the sales tax report is timely filed, the vendor may deduct the applicable remuneration as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files his report after the date of delinquency or fails to make full payment on or before the due date.~~

~~(B) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).~~

~~(C) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.~~

~~(D) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.~~

~~(E) If the vendor has collected, in the aggregate, an amount of sales tax from it customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**~~

(5) The balance of tax due less any remuneration earned, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(6) Such other reasonable information as the Commission may require. [**See:** 68 O.S. §§1365, 1367]

(b) **Remuneration.** When the sales tax report is timely filed, the vendor may deduct the applicable remuneration as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files his report after the date of delinquency or fails to make full payment on or before the due date.

(1) If the vendor is participating in the Commission's electronic funds transfer and electronic data interchange program, the applicable remuneration is two and one-fourth ($2\frac{1}{4}$) percent of the tax due.

(2) For all other vendors, the remuneration allowed shall be one and one-fourth ($1\frac{1}{4}$) percent of the tax due.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Electronic Filing Coordinator, Oklahoma Tax Commission, P.O. Box 53374, Oklahoma City, OK, 73152-3374, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of two and one-fourth ($2\frac{1}{4}$) percent.

(1) To determine whether a vendor is "unable" file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access; and,

(C) The taxpayer is unable to use the Telefile system.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC* 710:1-5-21 through 710:1-5-48, the rules of practice and procedure before the Commission.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**

710:65-3-9. Final sales tax return when business is discontinued

Notwithstanding any other provision in this Chapter concerning the time within which a vendor must file a sales tax return, a vendor who is ceasing the business for which the sales tax permit was issued, must file a final return with the Commission within ~~fifteen (15)~~ twenty (20) days after discontinuing such business and submit his sales tax permit. [**See:** 68 O.S. §§ 1364, 1365]

710:65-3-10. Election to participate in electronic funds transfer and electronic data interchange programs

(a) In lieu of filing reports on the ~~fifteenth~~ twentieth day of each month, as required by 710:65-1-3, tax remitters or taxpayers who agree to participate in the Tax Commission's electronic funds transfer and electronic data interchange programs may file as provided in this subsection.

~~(1) Participating taxpayers shall remit one half of the estimated tax due from the preceding month on or before the fifth day of each month.~~

~~(2) On or before the twenty fifth day of each month, the taxpayer shall remit the balance due and file sales tax reports for the preceding month.~~

~~(b) If not paid on or before the twenty fifth day of the month, the tax shall be delinquent; provided, if the payment of one half of the estimated tax due is not made on or before the fifth day of the month, the entire amount of tax due for the preceding month shall be due and payable on the fifteenth day of the month and shall be delinquent if not paid on or before that date.~~

(1) *For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month;* and

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer.*

(b) Monthly sales tax reports filed pursuant to this Section shall be filed in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the sales occurred. Taxes not paid on or before the due dates specified in subsection (a) shall be delinquent from such dates.

PART 3. RECORDS AND RECORDKEEPING

710:65-3-34. Administration of electronically-claimed exemptions

(a) The vendor shall use the standard form adopted by the Commission for claiming an exemption electronically.

(b) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

(c) The vendor shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-13. Vendors' responsibility - sales to contractors

(a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.

(b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution

of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, or the Oklahoma Department of Veterans Affairs, may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [**See:** 68 O.S. 1356(38)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), or (b)(3) of this Section, the vendor must obtain:

(1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this subsection;

(2) Documentation indicating the contractual relationship between the contractor and the entity; and,

(3) Certification, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

710:65-7-16. Vendors' reliance on erroneous information

(a) Vendors shall be relieved of any liability for having charged and collected an incorrect amount of sales or use tax resulting from having relied on erroneous data provided by the Tax Commission as to tax rates, boundaries, or taxing jurisdiction assignments.

(b) For purposes of source telecommunications transactions, vendors shall not be relieved from liability for errors resulting from the reliance on the information provided pursuant to any "zip-code" database, if the Tax Commission has provided an address-based system which meets the requirements of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 119. [**See:** 68 O.S.Supp.2003, § 1354.32(5)]

SUBCHAPTER 9. PERMITS

710:65-9-1. Obtaining a sales tax permit to do business

(a) **General provisions.** Every person desiring to engage in a business within this state who will regularly and continuously make sales subject to taxation from an established place of business, will make taxable seasonal sales, or make taxable sales through peddlers, solicitors or other salesmen who have no established place of business in Oklahoma must secure from the Commission every three (3) years a written sales tax permit for a fee of Twenty Dollars ($20.00) prior to engaging in such business in this state. Each such person shall file with the Commission an application for a permit to engage in or transact business in this state, setting forth such information as the Commission may require. The application shall be signed by an owner or authorized representative of the business, and, in the case of a corporation, by an officer thereof.

(b) **Probationary permits.** Every vendor who is making an "initial application" for a sales tax permit and who otherwise qualifies based on a review of the information contained in the application for a sales tax permit and who does not currently hold a sales tax permit, or does not qualify to receive a non-probationary permit as those qualifications are described in this Section, will be issued a probationary permit as allowed by 68 O.S. §1364(B) and implemented by the procedures set out in this Section. When issued, the probationary permit will be effective for six (6) months and will be automatically renewed for an additional thirty (30) months, unless the applicant is given written notice of Tax Commission's refusal to renew the permit.

(c) **Issuance upon receipt of an "initial application. "** An **"initial application"** means the first application by an entity for a sales tax permit. Upon receipt of an initial application for a sales tax permit by a person required to obtain a sales tax permit, the Commission may issue a probationary sales tax permit, based on its records, after determining that the applicant appears to be in compliance with all of the tax laws of this state and has, or will be, required to secure a sales tax permit based on the information contained in the application which was submitted.

(d) **Post-issuance review of probationary permit-holder.** Once a probationary permit has been issued, the Commission may conduct a compliance visit at the taxpayers place of business or at the location of the books and records of the applicant in Oklahoma, as those locations are set out in the initial application.

(1) The compliance visit may be made by a telephone call to the offices of the applicant if the Collections Division Representative believes the information contained in the application may be verified in that manner or in the case where the applicant does not have an established place of business in Oklahoma or has an office located outside of Oklahoma.

(2) The purpose of the compliance visit is to determine if the applicant qualifies for a sales tax permit and will include:

(A) Establishing that the taxpayer is engaged in business as a group one or group three vendor, and that the applicant's business activities are not solely those of a consumer-user and therefore the probationary permit should be automatically renewed.

(B) Determining that the applicant has maintained compliance with all tax laws of the state and offering assistance to aid the applicant in complying with the tax laws of the state, where necessary.

(e) **Refusal of the Commission to renew the permit; notice, options available upon refusal.**

(1) If the compliance visit indicates that the applicant is ineligible; if the applicant fails to contact the Commission regarding a compliance visit, after attempted contact; or if other circumstances indicate that the applicant does not qualify, the Commission shall, prior to the end of the sixth month of the probationary period, give notice that the applicant's probationary permit will not be renewed.

(2) The notice shall be in writing and shall allow the applicant to request a hearing to show why the permit should be issued.

(3) Upon receipt of a request for a hearing, the Tax Commission shall set the matter for a hearing and provide notice of the date, time and place of the hearing to the applicant, along with a statement of the reason for refusal. At the hearing the applicant shall appear, state its qualifications for a permit, and provide proof of compliance with all state tax laws. The hearing will not be held sooner than 10 days from the date the notice is mailed.

(4) Proceedings related to the refusal to issue a sales tax permit shall be governed by *OAC* 710:1-5-100.

(f) **Compliance reviews not limited to probationary permits.** Nothing in this Section shall be construed so as prevent, or circumscribe in any fashion, the authority of the Oklahoma Tax Commission and its appointed agents and representatives, to examine and review the books and records of every taxpayer and business operation for compliance with the tax laws of this State. In all cases where a review results in a determination that the business may not be in compliance with the tax laws of this state, a hearing to revoke or suspend any license or permit may be held pursuant to *OAC* 710:1-5-100, and any other action available by law to the Tax Commission to remedy the deficiency may be pursued.

(g) **Sales / Manufacturers Permit.** Each applicant who is engaged in manufacturing at a manufacturing site located in Oklahoma will be issued a Sales/Manufacturers Permit.

(h) **Special event permits.** Promoters or organizers of special events must apply for a special events permit at least twenty (20) days prior to the event, provide forms to special event vendors for reporting sales tax collections, collect the sales taxes from the vendors, and remit them, along with daily sales tax reports to the Tax Commission within fifteen (15) days following the conclusion of the special event, pursuant to 710:65-9-8. [**See:** 68 O.S.Supp.2003, Section 1364.2]

710:65-9-8. Special event permits and reporting

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

(1) **"An event held on an irregular basis"**, for purposes of this Section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "an irregular basis" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.

(2) ***"Person"*** *means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.* [68 O.S. § 1352(12)]

(3) ***"Promoter"*** *or* ***"organizer"*** *means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes by special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(4) ***"Special event"*** *means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold.* ***"Special event"*** *shall include, but not be limited to gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits.* ***"Special event"*** *shall not include any county, district or state fair or public or private school-sponsored event.* [68 O.S.Supp.2003 § 1364.2]

(5) ***"Special event vendor"*** *means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes at a special event within this state and who is not permitted under Section 1364 of Title 68 of the Oklahoma Statutes.* [68 O.S.Supp.2003 § 1364.2]

(b) **Application for special event permit.** Every promoter or organizer of a special event shall file an application for a special event permit with the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City OK 73194, at least 20 days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one application, and a separate permit will be issued for each event. Each permit will include the dates of the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events.

(c) **Fee.** There is a fee of fifty dollars ($50.00) for each application filed, which must be remitted with the application.

(d) **Promoter or organizer to distribute vendors' reporting forms.** Special event promoters and organizations are required to provide Special Event Vendors Reporting Forms to the non-permitted vendors that will be selling tangible personal property and taxable services at the event.

(e) **Promoter or organizer to collect reports and tax from special event vendors.** Special event promoters are required to collect the Special Event Vendors Reporting Forms daily, along with the sales tax due from each special event vendor.

(f) **Promoter or organizer to report and remit sales tax.** Promoters or organizers of special events must file sales tax reports and remit taxes collected from special events, as follows:

(1) Promoters and organizers are required to file a sales tax report within fifteen days following the last day of a special event. The sales tax report is to be accompanied by the Special Event Vendors Reporting Forms;

(2) Payment of the total tax due is required at the time the sales tax report is filed. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed; and,

(3) The organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 O.S. § 1364. The list shall include the vendor's name, address, telephone number, and sales tax permit number.

(g) **Reporting and remitting tax when event lasts 30 days or longer.** When the special event will last thirty (30) days or longer, a sales tax report is required to be filed for each calendar month by the 15th day of the following month.

(h) **Remuneration.** Provided that the required sales tax reports are timely filed and the tax due remitted, promoters and organizers to whom special event permits have been issued may deduct the applicable remuneration allowed by 68 O.S. § 1367.1.

710:65-9-9. Administration of the Streamlined Sales and Use Tax Agreement online database

(a) As part of the Streamlined Sales and Use Tax Agreement, the Oklahoma Tax Commission will participate in an online sales and use tax registration system. By registering to participate in the online system, the vendor agrees to collect and remit sales and use taxes for all taxable Oklahoma sales.

(b) Registration with this central registration system and the collection of sales and use taxes in Oklahoma will not be used as factor in determining whether the vendor has nexus with Oklahoma.

(c) A vendor registering with this System who has no legal requirement to register in Oklahoma, will not be required to pay registration fees or other charges provided in Section 1364 of Title 68. A vendor who has a requirement to register in Oklahoma prior to utilizing the online System must provide additional information to complete the registration process and pay the registration fee.

(d) Oklahoma's withdrawal or revocation from the Agreement will not relieve a vendor of its responsibility to remit taxes previously or subsequently collected to behalf of Oklahoma.

SUBCHAPTER 11. CREDITS AND REFUNDS

710:65-11-2. Sales tax ~~credit~~ deduction for bad debt

(a) ~~The vendor may take a credit against the current month remittances for sales tax previously paid which have been determined to be worthless and have been or will be actually charged off on the vendor's books for the month and will be or have been written off or could be eligible to be claimed if taxpayer kept accounts on a cash basis or could be eligible to be claimed if taxpayer kept records on the accrual basis on the current year's Income Tax Return, or for the unpaid portion of an account at the time of a repossession.~~ A vendor may take a deduction for bad debts on the return for the period during which the bad debt is written off as uncollectible in the vendor's books and records and is eligible to be deducted for Federal Income Tax purposes, if the vendor kept accounts on a cash basis, or could be eligible to be claimed if the vendor kept accounts on an accrual basis. For purposes of this Section a vendor who is not required to file Federal Income Tax Returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the vendor's books and records

and would be eligible for a bad debt deduction if the vendor were required to file a Federal Income Tax Return.

(b) The fact that a ~~credit~~ deduction has been taken against the current month must be so indicated on the face of the sales tax report. If the accounts are thereafter collected, the amount received shall be included in the gross receipts for the period in which the account is collected.

(c) The "bad debt" deduction is calculated based upon the federal definition provided in 26 U.S.C. § 166 and the amount should be adjusted to exclude:

(1) *Financing charges or interest;*

(2) *Sales or use taxes charged on the purchase price;*

(3) *Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; and,*

(4) *Expenses incurred in attempting to collect any debt and repossessed property.* [68 O.S.Supp.2003, § 1366(B)]

(~~c~~d) The burden of establishing the right to, and the validity of a bad debt ~~credit~~ deduction is on the vendor. In order to verify each ~~credit~~ deduction taken for a bad debt, the vendor must retain and make available:

(1) The name of the purchaser/debtor;

(2) The date of the sale or sales giving rise to the bad debt;

(3) The price of the property and the amount of sales tax charged thereon;

(4) The amount of interest, finance and service charges charged to the debt or account;

(5) Whether the property was retained by the vendor or repossessed;

(6) Any amounts charged to the debt or account representing costs of collection;

(7) The dates and amounts of any payments made on the debtor's account;

(8) Any portion of the debt or account which represents a charge that was not subjected to the tax in the original transaction; and

(9) Records documenting that the account has been or will be written off or could be eligible to be claimed if taxpayer kept accounts on a cash basis or could be eligible to be claimed if taxpayer kept records on the accrual basis on the Federal Income Tax Return for the year, or that the item was repossessed.

(~~d~~e) The information in ~~(c) of this Section~~ subsection (d) may be requested by the Commission at any time.

(~~e~~f) The ~~credit~~ deduction for bad debts is limited to the ~~tax~~ amount shown on the invoice that is being or will be charged off as a bad debt ~~and must be adjusted to reflect any remuneration previously taken on a sales tax report~~. This tax ~~credit~~ deduction is allowable only to the person who remitted and reported the tax to the Commission. Subsequent recoveries of bad debts that have been taken as a ~~credit~~ deduction are to be reported in the month of the recovery. [**See:** 68 O.S. §1366]

(g) *When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the statute of limitations for refund claims provided in Section 227 of this title; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.*

(h) *Where filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.*

(i) *For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.*

(j) *In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the states which are members of the Streamlined Sales and Use Tax Agreement, the allocation will be permitted.* [68 O.S.Supp.2003, § 1366]

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

710:65-13-51. Exemption for sales of computers, data processing, telephonic and certain related equipment and services to a qualified aircraft maintenance or manufacturing facility

(a) Effective January, 1991, sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility are exempt from sales and use tax.

(1) For purposes of this exemption, **"qualified aircraft maintenance or manufacturing facility"** is defined as any new or expanded business which adds at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission. In order to qualify for the exemption, the construction cost of the new or expanded facility must exceed Five Million Dollars ($5,000,000.00).

(2) For purposes of this exemption, the following will apply:

(A) **"Computer"** means an electronic device ~~which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication.~~ *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352] ~~The term includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network;~~

(B) **"Data processing equipment"** includes machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities;

(C) **"Related peripheral"** ~~includes input/output equipment used to make hard copies or to read in data from hard copies which is attached to computer(s) or data processing equipment~~ means input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network ; and

(D) **"Telecommunications"** includes data transmission between a computing system and remotely located devices.

(3) The exemption shall include, but shall not be limited, to the following:

(A) Computer
(B) Terminal
(C) Modem
(D) Printer
(E) Disk Drive
(F) Video Display Terminal
(G) Memory
(H) Removable Disk
(I) Fixed Disk
(J) Bar Code Reader
(K) Key Punch
(L) CRT
(M) Plotter
(N) Card Reader/Punch
(O) Tape Drive
(P) Monitor
(Q) Software
(R) Telephone equipment
(S) Telephone service
(T) Telegraph equipment
(U) Telegraph service
(V) Dedicated lines

(4) The exemption shall not apply to the following:

(A) Supplies, such as:
(i) Diskettes
(ii) Tape
(iii) Paper
(iv) Pens
(v) Ribbons
(vi) Print Wheels
(vii) Media Storage
(viii) Storage Case
(ix) Cleaning Product
(x) Cleaning Kit
(xi) Template
(xii) Print-out Ruler
(xiii) Label

(B) Furniture, such as:
(i) Desk
(ii) Chair
(iii) Table
(iv) Rack
(v) Stand
(vi) Acoustical Protector
(vii) Shelving

(C) Accessories, such as:
(i) Surge Protector
(ii) Filter
(iii) Radiation Shield
(iv) Dust Cover
(v) Static Dissipator
(vi) Security System

(b) No exemption shall be granted if the qualified aircraft maintenance or manufacturing facility fails to file the documentation required below with the Commission within thirty-six (36) months of the date of purchase and the required certification issued by the Employment Security Commission within sixty (60) months of the date of first purchase.

(c) Pursuant to statute, the exemption for sales to a aircraft maintenance or manufacturing facility outlined above will be administered as a refund for state and local taxes paid by the aircraft maintenance or manufacturing facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance repair or manufacturing that will take place within the facility, and other information requested by the Commission. Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(2) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(3) All additional documentation required to be submitted by the Commission.

(f) At the option of the entity who believes it will be certified as a qualified aircraft maintenance or manufacturing facility, the documentation required in (e) of this Section can be filed monthly, quarterly, semi-annually, or annually. However,

all documentation must be filed no later than thirty-six (36) months after the item is purchased. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(g) Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(h) Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total cost of construction exceeded the sum of Five Million Dollars ($5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(1) The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified aircraft maintenance or manufacturing facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. §1357(L)]

(2) The following shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial, and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(D) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. An applicant aggrieved by the order of the Commission must file, within ten (10) days of mailing of the order, a notice of intent to appeal with the Secretary of the Commission. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [NOTE: For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through 710:1-5-48). [**See:** 68 O.S. §§ 225, ~~1357.5~~ 1357.4, ~~1404.4~~ 1404.3]

710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development

(a) **Definitions.** In addition to the definitions found in the Oklahoma Research and Development Act, 68 O.S. Supp. 1992, §54001 et seq., the following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Computer"** means an electronic device ~~which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication. The term "computer" includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network.~~ *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352]

(2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities.

(3) **"Primarily engaged in"** means that at least seventy-five percent (75%) of the gross revenues of the new or expanding business must come from such activities.

(4) **"Qualified purchaser"** means any new or expanded business or facility which adds at least ten (10) new in-state full-time-equivalent employees, as certified by the Employment Security Commission, for a period of at least thirty-six (36) months at an average annual salary of at least Thirty-five Thousand Dollars ($35,000.00) per year per employee. In addition, at least fifty percent (50%)

of the annual gross revenues must be derived from sales of a product or service to an out-of-state buyer or consumer.

(5) **"Qualified purchases"** means computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment.

(6) **"Related peripheral"** means ~~data transmission between a computing system and remotely located devices~~ input, output, processing, storage, software and communication facilities which are connected or related to devices in a system or network.

(b) **Qualification.** Effective July 1, 1992, sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications services and equipment sold to a qualified purchaser by a qualified vendor are exempt from sales and use tax.

(c) **Exempt items.** Exempt items shall include, but shall not be limited, to the following:

(1) Bar code reader
(2) Card reader/punch
(3) Computer
(4) CRT
(5) Dedicated lines
(6) Disk drive
(7) Fixed disk
(8) Key punch
(9) Memory
(10) Modem
(11) Monitor
(12) Plotter
(13) Printer
(14) Removable disk
(15) Software
(16) Tape drive
(17) Telegraph equipment
(18) Telegraph service
(19) Telephone equipment
(20) Telephone service
(21) Terminal
(22) Video display terminal

(d) **Non-exempt items.** The exemption shall not apply to the following:

(1) Supplies, such as:
  (A) Cleaning product
  (B) Cleaning kit
  (C) Diskettes
  (D) Media storage
  (E) Paper
  (F) Pens
  (G) Print wheels
  (H) Print-out label
  (I) Print-out ruler
  (J) Ribbons
  (K) Storage case
  (L) Tape
  (M) Template
(2) Furniture, such as:
  (A) Acoustical protector
  (B) Acoustical shelving
  (C) Chair
  (D) Desk
  (E) Rack
  (F) Stand
  (G) Table
(3) Accessories, such as:
  (A) Dust cover
  (B) Filter
  (C) Radiation shield
  (D) Security system
  (E) Static dissipater
  (F) Surge protector

(e) **Qualified purchaser explained.** Specifically exempted from sales and use taxes are sales of qualified purchases to a qualified purchaser primarily engaged in computer services and data processing as defined under Industrial Group Number 7372 (prepackaged software), Industrial Group Number 7373 (computer integrated system design), Industrial Group Number 7374 (computer processing and data preparation and processing services) and Industrial Group Number 7375 (information retrieval services). In order to qualify for this exemption under Industrial Group 7374 a qualified purchaser must have a minimum of One Hundred Thousand Dollars ($100,000.00) in qualified purchases yearly. In order to qualify for this exemption, a new or expanding business can not include the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

(f) **Out-of-state sales.** Eligibility to receive the exemption provided for in 68 O.S. §54003(1) as a business which derives at least fifty percent (50%) of its annual gross revenues from sales of a product or service to an out-of-state buyer or consumer shall be established, subject to review by the Oklahoma Tax Commission on an annual basis, by an affidavit that the business qualifies for such exemption. The Oklahoma Tax Commission may require additional information as required to ensure that the business qualifies for such exemption. All sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer.

(g) **Limitations.** No exemption shall be granted if the qualified computer services and data processing or research and development facility fails to file the documentation required by Subsection (j) of this Section with the Commission. ~~within thirty-six (36) months of the date of purchase and~~ Additionally, the required certification issued by the Employment Security Commission must be filed with the Tax Commission within thirty-six (36) months of the date of first purchase.

(h) **Administration.** Pursuant to statute, the exemption for sales to a qualified computer service and data processing or research and development facility outlined in this Section will be administered as a refund for state and local taxes paid by the qualified computer services and data processing or research and development facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(i) **Application process.** All persons who believe that they fall within the exemption shall file an Application/Intent to Qualify with the Commission. The Application/Intent to

Qualify shall be on forms provided by the Commission and shall include, as an attachment, specifications of the new or expanded facility, a complete description of the computer services and data processing or research and development that will take place within the facility, and other information requested by the Commission. Upon receipt of the application, the application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the application by the Commission.

(j) **Claims process.** For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) **Invoices** indicating the amount of state and local taxes billed to the qualified computer services and data processing or research and development facility.

(2) **An affidavit** of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the qualified purchasing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached.

(3) All additional documentation required to be submitted by the Commission.

(k) **Filing claims.** At the option of the entity who believes it will be certified as a qualified computer services and data processing or research and development facility, the documentation required by Subsection (j) of this Section can be filed monthly, quarterly, semiannually, or annually. ~~However, all documentation must be filed no later than thirty six (36) months after the item is purchased.~~ The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(l) **Fiscal procedure.** Each month, the Commission shall transfer from sales and use tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(m) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total annual purchases exceeded the sum of One Hundred Thousand Dollars ($100,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified computer services and data processing or research and development facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. § 54005(C)]

(3) **Denial.** The following procedure shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the Applicant or a duly authorized agent setting out:

(i) A statement of denial as determined by the Commission;

(ii) A statement of the applicant's disagreement with such denial; and,

(iii) Supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(4) **Protest of denial of certification.** The following procedure shall apply to protests of any denial of certification.

(A) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(B) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. An applicant aggrieved by the order of the Commission must file, within ten (10) days of mailing of the order, a notice of intent to appeal with the Secretary of the Commission. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [**See:** 710:1-5-21 through 710:1-5-48 / 68 O.S. §§225, 1357.5, 1404.4]

710:65-13-54. Exemption for sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing

(a) **Definitions.** ~~In addition to the definitions found in the Oklahoma Sales Tax Code 68 O.S. Supp. 1996, §1352, the~~ The following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Computer"** means an electronic device ~~which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication.~~ *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352] ~~The term "computer" includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network.~~

(2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic or communication and all machines used in support of machines possessing those capabilities.

(3) **"Equipment"**, for purposes of this Section, means any independent device or tool, separate from any machinery, but essential to use of the machinery, or any sub-unit or sub-assembly comprising a component of any machinery or auxiliary, adjunct, or attachment, to parts of machinery. **"Equipment"** also specifically includes **"computers"** and **"data processing equipment"**, as defined in this Section.

(4) **"Machinery"**, for purposes of this Section, means major mechanical, electrical, or electronic machines or major components of such machines.

(5) **"Qualified purchaser"** means an establishment primarily engaged in computer services and data processing:

(A) Which is defined under Industrial Group Numbers 7372 (prepackaged software) and 7373 (computer integrated system design) of the Standard Industrial Classification (SIC) Manual, latest version, and which derives at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, or

(B) Which is defined under Industrial Group Number 7374 (computer processing and data preparation processing services) of the SIC Manual, latest version, which derives at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

(6) **"Related peripheral"** means input, output, processing, storage, software, and communication facilities which are connected or related to a device in a system or network.

(b) **General provisions.** Effective July 1, 1996, the sale of machinery and equipment, including computers, data processing equipment, and related peripherals, to a qualified purchaser primarily engaged in computer services and data processing as defined by (a) of this Section
is specifically exempt from the levy of sales or use tax. For purposes of determining "qualified purchaser" status, all sales to the federal government shall be considered sales to an out-of-state buyer or consumer.

(c) **Examples of exempt items.** Exempt items include, but are not limited to:

(1) Bar code reader
(2) Card reader/punch
(3) Computer
(4) CRT
(5) Disk drive
(6) Fixed Disk
(7) Key punch
(8) Memory
(9) Modem
(10) Monitor
(11) Plotter
(12) Printer
(13) Removable disk
(14) Software
(15) Tape drive
(16) Telegraph equipment
(17) Telegraph service
(18) Telephone equipment
(19) Telephone service
(20) Terminal
(21) Video display terminal

(d) **Examples of non-exempt items.** The exemption shall not apply to:

(1) Cleaning products
(2) Paper
(3) Pens
(4) Print-out labels

(e) **Application.** Application for exemption may be made by filing a signed, sworn affidavit with the Commission, stating:

(1) The name, address, and federal employer's identification number of the applicant and the name and title of the person signing for the applicant;

(2) A complete description of the computer services and data processing that will take place within the establishment;

(3) A statement of the establishment's annual gross revenues, and the percentage of the annual gross revenues derived from sales made to out-of-state buyers and consumers, determined for the most recently completed income tax year;

(4) A statement that the applicant is primarily engaged in the activities appropriate to SIC Code classification number 7372, 7373 or 7374, as applicable;

(5) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and

(6) Such additional information as the Commission may require to confirm eligibility.

(f) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption allowed the establishment will be forwarded to the applicant.

(g) **Issuance, scope, limitations of direct payment permit.** The letter of certification issued by the Commission will become effective, commencing July 1st following the ending date of the income tax year on which the statement required by subsection (e) was calculated, for a period of twelve (12) months, and may be renewed, subject to annual review and recertification of the applicant's eligibility by the Commission.

(h) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

PART 15. HAZARDOUS WASTES

710:65-13-80. Exemption for purchases to reduce hazardous waste

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

(1) **"Directly used or consumed in the process of treatment"** means either the tangible personal property is:

(A) **"Directly used"** in the step-by-step processes by which hazardous waste is treated. Any tangible personal property or any services which are only indirectly related to the process of treatment are not included; or

(B) **"Consumed"** as in destroyed, used up, or worn out to the degree or extent that such property cannot be repaired, reconditioned, or rendered fit for further use. **"Consumed"** does not mean or include mere obsolescence.

(2) **"Equipment"** means the implements used in the direct process of treatment.

(3) **"Hazardous waste"** means waste materials and by-products, either solid or liquid, which are to be discarded by the generator, and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary landfills, waste or sewage treatment facilities. Hazardous waste may include, but is not limited to, explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste, and excludes domestic sewage. For purposes of the sales and use tax exemption, the term "**hazardous waste**" may include low-level radioactive waste.

(4) **"Incorporated into"** means directly used or consumed in the process of treatment.

(5) **"Machinery"** means mechanically, electrically, or electronically operated devices used for performing the tasks of remediation of hazardous waste.

(6) **"Other materials"** means other items of tangible personal property which are used in the direct process of treatment of hazardous waste, but which are not machinery, equipment, fuel, or chemicals. For purposes of this Section, electricity is included in the category "other materials".

(b) **Exemption limited to eligible, properly documented transactions.** Only purchases of machinery, equipment, fuel, and chemicals or other materials incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume of harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the clean up of a site of contamination are exempt. Only purchases made by persons engaged in the process of treatment, invoiced to those persons, and paid for by such persons are exempt.

(c) **Application process.** Application shall be made by letter, addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Location address of the facility at which treatment is to be conducted;

(4) Federal employer's identification number;

(5) Names and current mailing addresses of all responsible officers;

(6) A written description of the process in which the person will be engaged;

(7) Information regarding the permit or approval under which the person is operating;

(8) Documentation that any nonresident contractor or subcontractor is in compliance with the registration requirements found at 68 O.S. § 1701 et.seq.; and

(9) Such additional information as the Commission may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption allowed will be forwarded to the applicant.

(e) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to

issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

(f) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(g) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

PART 23. GAS AND ELECTRICITY

710:65-13-120. Sales tax exemption for residential use

(a) **Definition.** ~~Gas~~ The sale of natural or artificial gas and electricity, ~~and~~ along with associated delivery or transmission services, when sold exclusively for residential use ~~are~~ is exempt from state sales tax, but ~~remain~~ remains subject to any applicable municipal and county sales taxes in effect at the time of sale. The term **"residential use"** means the use of gas or electricity by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning, in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, or townhouse used exclusively for domestic purposes. Residential use includes service to buildings appurtenant to the residence, including garages, barns, and other minor buildings, for use of the residents served through the residential meter. Residential use does not include use in travel trailers, motor homes or other recreational vehicles.

(b) **Private homes or individual living units.** Users in a private home or individual living unit, such as apartments, condominiums and townhomes, who are served through a single meter and whose rate has been classified by statute or regulations as residential are automatically exempt.

(c) **Multiple unit dwellings.** Users in multi-unit apartments, mobile trailer home parks or condominium and townhouse associations who are billed through a master meter, i.e. a single meter for the entire complex, and are taking service under a commercial rate may nevertheless qualify for this exemption providing the gas or electricity is used exclusively for residential use as defined in (a) of this Section. [**See:** ~~68 O.S.Supp. 1999, § 1357(A)(2)~~ 68 O.S.Supp.2003, § 1357(6)]

PART 29. MANUFACTURING

710:65-13-150.1. Manufacturing exemption; taxable and exempt transactions

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

(1) **"Administration"** means activities performed in the areas of general management, communications, security, employee training, personnel administration, including time-keeping, general accounting and purchasing, employee benefit activities and employee recognition, legal services, public relations, and the establishment, maintenance, billing and collection of accounts.

(2) **"Distribution"** means those activities involved in the movement of manufactured items by vehicles, aircraft, watercraft, railroads or pipelines from a manufacturing site to a customer's location.

(3) **"Incidental use"** means that the property or service is used infrequently or for a minor portion of the total time it is used.

(4) ***"Manufacturing"*** *means and includes the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use. "**Manufacturing**" does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, ~~but may include processes subsequent to extraction if such processes result in a change of the form or use of the material extracted~~ nor oil and gas field processes, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration and compression.* ~~[68 O.S.Supp.1998, Section 1352(9)]~~ [68 O.S.Supp.2003, § 1352(13]

(5) ***"Manufacturing operation"*** *means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. **"Manufacturing operation"** does not include administration, sales, distribution, transportation, site construction, or site maintenance. Extractive activities and field processes shall not be deemed to be a part of a manufacturing operation even when performed by a person otherwise engaged in manufacturing.* ~~[68 O.S.Supp.1998, Section 1352(10)]~~ [68 O.S.Supp.2003, § 1352(14)]

(6) ***"Manufacturing site"*** *means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer.* [68 O.S.Supp.1998, Section 1352(11)] It is not required that the building or structures owned, leased, or controlled by

a manufacturer be located on a single tract of land or on contiguous tracts of land.

(7) **"Predominant or predominantly"** means the most frequent or for the most part.

(8) **"Sales"** means the activities involved in selling a manufacturer's goods to others, and includes advertising or marketing, printing, preparation, and distribution of catalogs and flyers, and product exhibition and promotion.

(9) **"Site construction"** means the construction of buildings and other structures and improvements to real property. The term includes land preparation, new construction, reconstruction, remodeling, renovation, repair, upgrading and making alterations and additions to the real property, whether the work is done by the manufacturer or by other firms.

(10) **"Site maintenance"** means the provision of facilities support services as defined in the North American Industry Classification System, Code 561210. **"Site maintenance"** does not include items used in the manufacturing operation, as defined in this Section, or in waste disposal activities resulting from the manufacturing operations.

(11) **"Transportation"** means to move or carry tangible personal property to a manufacturing site, prior to the time it enters into the manufacturing process, and to move or carry, tangible personal property from a manufacturing site, after such property leaves the manufacturing operation. The term "transportation" includes the purchase, maintenance, repair, overhaul, rebuilding, storage and operation of vehicles and transportation equipment.

(b) **Activities included in manufacturing operations.** Purchases by a manufacturer of tangible personal property or services for use in a manufacturing operation are exempt from sales and use taxes in Oklahoma. Operations performed by a sub-contractor to the manufacturer may also qualify as a manufacturing operation if the contractor is performing sub-assembly work leading to completion of the finished product. Activities included in a manufacturing operation include the following:

(1) **Product development.** Examples of property used in product development include raw materials, machinery, and equipment utilized in designing and making prototypes.

(2) **Production.** Production includes those processes and activities consisting of manufacturing, compounding, processing, assembling, or preparing of articles for sale as tangible personal property.

(A) **Production supplies.** Examples of production supplies include items used in the production process, such as:

(i) Raw materials.

(ii) Coal, fuel, oil, electricity, natural gas, artificial gas, steam and refrigeration, when used in the production process or when used to generate power or to create or maintain a temperature necessary for the production process.

(iii) Miscellaneous supplies that are consumed in the production process, such as lubricating oils and greases used on machinery and equipment.

(B) **Manufacturing supplies.** Examples of manufacturing supplies include items used to service and operate manufacturing equipment, such as:

(i) Work clothing, such as coveralls and uniforms; safety goggles; face masks; helmets, gloves, aprons, shoe and sleeve protectors.

(ii) Static mats.

(iii) Surge protectors.

(C) **Manufacturing tools.** Manufacturing tools eligible for exemption when purchased for use in a manufacturing operation are those tools used in the manufacturing process, such as:

(i) Scales to measure raw materials.

(ii) Knives, staple guns, tape guns.

(iii) Hand tools used on the product or in the maintenance of exempt machinery.

(D) **Manufacturing equipment and machinery.** Examples of manufacturing equipment and machinery eligible for exemption when purchased by a manufacturer include:

(i) Manufacturing equipment, machinery, and associated repair or replacement parts.

(ii) Dust collector equipment.

(iii) Paint booths.

(iv) Conveyors.

(v) Forklifts.

(3) **Testing or quality control.** Equipment and supplies used in testing or quality control, or both, may qualify for the exemption when purchased by a manufacturer for use in a manufacturing operation.

(4) **Production waste disposal.** Equipment and supplies purchased by a manufacturer to be used in production waste disposal at a manufacturing site may qualify for the exemption.

(5) **Warehousing supplies and equipment.** Examples of warehousing supplies and equipment eligible for exemption when purchased by a manufacturer include:

(A) Flow racks.

(B) Tables.

(C) Storage units.

(D) Wrapping, packing, or packaging supplies, used to further the sale of a product.

(E) Labels and label-makers.

(F) Inventory control items.

(6) **Shipping.** Examples of shipping supplies eligible for exemption when purchased by a manufacturer include:

(A) Boxes, scales, inserts.

(B) Tape dispensers.

(c) **Non-exempt uses.** <u>The following items and uses will result in the taxability of the transaction:</u>

<u>(1)</u> Items purchased for use, or manufactured and withdrawn from inventory and used, in the areas of administration, distribution, sales, site construction, site maintenance, or transportation, are subject to sales tax if the items are purchased or withdrawn from an inventory in

Oklahoma. If tangible personal property is purchased or withdrawn from inventory outside Oklahoma, to be used in Oklahoma for these non-exempt purposes, it is subject to use tax. The amount of tax due is computed based upon the "**sales value**," of the goods withdrawn, as defined in *OAC* 710:65-1-2.

(2) *Goods, wares, merchandise, property, machinery and equipment, used in a non-manufacturing activity or process as set forth in paragraph 9 of Section 1352* of Title 68 of the Oklahoma Statutes *shall not be eligible for the exemption* described in this Section *by virtue of the activity or process being performed in conjunction with or integrated into a manufacturing operation*. [68 O.S.Supp.2003, § 1359(1)]

(d) **Predominant use.** Incidental use of otherwise qualifying items or machinery **predominantly** used in the manufacturing operation will not result in disqualification:

(1) Where an item is predominantly used in the manufacturing operation, any non-exempt use will be considered incidental, and will not disqualify the item from the exemption.

(2) Where electricity or natural gas is metered through a single meter, and the predominant use is in the manufacturing operation, any remaining usage will be considered incidental, and will be exempt.

(e) **Applicability of examples.** Items enumerated in Subsections (b) and (c) are examples and illustrations only, and are not intended to be exclusive or exhaustive.

710:65-13-153. Exemption for "qualified manufacturers"

(a) **Qualification.** Sales of construction materials to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to the qualified manufacturer.

(1) **"Manufacturing facility"** for purposes of this exemption, means buildings and land improvements used in manufacturing as defined by the Standard Industrial Classification Code, except that up to ten percent (10%) of the square feet of such building may be devoted to office to provide clerical support for the manufacturing operation and shall also mean building and land improvements used for the purpose of packing, packaging, repackaging, labeling or assembling for distribution to market, if at least seventy percent (70%) of the product is made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. Retail outlets will be included only if the retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility.

(2) **"Qualified manufacturer"** for purposes of this exemption, means:

(A) Any enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Five Million Dollars ($5,000,000.00) and the new or expanded facility adds at least One Hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, and such employees are maintained for a period of at least thirty-six (36) months, upon completion of the facility.

(B) If the cost of construction exceeds Ten Million Dollars ($10,000,000.00) and the combined cost of construction material, machinery, equipment, and other tangible personal property exceeds Fifty Million Dollars ($50,000,000.00), the required number of new full-time-equivalent employees to be added and maintained to be a **"qualified manufacturer"** is Seventy-five (75).

(C) If the total cost of construction exceeds the sum of Three Hundred Million Dollars ($300,000,000.00) the **"qualified manufacturer"** must maintain an employment level of a least 1,750 full time equivalent employees.

(3) **"Total costs of construction" defined.** For purposes of this Section, **"total cost of construction"** means and includes building and construction materials, and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility, but shall not include attorney fees. For purposes of (a)(2)(C) of this Section the **"total cost of construction"** shall also include the cost of qualified depreciable property,as defined by Section 2357.4 of Title 68 of the Oklahoma Statutes, and labor services performed in the construction of a new or expanded facility.

(4) **The employment requirement.** The employment requirement described in this Section can be satisfied by a portion of the required new full-time-equivalent employees being employed at a manufacturing facility related to or supported by the new or expanded business, so long as both or all facilities are owned by the same person.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property consumed or incorporated in the construction of a new manufacturing facility or the expansion of an existing facility made after June 1, 1988. The exemption applies to sales made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer as well as to sales made to a qualified manufacturer.

(2) The exemption applies only to tangible personal property that becomes a part of the facility or that is directly consumed in the construction process.

(3) No exemption shall be granted if the qualified manufacturer fails to file both the documentation required in (e)(1) of this Section and the required certification issued by the Employment Security Commission with the Commission.

(c) **Administration.** Pursuant to statute, the exemption for sales to a qualified manufacturer outlined in this Section will be administered as a refund for state and local taxes paid by the

qualified manufacturer to the vendor or, in the case of use tax, self-remitted to the state of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded manufacturing facility a complete description of the product to be manufactured, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entities base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified as a qualified manufacturer shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the qualified manufacturer;

(ii) Affidavit of the vendor of the construction materials reflected on the invoice that state and local sales tax reflected on that invoice has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charge has been collected to the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a qualified manufacturer, the qualified manufacturer shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of construction materials reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the qualified manufacturer is based on state and local sales tax paid by the contractor or sub-contractor on construction materials to be consumed or incorporated in a construction of new or expanded manufacturing facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as a qualified manufacturer, the documentation can be filed monthly, quarterly, semi-annually, or annually. ~~However, all documentation including certification~~ Certification issued by the Employment Security Commission must be filed within thirty-six (36) months of the date of first purchase.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the thresholds required by law have been met. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The applicant will also receive accrued interest upon the principal amount of the refund made. [**See:** 68 O.S. § 1359.1(C)]

(3) **Assessment.** If at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission the number of full-time-equivalent employees drops below one hundred (100) such employees, any use or sales tax and interest previously refunded to the taxpayer will be assessed against the taxpayer receiving such refund and interest.

(4) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing

of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or his duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial; and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicants. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. An applicant aggrieved by the order of the Commission must file within ten (10) days of mailing of the order a notice of intent to appeal with the Secretary of the Commission. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [**See:** 68 O.S. § 225]

(F) For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through 710:1-5-48). [**See:** 68 O.S. §§ 1359.1, 1404.1]

710:65-13-154. Limitation on credits

No qualified establishment, nor its contractors or subcontractors, receiving an incentive payment pursuant to the Oklahoma Quality Jobs Program Act, ~~68 O.S. §§3603-3609,~~ 68 O.S. § 3601 et seq., shall be eligible to receive the credit described in ~~this Part~~ 710:65-13-153. [**See:** 68 O.S. Supp. 1993, §3607]

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-169. Definitions

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

"Drug" *means a compound, substance or preparation, and any component of a compound, substance or preparation:*

(A) *Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;*

(B) *Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or,*

(C) *Intended to affect the structure or any function of the body.* [68 O.S.Supp.2003, § 1352(7)]

"Durable medical equipment" means equipment, *including repair and replacement parts for same,* which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is appropriate for use in the home. ***"Durable medical equipment"*** *does not include "mobility enhancing equipment".* [68 O.S.Supp.2003, § 1357.6(D)]

"Medical appliance" means any item or replacement part thereof used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life.

"Medical devices" include prosthetic, orthotic, and orthopedic devices. The scope of the term medical devices, however, is broader than the terms prosthetic, orthotic, and orthopedic devices.

"Medical equipment" means machinery, apparatus and other devices intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings.

"Mobility enhancing equipment" *means equipment, including repair and replacement parts for same, which:*

(A) *Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;*

(B) *Is not generally used by persons with normal mobility; and,*

(C) *Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.*

"Mobility enhancing equipment" *does not include* ***"durable medical equipment"*** as defined in this Section. [68 O.S.Supp.2003, § 1357.6(E)]

"Orthopedic device" means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures.

"Orthotic device" means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

"Over-the-counter drug" *means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:*

(A) *A "Drug Facts" panel, or*

(B) *A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.* [68 O.S.Supp.2003, § 1352(16)]

"Practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

"Prescription" means ~~any order for drugs or medicinal appliances, devices or equipment written or transmitted by any means or communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal appliances, devices or equipment and intended to be dispensed by a pharmacist, practitioner or supplier. The term includes an orally transmitted order by the lawfully designated agent of such practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the person called upon to dispense such order determines, in the exercise of his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness~~ *an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed "practitioner"*, as defined by 68 O.S. § 1357.6. [68 O.S.Supp.2003, § 1352(18)]

"Prosthetic device"~~, for~~ means:

(A) For purposes of sales to ~~a~~ Medicare or Medicaid ~~recipient,~~ recipients, ~~means a device which replaces a missing part or function of the human body, and includes any supplies physically connected to the device.~~ *a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:*

(i) *Artificially replace a missing portion of the body;*

(ii) *Prevent or correct physical deformity or malfunction; or,*

(iii) *Support a weak or deformed portion of the body.* [68 O.S.Supp.2003, § 1357.6(C)

(B) In the case of sales to individuals who are **not** Medicare or Medicaid recipients, "**prosthetic device**" ~~is limited to those devices which replace a missing part of the human body, including any supplies physically connected to the device~~ *shall not include corrective eye glasses, contact lenses, hearing aids, or dental prostheses*. [68 O.S.Supp.2003, § 1357(20)]

"Purchased or leased on behalf of an individual" means that the item must be specifically bought for the individual who will use the item. Purchases made in bulk and then dispensed to individual patients do not qualify for exemption. For example, if a physician maintains an inventory of crutches or ace bandages which are dispensed to individual patients as needed, the purchase of these items is not exempt since the original purchase was not made on behalf of a specific patient. Conversely, if a physician determines that a patient needs a brace and purchases a brace specifically designed for that patient, the purchase is made on behalf of the individual and will not be subject to the tax.

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

(a) **Drugs.** ~~Legend~~ Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the ~~medicines or~~ drugs are exempt from sales tax~~, regardless of who purchases the medicine or drug~~. ~~Proprietary drugs and medicines are subject to tax. Insulin is considered to be a legend drug and is exempt from sales tax. Oxygen, as of September 16, 1988, if prescribed by a physician, is considered to be a medicine or drug prescribed for the treatment of human beings and is therefore exempt.~~ Ocular lenses~~, as of January 25, 1990~~, if permanently implanted through medical surgery ~~are considered to be a medicine or drug and are therefore exempt.~~, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S.Supp.2003, § 1357(7)]

(b) **Medical equipment or device.** Except as set forth in 710:65-13-173, the sale or rental of medical equipment, supplies or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(c) **Sales to hospitals, nursing homes and practitioners.** Sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and ~~the institutions pay~~ use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering ~~primary~~ medical service to patients, regardless of whether the tangible items are billed separately.

(d) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment. [**See:** 68 O.S. §1357(7); OTC Order 90-01-25-009]

710:65-13-171. Sales of prosthetic devices to individuals

(a) **General provisions.** ~~Effective July 1, 1996, the sale of any prosthetic device to an individual, other than a Medicare or Medicaid recipient, for use by that individual, is not subject to sales tax.~~ Sales of prosthetic devices to an individual for use by such individual is exempt from sales tax.

(b) **Applicable definitions.** For purposes of this Section:

(1) **"Prosthetic device"** means ~~a device which replaces a missing part of the human body, and includes any supplies physically connected to the device.~~ a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or,

(C) Support a weak or deformed portion of the body.

(2) **"Prosthetic device"** does **not** include corrective eye glasses, contact lenses, hearing aids, or dental prostheses, unless the sale is to an individual Medicare or Medicaid recipient.

(~~2~~3) **"Use by that individual"** means usage for the purposes and in a manner for which the device was designed and intended.

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

(1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.

(2) The item is administered or distributed by a "practitioner" or purchased or leased pursuant to a prescription or work order of a practitioner; and

(3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item is reimbursable by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order;

(3) A copy of the eligible recipient's Medicare card; and

(4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Examples of durable medical equipment.** A nonexclusive list of **durable medical equipment** is as follows:

(1) **IPPB, circuits, devices and supplies.**

(A) Air oxygen mixers
(B) Emergency oxygen delivery units
(C) Manual resuscitators
(D) Nebulizers, tubing

(2) **Oxygen equipment.**

(A) Cylinder stands, support devices
(B) Cylinder transport devices (sheaths, carts)
(C) Face masks
(D) Liquid oxygen base dispenser
(E) Liquid oxygen portable dispenser
(F) Nasal cannulas
(G) Oxygen concentrators
(H) Oxygen cylinders
(I) Oxygen fittings, accessories
(J) Oxygen humidifiers
(K) Oxygen tubing
(L) Regulators, flowmeters
(M) Tank wrench

(3) **Patient care equipment, physical and occupational therapy.**

(A) Alternating pressure pads
(B) Bed rails
(C) Bedside commodes
(D) Bone fracture therapy devices
(E) Catheter devices and supplies
(F) Colostomy supplies and devices
(G) Communication aids for physically impaired
(H) Crawlers
(I) Crutches, crutch pads, tips
(J) Decubitus seating pads, bed pads
(K) Dressing aids, button loops, zipper aids, etc.
(L) Eating and drinking aids
(M) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
(N) Fitted stroller
(O) Foam seating pads
(P) Foam wedges
(Q) Geriatric chairs
(R) Grooming aids, dental aids
(S) Hand exercise equipment putty
(T) Hospital beds
(U) Household aids for the impaired
(V) Hydro-collators
(W) Hydro-therm heating pads
(X) I.V. stands
(Y) Leg weights (rehab. related)
(Z) Lift recliners
(AA) Muscle stimulators
(BB) Overbed tables
(CC) Paraffin baths
(DD) Patient transport devices, boards
(EE) Patient lifts
(FF) Patient lifts slings
(GG) Posture back supports
(HH) Posture back supports for seating

(II) Raised toilet seats
(JJ) Reaching aids
(KK) Restraints
(LL) Shampoo trays
(MM) Shower grip bars
(NN) Shower seating
(OO) Sitting and sleeping cushions
(PP) Specially designed hand utensils
(QQ) Specialized seating, desks, work stations
(RR) Splints, holders
(SS) Stairglides, lifts in home
(TT) Standing frames, devices and accessories
(UU) Stethoscope
(VV) Toilet safety frames
(WW) Traction stands, pulleys, etc.
(XX) Transcutaneous nerve stimulators
(YY) Trapeze bars-bar stand
(ZZ) Walkers
(AAA) Walker accessories
(BBB) Walking canes, quad canes, accessories
(CCC) Wheel walkers
(DDD) Wheelchairs
(EEE) Writing and speech aids for the impaired

(4) **Respiratory therapy equipment.**
(A) Aerosol compressors (stationary and portable)
(B) Aspirators
(C) Percussors, vibrators
(D) Room humidifiers (with script)
(E) Ultrasonic nebulizers
(F) Volume ventilators, respirators and related device supplies

(e) **Medical appliances.** A nonexclusive list of **medical appliances** is as follows:
(1) Artificial eyes
(2) Artificial limbs
(3) Braces
(4) Canes
(5) Corrective shoes
(6) Crutches
(7) Dialysis machines
(8) Hydraulic lifts
(9) Hypodermic syringes and needles
(10) Orthotic supports (Bandages, belts, and similar supplies)
(11) Oxygen equipment
(12) Pacemakers
(13) Post-surgical bust forms
(14) Pressure pads
(15) Specially built hospital beds
(16) Stoma appliances (colostomy, ileostomy, ureterostomy, catheters)
(17) Trusses
(18) Walkers
(19) Wheelchairs

(f) **Medical devices or medical supplies, not including prosthetic, orthotic, or orthopedic devices.** An illustrative list of **medical devices and medical supplies**, not including prosthetic, orthotic or orthopedic devices, is as follows:
(1) Adhesive bandages
(2) Anesthesia trays
(3) Aneurysm clips
(4) Arterial bloodsets
(5) Aspirators
(6) Athletic supporters
(7) Atomizers
(8) Autolit
(9) Back cushions
(10) Bathing aids
(11) Bathing caps
(12) Bed pans
(13) Bedside rails
(14) Bedside tables
(15) Bedside trays
(16) Bedwetting prevention devices
(17) Belt vibrators
(18) Biopsy needles
(19) Biopsy trays
(20) Blood administering sets
(21) Blood cell washing equipment
(22) Blood pack holders
(23) Blood pack trays
(24) Blood pack units
(25) Blood pressure meters
(26) Blood processing supplies
(27) Blood tubing
(28) Blood warmers
(29) Breast pumps
(30) Breathing machines
(31) Cannula systems
(32) Cardiac electrodes
(33) Cardiac pacemakers
(34) Cardiopulmonary equipment
(35) Catheters
(36) Catheter trays
(37) Chair lifts
(38) Clamps
(39) Clip-on ash trays
(40) Colostomy devices
(41) Commode chairs
(42) Connectors
(43) Contact lens cases
(44) Contact solution
(45) Convoluted pads
(46) Corrective pessaries
(47) Cotton balls
(48) Dialysis chairs
(49) Dialysis supplies
(50) Dialyzers
(51) Dietetic scales
(52) Disposable diapers
(53) Disposable gloves
(54) Disposable underpads
(55) Donor chairs
(56) Drainage bags
(57) Dressings
(58) Drug infusion devices

(59) Dry aid kits for ears
(60) EKG paper
(61) Earmolds
(62) Electrodes
(63) Emesis basins
(64) Endo trach tubes
(65) Enema units
(66) First-aid kits
(67) Fistula sets
(68) Foam slant pillows
(69) Gauze bandages
(70) Gauze packings
(71) Gavage containers
(72) Geriatric chairs
(73) Grooming aids
(74) Hand sealers
(75) Hearing aid carriers
(76) Hearing aid repair kits
(77) Heart stimulators
(78) Heat lamps
(79) Heat pads
(80) Hemodialysis devices
(81) Hemolators
(82) Hospital beds
(83) Hot water bottles
(84) Ice bags
(85) Ident-a-bands
(86) Ileostomy devices
(87) Incontinent garments
(88) Incubators
(89) Infrared lamps
(90) Inhalators
(91) Insulin infusion devices
(92) Iron lungs
(93) Irrigation apparatus
(94) Irrigation solutions
(95) I.V. administering sets
(96) I.V. connectors
(97) I.V. tubing
(98) Karaya paste
(99) Karaya seals
(100) Kidney dialysis machines
(101) Laminar flow equipment
(102) Latex gloves
(103) Leukopheresis pumps
(104) Lymphedema pumps
(105) Manometer trays
(106) Massagers
(107) Maternity belts
(108) Medigrade tubing
(109) Modulung oxygenators
(110) Moist heat pads
(111) Myelogram trays
(112) Myringotomy tubes
(113) Nebulizers
(114) Needles
(115) Ostomy devices
(116) Overbed tables
(117) Oxygen equipment
(118) Pacemaker equipment
(119) Page turning devices
(120) Pap smear kits
(121) Paraffin baths
(122) Physicians instruments
(123) Pigskin
(124) Plasma extractors
(125) Plasmapheresis units
(126) Plastic heat sealers
(127) Prescribed device repair kits
(128) Respirators
(129) Resuscitators
(130) Sauna baths
(131) Security pouches
(132) Servipak dialysis supplies
(133) Shelf trays
(134) Shower chairs
(135) Side rails
(136) Sitz bath kit
(137) Small-vein infusion kits
(138) Specimen containers
(139) Spinal puncture trays
(140) Sponges (surgical)
(141) Stairway elevators
(142) Steri-peel
(143) Stoma bags
(144) Stools
(145) Stopcocks
(146) Strap-on urinals
(147) Suction equipment
(148) Sun lamps
(149) Surgical bandages
(150) Surgical equipment
(151) Suspensories
(152) Sutures
(153) Thermometers
(154) Toilet aids
(155) Tourniquets
(156) Trach tubes
(157) Transfer boards
(158) Transfusion sets
(159) Tub sealers
(160) Underpads
(161) Ureostomy devices
(162) Urinals
(163) Vacutainers
(164) Vacuum units
(165) Vaporizers
(166) Venous blood sets
(167) Vibrators
(168) Whirlpools
(169) X-ray film

(g) **Orthopedic devices.** A nonexclusive list of **orthopedic devices** is as follows:

(1) Abdominal belts
(2) Alternating pressure mattresses
(3) Alternating pressure pads

(4) Anti-embolism stockings
(5) Arch supports
(6) Arm slings
(7) Artificial sheepskin
(8) Bathtub grab bars
(9) Bathtub lifts
(10) Bathtub seats
(11) Bone cement
(12) Bone nails
(13) Bone pins
(14) Bone plates
(15) Bone screws
(16) Bone wax
(17) Braces
(18) Canes
(19) Casts
(20) Cast heels
(21) Cervical braces
(22) Cervical collars
(23) Cervical pillows
(24) Clavicle splints
(25) Corrective braces
(26) Corrective shoes
(27) Crutch cushions
(28) Crutch handgrips
(29) Crutch tips
(30) Crutches
(31) Decubitus prevention devices
(32) Dentures
(33) Dorsolumbar belts
(34) Dorsolumbar supports
(35) Elastic bandages
(36) Elastic supports
(37) Exercise devices
(38) Eyeglasses
(39) Eyelid load prosthesis
(40) Head halters
(41) Hernia belts
(42) Iliac belts
(43) Invalid rings
(44) Knee immobilizers
(45) Lithotripter
(46) Lumbosacral supports
(47) Mastectomy pads
(48) Muscle stimulators
(49) Nerve stimulators
(50) Orthopedic implants
(51) Orthopedic shoes
(52) Patient lifts
(53) Patient safety vests
(54) Plaster (surgical)
(55) Rib belts
(56) Rupture belts
(57) Sacroiliac supports
(58) Sacrolumbar belts
(59) Sacrolumbar supports
(60) Shoulder immobilizers
(61) Shower chairs
(62) Space shoes
(63) Splints
(64) Toilet seat rails
(65) Toilet seat risers
(66) Traction equipment
(67) Transcutaneous electrical nerve stimulators (tens unit)
(68) Trapezes
(69) Trusses
(70) Walkers, including walker chairs
(71) Walking bars
(72) Water beds
(73) Wheelchairs

(h) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:
(1) Artificial arteries
(2) Artificial breasts
(3) Artificial ears
(4) Artificial eyes
(5) Artificial heart valves
(6) Artificial implants
(7) Artificial larynx
(8) Artificial limbs
(9) Artificial noses
~~(10) Artificial teeth~~
~~(11) Contact lenses~~
(~~12~~ 10) Cosmetic gloves
~~(13) Hearing aids~~
(~~14~~ 11) Heart valves
(~~15~~ 12) Organ implants
(~~16~~ 13) Penile implants
~~(17) Prescription eyeglasses~~

PART 39. SCHOOLS AND HIGHER EDUCATION

710:65-13-210. Exemption for public and private schools and institutions of higher education

(a) **Sales to schools.** Sales of tangible personal property or services to the following entities are exempt from taxation:
(1) Private institutions of higher education.
(2) Private elementary and secondary schools.
(3) Members of the Oklahoma system of higher education.
(4) Public school districts.

(b) **Scope of exemption.** The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher education which are exempt from taxation pursuant to 26 U.S.C.A. § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) **Sales by a lease or lease-purchase agreement with a school district.** As of July 1, 1999, sales of tangible personal property or services pursuant to a lease or lease-purchase

agreement executed between a vendor and a school district are exempt from sales tax.

(d) **Sales under public contract.** Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) **Certification required.** Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in subsection (a). The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) **Campus construction.** Sales for use on campus construction projects for the benefit of institutions of the Oklahoma system of higher education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Taxpayer Assistance Division. Along with the request, the following must be supplied:

(1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.

(2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:

(1) separately stated on the admission ticket; and

(2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent organizations.** Private schools, public schools, public school boards, public school districts, and public school student organizations (to include parent organizations) can make sales of tangible personal property, including admission tickets and concessions at athletic events, for fund-raising projects to benefit the school or the organization without collecting and remitting sales tax. [**See:** 68 O.S. §§ 1356(13),(14)]

(l) **Sales to, or by, parent-teacher organizations.** Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes.

SUBCHAPTER 17. CITY AND COUNTY SALES TAXES [REVOKED]

710:65-17-1. Administration of city and county sales taxes [REVOKED]

~~(a) For purposes of determining whether any city or county sales tax is due, the location at which a taxable sale of tangible personal property or services is made must be determined by one of the following:~~

~~(1) If the purchaser identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the location of the sale shall be the place of business, regardless of the place of delivery;~~

~~(2) If a purchaser, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the location of the sale shall be the place of delivery, regardless of the manner of transportation;~~

~~(3) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the location of the sale shall be the place where the solicited offer to buy was accepted or approved by the vendor if the purchaser does not have a right to accept or reject delivery;~~

~~(4) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the purchaser has a right to accept or reject delivery, the location of the sale shall be the place of delivery; or~~

~~(5) In the case of the sale of mobile telecommunications services, the point of sale shall be "the place of primary use" as defined in 68 O.S. §55001.~~

~~(b) Once the location of the sale has been determined, the appropriate city and/or county sales tax (if any) for the location should be added to the price and collected, reported and remitted in the same manner as the state sales tax. [**See:** 68 O.S. §1352(J)]~~

SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

710:65-18-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes under the Streamlined Sales and Use Tax Administration Act. [68 O.S.Supp.2003, §§ 1354.14 through 1354.23]

710:65-18-2. Definitions

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

"Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. **"Direct mail"** includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. **"Direct mail"** does not include multiple items of printed material delivered to a single address.

"Primary property location" *means a location indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith.* ***"Primary property location"*** *shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.* [68 O.S.Supp.2003, § 1354.27(B)]

"Receive" *and* ***"receipt"*** *mean:*

(A) *Taking possession of tangible personal property;*

(B) *Making first use of services; or,*

(C) *Taking possession or making first use of digital goods, whichever comes first.*

"Receive" *and* ***"receipt"*** *do not include possession by a shipping company on behalf of the purchaser.* [68 O.S.Supp.2003, § 1354.27(E)]

"Sourced" means the location for which local sales and use taxes are to be applied.

"Transportation equipment" *means and includes:*

(A) *Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;*

(B) *Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:*

(i) *Registered through the International Registration Plan; and,*

(ii) *Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;*

(C) *Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or,*

(D) *Containers designed for use on and component parts attached or secured on the items set forth in this subsection.* [68 O.S.Supp.2003, § 1354.27(D)]

710:65-18-3. Sourcing of retail sales

For those sales that are not sales of mobile telecommunications services and are not the lease or rental of tangible personal property other than transportation equipment, the sales shall be sourced to the location for which city and county sales taxes will be charged in the following manner:

(1) *When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;*

(2) *When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this [paragraph] shall not apply to florists until January 1, 2006. Prior to that date, all sales by florists shall be sourced to its business location;*

(3) *When the provisions of paragraphs (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;*

(4) *When the provisions of paragraphs (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and,*

(5) *When none of the previous rules of paragraphs (1), (2), (3) or (4) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.* [68 O.S.Supp.2003, § 1354.27(A)]

710:65-18-4. Sourcing for lease or rental of tangible personal property

For a lease or rental of tangible personal property, **other** than property identified in 710:65-18-2, as "transportation equipment", and those motor vehicles, trailers, semitrailers, or aircraft that do not qualify as "transportation equipment":

(1) Where the lease or rental requires recurring periodic payments:

(A) The first payment will be sourced as set out in 710:65-18-3.

(B) For those payments made after the first payment, the payment will be sourced to the "primary property location", as defined by 710:65-18-2., for each period covered by the payment. The periodic rental or lease payments shall be sourced to the primary property location even though the property may be used intermittently at different locations.

(2) Where the lease or rental does not require periodic payments, the payment is sourced in accordance with the provisions of 710:65-18-3.

(3) Where the lease or rental is based on a lump sum or accelerated basis, the payment is sourced in accordance with the provisions of 710:65-18-3.

710:65-18-5. Sourcing of telecommunications services

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

(1) ***"Air-to-ground radiotelephone service"*** *means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;*

(2) ***"Call-by-call basis"*** *means any method of charging for telecommunications services where the price is measured by individual calls;*

(3) ***"Communications channel"*** *means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;*

(4) ***"Customer"*** *means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service.* ***"Customer"*** *does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;*

(5) ***"Customer channel termination point"*** *means the location where the customer either inputs or receives the communications;*

(6) ***"End user"*** *means the person who utilizes the telecommunications service. In the case of an entity,* ***"end user"*** *means the individual who utilizes the service on behalf of the entity.* [68 O.S.Supp.2003, § 1354.30(A)(6)]

(7) ***"Home service provider"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act.* [68 O.S.Supp.2003, § 1354.30(A)(7)]

(8) ***"Mobile telecommunications service"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act;*

(9) ***"Place of primary use"*** *means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services,* ***"place of primary use"*** *must be within the licensed service area of the home service provider;*

(10) ***"Post-paid calling service"*** *means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service;*

(11) ***"Prepaid calling service"*** *means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;*

(12) ***"Private communication service"*** *means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and*

(13) ***"Service address"*** *means:*

(A) *The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;*

(B) *If the location in (A) of this paragraph is not known,* ***"service address"*** *means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and,*

(C) *If the locations in (A) and (B) of this paragraph are not known,* ***"service address"*** *means the location of the customer's place of primary use.*

(b) **Services sold on a call-by-call basis.** *Except for those telecommunications services defined in (d) of this Section, sales of telecommunications which are sold on a "call-by-call" basis are sourced in accordance with the following:*

(1) *When the call both originates and terminates in the same jurisdiction, the call is sourced to that jurisdiction.*

(2) *The jurisdiction in which the service address is located when the call either originates or terminates in that jurisdiction.*

(c) **Services sold on a basis other than on a call-by-call basis.** *For those telecommunications services sold on a basis other than on a call-by-call basis, and except for those services defined in (d) of this Section, the sale is sourced to the customers place of primary use.*

(d) **Other telecommunication services.** *The sale of the following services shall be sourced as in the following manner:*

(1) *A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the provisions of Section 55001 of Title 68 of the Oklahoma Statutes;*

(2) *A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:*

(A) *The seller's telecommunications system, or*

(B) *Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;*

(3) *A sale of prepaid calling service is sourced in accordance with* 710:65-18-3. *Provided, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the provisions of paragraph (5) of* 710:65-18-3 *shall apply; and*

(4) *A sale of a private communication service is sourced as follows:*

(A) *Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located,*

(B) *Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located,*

(C) *Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty (50) percent in each level of jurisdiction in which the customer channel termination points are located, and*

(D) *Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.* [68 O.S.Supp.2003, § 1354.30]

710:65-18-6. Sourcing of sales involving direct mail

(a) Notwithstanding the provisions of 710:65-18-3, *a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Form or information to show the jurisdictions to which the direct mail is delivered to recipients.* [68 O.S.Supp.2003, § 1354.29(A)]

(1) *Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.* [68 O.S.Supp.2003, § 1354.29(A)]

(2) *Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.* [68 O.S.Supp.2003, § 1354.29(A)]

(b) *If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Form or delivery information, as required by subsection (a) of this Section, the seller shall collect the tax according to paragraph (5) of 710:65-18-3. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.* [68 O.S.Supp.2003, § 1354.29(B)]

(c) *If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the seller.* [68 O.S.Supp.2003, § 1354.29(C)]

710:65-18-7. [RESERVED]

710:65-18-8. [RESERVED]

710:65-18-9. Effective date for taxable services which span a rate change

The effective date for sales and use taxes for services spanning a statutory change in rates shall be:

(1) *For a rate increase, the new rate shall apply to the first billing period starting on or after the statutory effective date*; and

(2) *For a rate decrease, the new rate shall apply to bills rendered on or after the statutory effective date*. 68 O.S.Supp.2003, § 1354.25

710:65-18-10. Effective dates of sales and use tax rate changes and of municipal boundary changes

(a) Changes in municipal or county sales or use tax rates shall become effective on the first day of the calendar quarter

following the sixty (60) day notice to vendors of such rate change, as required by law, or in the case of purchases from printed catalogs, the notice provided shall be one hundred twenty (120) days.

(b) To facilitate giving sixty (60) days notice to vendors of the changes in municipal and county sales tax rates and changes in the boundaries of municipalities, and to ensure compliance with the statutory directive that such changes be effective on the first of a calendar quarter, the municipality or county must give the notice of any changes in accordance with the following schedule:

(1) Where notice of a change in rate or boundary is received by the Tax Commission on January 1 through January 15, such rate or boundary change shall be effective for sales and use tax purposes on the following April 1.

(2) Where notice of a change in rate or boundary is received by the Tax Commission on April 1 through April 15, such rate or boundary change shall be effective for sales and use tax purposes on the following July 1.

(3) Where notice of a change in rate or boundary is received by the Tax Commission on July 1 through July 15, such rate or boundary change shall be effective for sales and use tax purposes on the following October 1.

(4) Where notice of a change in rate or boundary is received by the Tax Commission on October 1 through October 15, such rate or boundary change shall be effective for sales and use tax purposes on January 1 of the following year.

(c) Failure to provide timely notice to the Commission of a rate or boundary change will delay the effective date of the rate or boundary change to the first day of the calendar quarter following such notice being given to the Commission and to the public for the requisite sixty days.

(d) Vendors will be notified of rate changes by posting the changes to the rate charts available on the Tax Commission website at: www.oktax.state.ok.us

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 1. "A"

710:65-19-4. Alarm systems

(a) As used in this Section, the term **"monitored systems"** means burglar, security and fire alarm systems which are furnished, installed and monitored under contract with the person furnishing and installing such systems. Systems which are monitored by a person other than the person who furnished and installs such system, e.g., those which are connected directly to the police or fire department, are not **"monitored systems"** as the term is used in this Section.

(b) Charges, separately stated, exclusively for monitoring systems constitute charges for a service which are not subject to sales tax. The person selling/leasing and installing the monitored system is deemed to be selling tangible personal property and must collect and remit the tax on such property at the time of sale.

(c) Persons engaged in the sale or lease and installation of burglar, security or fire alarm systems are engaged in making sales, the total charge for which is subject to sales tax. Separately stated installation charges are not subject to sales tax. Persons engaged in sales or leases must register as a vendor and collect and remit sales tax in respect to the sales or leases. All items used by the vendor in installing such a system, for example wiring which remains a part of the building, nails and similar items, are taxable to the vendor at the time of purchase.

(d) The sale of security and fire devices such as smoke detectors, and similar items which do not become attached to realty are sales of tangible personal property, the total charge for which is subject to sales tax. Persons engaged in the sale and installation of other types of security devices such as permanent window bars and similar items which become permanently affixed to realty are ~~vendors~~ consumer/users with respect to such transactions and must pay the tax on all property installed.

PART 5. "C"

710:65-19-52. Computers and related systems; "hardware" and "software" defined

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

(1) ***"Computer"*** *means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp 2003, § 1352(3)]

(2) ~~Computer "**hardware**" is defined as~~ **"Computer hardware"** means the machine and all of its components and accessories that make up the physical computer assembly.

(3) ~~Computer "**software**" is the programming needed to make computers operate and on which basic operating procedure of the computer is formulated.~~ ***"Computer software"*** *means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.* [68 O.S.Supp 2003, § 1352(4)]

(4) ***"Electronic"*** *means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.* [68 O.S.Supp 2003, § 1352(8)]

(5) **"Load and leave"** means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(6) ***"Prewritten computer software"*** *means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.*

Prewritten software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. [68 O.S.Supp 2003, § 1352(19)]

(b) **Sale or rental of a computer.** The sale of a computer and its related components is subject to sales or use tax. The rental of a computer and its related components, including terminal equipment (hardware) is subject to sales tax.

~~(c) **Canned computer software.** For purposes of this Section, the term **"canned computer software"** means a program held for repeat sale, lease or licensing, even if the program was initially developed on a custom basis. Canned computer software is tangible personal property and is, therefore, subject to tax.~~

(c) **Sale of prewritten computer software.** The sale of prewritten computer software delivered in a tangible media format is taxable. Prewritten computer software delivered by means of "load and leave" is also taxable.

(d) **Maintenance contract sold with ~~canned~~ prewritten computer software.** The taxability of a maintenance contract sold with ~~canned~~ prewritten computer software delivered in a tangible media format depends on whether the maintenance contract is required or optional.

(1) If the contract is required, the entire sale price, including the charge for the contract, is subject to tax.

(2) The charge for an optional contract may be subject to taxation:

(A) If it provides **only** upgrades or enhancements which include prewritten computer software delivered in a tangible media format; or,

(B) If it provides both upgrades and support services, and the fee for the support services is **not** stated separately.

(3) If the contract is optional and provides **only** maintenance agreement support services, the contract is **not** taxable.

(e) **Written training materials.** Written training materials are taxable, although the training services themselves are not.

(f) **Modifications to ~~canned~~ prewritten computer software.** Modifications to "~~canned~~ prewritten computer software" do **not** result in the production of custom computer software. ~~Any such modification charges are considered fees for fabrication or services that are part of a sale and, as such, are subject to tax regardless of whether the charge for the modification is separately stated.~~ *Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten software; provided, however, that where there is a reasonable, separately-stated charge or an invoice or other statement of the price is given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software*. [68 O.S.Supp 2003, § 1352(19)]

(g) **Custom computer software.** For purposes of this Section, the term **"custom computer software"** means a program prepared to the special order of a customer. The sale of a custom computer program is a service transaction, and therefore, is not subject to tax. In addition, charges for maintenance are not taxable.

(h) **Software purchased with computer.** The charge for ~~canned~~ prewritten computer software purchased with a computer is subject to tax. If a computer is bought with custom software and the charge for the software is not separately stated, the entire purchase price is subject to tax. In addition, the entire charge is subject to tax if modifications are required and the charge for the modifications is not separately stated and records do not adequately document the extent of the modifications.

710:65-19-56. Contractors and subcontractors

(a) **Definition.** The term **"contractor"** as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

(b) **General provisions.** As consumer/users, contractors must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop, repair, alter, remodel, and improve real property.

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, or the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be

used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** 710:65-7-6 and 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(d) **Fabrication by contractors.** A contractor may fabricate part or all of the articles to be used in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items from sheet metal purchased and used pursuant to a contract for the construction or improvement of real property. In such a contract the purchase by the contractor is a purchase by a consumer or user and the contractor is required to pay the sales or use tax at the time of purchase. This is so, whether the articles fabricated are used in the alteration, repair or reconstruction of an old building, or in new construction.

PART 7. "D"

710:65-19-70. Delivery~~, shipping, and handling~~ charges

(a) **Definition.** **"Delivery charges"** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. **"Delivery charges"** does not include charges for the delivery of **"direct mail"** if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

(~~a~~b) **Separately-stated ~~transportation~~ delivery charges.** In every case where a ~~shipping, freight, or~~ delivery charge represents the cost of transporting the items sold from the vendor to the consumer, and is separately-stated on the invoice or statement, such charges are not subject to sales tax.

(~~b~~c) **~~Transportation~~ Delivery charges included in price.** If ~~shipping, freight, or~~ delivery charges are included in the selling price of the tangible personal property sold, the charges are subject to sales tax.

(~~c~~d) **Transportation costs of the seller.** Shipping, freight, or delivery charges paid by a seller in acquiring property for sale are considered costs of doing business to the seller and may not be deducted from the gross proceeds of the sale in computing tax liability, even though such costs may be passed on to his customers and regardless of whether they are separately-stated.

(~~d~~e) **Demurrage.** Demurrage is a charge for detaining a ship, freight car, or truck beyond the time allowed for loading or unloading. This is considered a penalty and is not subject to sales tax.

~~(e) **Delivery or transmission charges associated with utilities or public services.** Delivery or transmission services associated with the sale of utilities or public services, including natural or artificial gas and electricity, are subject to sales tax. [**See:** 68 O.S. § 1354(A)(2)] However, delivery or transmission charges associated with gas and electricity sold exclusively for residential use are exempt from the Oklahoma sales tax, but remain subject to any applicable municipal and county sales taxes in effect at the time of the sale. [**See:** 68 O.S. § 1357(6) and 710:65-13-120]~~

~~(f) **"Handling" charges.** If "handling charges" are charges for additional services that a vendor performs as a result of a purchaser requesting that an item be shipped, and the charges for these services are separately-stated on the invoice or statement, then they are not subject to sales tax.~~

710:65-19-72. Deposits, core charges and trade-ins

(a) A core deposit is the amount required by the seller to insure that the buyer of a rebuilt item will exchange or trade-in his old rebuildable item. No deduction from the gross proceeds of a sale is permitted for any credit allowed by the seller for the value of a core charge, deposit or a trade-in in exchange or part payment and the tax applies to the full selling price. ~~However, the trade-in value of used or trade-in parts for a motor vehicle, bus, motorcycle, truck-tractor, trailer, semitrailer or implement of husbandry, with the exception of tires and batteries, is not subject to tax.~~

(b) The retail sale of used tangible personal property which has been acquired by the seller by purchase is taxable upon the full selling price. When an article acquired by the taxpayer by trade-in is subsequently resold, this sale also is taxable on the full selling price. If an article purchased or acquired in trade is salvaged or 'cannibalized' for parts, the sale or use of such parts is considered to be taxable. If the parts are used by the vendor to satisfy an extended warranty agreement, if there is no charge to the customer for the parts, the vendor shall report the cost of the parts on a withdrawal basis and pay sales tax on such cost.

(c) Examples of taxable transactions are as follows:

~~(1) John Doe's generator on his car burns up. He takes the generator off his car and goes to Lefty's Auto Supply Company. Lefty's Auto Supply sells John Doe a rebuilt generator for forty-five dollars ($45.00) and gives him a fifteen dollar ($15.00) credit for his rebuildable generator. Sales Tax is due on the net selling price of thirty dollars ($30.00).~~

(~~2~~1) John Doe needs to replace his battery. He drives to Lefty's Auto Supply and purchases a new battery. Lefty's Auto Supply charges thirty dollars ($30.00) for the battery and allows him five dollars ($5.00) exchange. Sales Tax is due on the full thirty dollars ($30.00).

(~~3~~2) A piano is sold at retail for one thousand dollars ($1,000.00). The purchaser pays six hundred dollars ($600.00) in cash and is allowed a four hundred dollar ($400.00) trade-in. The selling price, upon which the sales tax must be collected and the amount to be reported as gross proceeds is one thousand dollars ($1,000.00). If the trade-in is later sold for five hundred dollars ($500.00), the sales tax must also be collected on the five hundred dollars ($500.00). [**See:** ~~68 O.S. §1352(F)~~ 68 O.S. § 1352(11)]

710:65-19-74. Discounts

~~Any discount allowed at the time of sale which establishes the final selling price for the article at that time may be deducted in arriving at the base price subject to the tax. Discounts which are allowed after the sale is made or upon conditions or events happening at some future time, such as a certain percentage discount being allowed if paid within a specified period, are not deductible in determining the tax base for the sales and service tax or use tax liability.~~

Discounts, whether cash, term, or coupons which are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale are excluded from the calculation of sales price for basing sales tax computation. [**See:** 68 O.S.Supp 2003, § 1352(11)(b)(1)]

PART 17. "I"

710:65-19-156. Internet-related services and transactions

(a) **General provisions.** Charges for providing access to the Internet are not subject to Oklahoma's sales tax, since they do not clearly fall within the levy on telecommunications services. Sales of other services or tangible personal property made via the Internet are taxable in the same manner that they would be taxable if made via any other communication method.

(b) **Internet-related transactions to which the tax is not applicable.** The levy of sales tax does **not** apply to:

(1) Charges for access to the Internet, including dialup, DSL, and cable access services that allow a customer to be routed to the net through a service-provider's server or router.

(2) Charges for designing, creating, or for the storage of information for a "website or home page" on a server, including charges for "set up", "technical fees", "scanning", or domain registration.

(3) Charges for data manipulation or "electronic data processing services", pursuant to *OAC* 710:65-19-86.

(4) Sales of advertising space through the Internet, inasmuch as it falls within the category "electronic media", as defined by *OAC* 710:65-13-1.

(5) *Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media.* [**See:** 68 O.S.Supp.2003, § 1357(30)]

(c) **Internet-related transactions to which the tax is applicable.** The transactions described in this subsection are subject to the levy of sales or use tax, without regard to the fact that the Internet was used to facilitate the sale:

(1) Sales of tangible personal property made via the Internet where the goods are sold to the purchaser in Oklahoma or are shipped into Oklahoma, as set out in *OAC* 710:65-15-1.

(2) Sales of ~~canned~~ prewritten computer software, where the software is not transferred from the seller to the purchaser ~~in a manner **not** solely via the Internet~~ electronically.

(3) The lease or purchase of dedicated lines or ports, routers, or other hardware or software by Internet access-providers, for use in providing services to their subscribers, is taxable to the service-provider. Note however, that the purchase of interstate private line service is exempt pursuant to *OAC* 710:65-19-330.

(d) **Establishment of a physical connection with Oklahoma.** The use of an on-line service or the establishment of a website, whether the server on which the website is maintained is located inside or outside Oklahoma, if the website owner has no other physical connection with Oklahoma, is **not** a sufficient, physical presence in Oklahoma, absent any other connection, to require the website owner to register as a business and to collect Oklahoma sales tax on sales of tangible personal property or services to consumers located in Oklahoma or on sales of goods sold for use in Oklahoma. The duty to collect and procedures to be used in reporting and remitting sales and use taxes which apply to vendors located or "maintaining a place of business" in Oklahoma are set out in *OAC* 710:65-15-1, 710:65-21-4(b) and in 68 O.S. §§ 1406 et seq. (Use Tax Code).

PART 29. "O"

710:65-19-241. Fractionation tanks (frac tanks)

(a) "**Frac tank**" means any portable or stationary, high-volume holding vessel designed and constructed for use in separating, storing, or temporarily holding materials used in or resulting from fracturing techniques used in oil and gas exploration. [17 O.S. § 54 et. seq]

(b) Mobile frac tanks do not qualify for special mobilized machinery registration or for commercial trailer registration under the Oklahoma Vehicle License and Registration Act.

(c) A mobile frac tank is classified as personal property and is subject to the provisions of the Oklahoma Ad Valorem Tax Code.

(d) The sales tax levied by 68 O.S. § 1354 applies to the gross receipts or gross proceeds from the sale, rental, or lease of mobile frac tanks, unless otherwise exempted.

PART 31. "P"

710:65-19-258. Registered pharmacists and druggists

(a) When registered pharmacists or druggists sell ~~drugs or medicines~~ **"over-the-counter"** drugs or other tangible personal property to purchasers ~~apart from their filling of the prescription of a licensed physician or other person qualified to issue prescriptions, or when registered pharmacists or druggists sell other tangible personal property to purchasers, such registered pharmacists or druggists~~ they must collect, report and remit the sales tax on these sales, unless otherwise exempt.

(b) When registered pharmacists and druggists, who, themselves, are engaged in the practice of a licensed profession, sell medicines or drugs on the prescription of a licensed physician or other person qualified to issue prescriptions which are exempt from taxation, such registered pharmacists and druggists are not required to collect and remit sales tax on their receipts from such transactions, including receipts from both labor and tangible personal property.

PART 35. "R"

710:65-19-294. Research and development

(a) The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

(b) In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research and development company must pay tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

(c) A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(d) A new or expanding business primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733, and 8734 of the SIC Manual, latest revision, may qualify for sales and/or use tax exemption on certain of its purchases under the Oklahoma Research and Development Incentives Act. [**See**: 68 O.S.~~Supp.1992,~~ § 54001 et seq. and *OAC* 710:65-13-52]

PART 39. "T"

710:65-19-330. Telecommunications services

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

(1) ***"Air-to-ground radiotelephone service"*** *means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.* [68 O.S.Supp.2003, § 1354.30(A)(1)]

(2) ***"Call-by-call basis"*** *means any method of charging for telecommunications services where the price is measured by individual calls.* [68 O.S.Supp.2003, § 1354.30(A)(2)]

(3) ***"Communications channel"*** *means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.* [68 O.S.Supp.2003, § 1354.30(A)(3)]

(4) ***"Customer"*** *means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service.* ***"Customer"*** *does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.* [68 O.S.Supp.2003, § 1354.30(A)(4)]

(5) ***"Customer channel termination point"*** *means the location where the customer either inputs or receives the communications.* [68 O.S.Supp.2003, § 1354.30(A)(5)]

(6) ***"End user"*** *means the person who utilizes the telecommunications service. In the case of an entity,* ***"end user"*** *means the individual who utilizes the service on behalf of the entity.* [68 O.S.Supp.2003, § 1354.30(A)(6)]

(7) ***"Home service provider"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act.* [68 O.S.Supp.2003, § 1354.30(A)(7)]

(~~1~~8) **"International telecommunications services" defined. "International telecommunications services"** means all telecommunications services that either (1) originate in this state and terminate outside of the United States or (2) originate outside of the United States and terminate in this state, where, in either instance, a service address of the telecommunications service is in this state.

(~~2~~9) **"Interstate telecommunications services" defined. "Interstate telecommunications services"** means all telecommunications services that either (1) originate in this state and terminate in another state or (2) originate in another state and terminate in this state, where, in either instance, a service address of the telecommunications is in this state. Interstate includes international.

(~~3~~10) **"Intrastate telecommunications services" defined. "Intrastate telecommunications services"** means all telecommunications services regardless of routing that both originate and terminate within this State.

(~~4~~11) **"Local exchange telecommunications services" defined. "Local exchange telecommunications services"** means the provision of each access line and each dial tone to a fixed location for sending and receiving service in the provider's local exchange network. Local exchange service includes, but is not limited to, all ordinary exchange and toll service, extra listings, joint-user service, customer access line charges, and auxiliary services (call waiting, call forwarding, etc.).

~~(5) **"Private line service" ("PLS") defined. "Private line service ("PLS")"** means any dedicated, non-traffic sensitive, service for a single customer that entitles the customer to the exclusive or priority use of a communications channel or group of channels between specified locations.~~

~~(6) **"Service address" defined. "Service address"** means the location of telecommunications equipment from which telecommunications are originated or at which telecommunications are received by a consumer. **"Service address"** is further defined by the following special provisions, which are listed in order of priority of application, so that only the first applicable special provision will apply if more than one potentially applies:~~

~~(A) The service address of all intrastate telecommunications services is deemed to be in this state;~~

~~(B) If the gross receipts is paid through a credit or payment mechanism that does not relate to a service address of the interstate or international telecommunications services, as may be the case when payment of the gross revenue is accomplished by a bank, travel, credit or debit card, the service address is deemed to be the location of the origination of the interstate or international telecommunications services; and~~

~~(C) If the service address is not a defined location, as in the case of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, service address shall mean the place of primary use of the telecommunications equipment. Section 55001 of Title 68 of the Oklahoma Statutes defines "place of primary use", in this instance, to be the residential street address or the primary business street address of the customer which is within the licensed service area of the home service provider.~~

(12) ***"Mobile telecommunications service"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act*. [68 O.S.Supp.2003, § 1354.30(A)(12)]

(13) ***"Place of primary use"*** *means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services,* ***"place of primary use"*** *must be within the licensed service area of the home service provider*. [68 O.S.Supp.2003, § 1354.30(A)(13)]

(14) ***"Post-paid calling service"*** *means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service*. [68 O.S.Supp.2003, § 1354.30(A)(14)]

(15) ***"Prepaid calling service"*** *means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount*. [68 O.S.Supp.2003, § 1354.30(A)(15)]

(16) ***"Private communication service"*** *means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels*. [68 O.S.Supp.2003, § 1354.30(A)(16)]

(17) ***"Service address"*** *means:*

(A) *The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;*

(B) *If the location in subparagraph (A) of this paragraph is not known,* ***"service address"*** *means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and,*

(C) *If the locations in subparagraphs (A) and (B) of this paragraph are not known,* ***"service address"*** *means the location of the customer's place of primary use*. [68 O.S.Supp.2003, § 1354.30(A)(17)]

(~~7~~18) **"Wide area transmission service" ("WATS/800") defined. "Wide area transmission service (WATS/800)"** means any high volume telephone or telegraph service purchased under separate contract which permits the subscriber to make or receive unlimited incoming and/or outgoing communications to specified geographical service areas.

(b) **Sales tax levied on the sale of telecommunications services.** ~~Effective June 9, 1992, sales~~ Sales tax is levied on the sale of telecommunications services regardless of the vendor of said service as follows:

(1) Telecommunications services which originate or terminate in Oklahoma and are charged to the consumer's service address in Oklahoma, regardless of where physical bills for such telecommunications services are sent.

(2) Local exchange telecommunications services and rental charges.

(3) The sale of a prepaid telephone authorization number and the recharge of a prepaid telephone calling card or authorization number as determined by *OAC* 710:65-19-331.

(c) **Transactions to which the tax is applicable.** Telecommunications services include:

(1) The transmission, conveyance, routing, or reception of any electronic, electromagnetic interactive transmission, or any other kind of energy force variations of information in any form, including but not limited to voice, image, data, or printed copy signal by means of wires, cables, radio waves, laser microwaves, satellites, fiber optics, any combination of these media, or any other method now in existence or that may be devised.

(2) The intrastate or interstate transmission of messages, programming or information through use of local, toll and wide area telephone service; private ~~line~~ communications services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications services; specialized mobile radio; stationary two-way radio; two-way paging service; facsimile or FAX; or any other form of mobile and portable two-way communications; or any other transmission of messages, programming or information by electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite, or any combination of these media, or any method now in existence or that may be devised.

(3) Rental charges, including construction charges and charges for installation and other items associated with the connection, change of service or servicing of any equipment having any connection with the transmission of any message or image.

(d) **Transactions to which the tax is not applicable.** Telecommunications services do not include:

(1) Interstate telecommunications services used, allocated or distributed between a parent corporation and its wholly owned subsidiaries, between the wholly owned subsidiaries, or between members of an affiliated group as defined by 12 U.S.C. §1504, when the tax imposed under this chapter previously was paid to a retailer, but only to the extent that the charges between the parent corporation and wholly owned subsidiaries, between the wholly owned subsidiaries, or between members of an affiliated group, represent an expense allocation between the corporations and not the generation of profit for the corporation rendering such service.

(2) Value-added non-voice services in which computer applications are used, other than for purposes of transmission, to act on the form, content, code or protocol of the information. If charges are not separately stated, however, charges are subject to tax.

(3) Charges made to a person regularly engaged in the business of selling telecommunications services for:

(A) Carrier access;

(B) Right of access;

(C) Telecommunications services to be resold; or

(D) Telecommunications services used in the subsequent provision of, used as a component part of, or integrated into end-to-end telecommunications services.

(4) Charges for having an employee personally answering a telephone and verbally relaying a message are not subject to sales tax.

(5) Charges for "wide area transmission service" (WATS/800) and for "private ~~line~~ communications service" ~~(PLS)~~ which are "interstate telecommunications services", all as defined in this Section, are exempt from sales tax.

(e) **Coin-operated telephone taxable.** Gross receipts from a coin-operated telephone are subject to sales tax.

(f) **Purchases of tangible personal property by persons providing telecommunications services.** Except as otherwise set out in this paragraph, persons engaged in the business of providing telecommunications services are the consumers of tangible personal property used in providing those services. Sales of such tangible personal property to persons providing telecommunications services are taxable. However, effective May 6, 1992, sales of wireless telecommunications equipment to a wireless telecommunications vendor, who subsequently transfers the equipment to a customer for no charge or for a discounted charge, in connection with the customer's purchase of new or continued wireless telecommunications service, is exempt.

(g) **Access charges billed to customer.** Access charges billed to consumers of telecommunications services are taxable.

(h) Sales of telecommunications services shall be sourced as set out in Section 710:65-18-5.

PART 41. "U"

710:65-19-341. Natural or artificial gas and electric utility services

(a) **General provisions.** Generally, the sale of utilities or public services, including natural or artificial gas and electricity, and associated delivery or transmission services, are subject to sales tax. [**See:** 68 O.S.Supp. 1999, § 1354(A)(2)]

(b) **Exemptions and exclusions.** ~~Gas~~ Natural or artificial gas and electricity sold exclusively for residential use, including any charges for associated delivery or transmission service, are exempt from the Oklahoma sales tax, but remain subject to any applicable municipal and county sales taxes in effect at the time of the sale. [**See:** 68 O.S.Supp. 1999, § 1357(3) and 710:65-13-120]

(c) **Point of sale for gas and electricity.** For purposes of any applicable municipal and county sales taxes, the point of sale for gas and electric utility services is determined to be the location of the meter by which the purchaser's usage is measured.

(d) **Minimum service charges.** When a fixed monthly charge is billed to a customer by a natural gas or electric utility and there is no consumption, this charge is not subject to sales

tax. If any amount of gas or electricity is consumed, the minimum charge is subject to sales tax.

(e) **Other charges.** Charges which are separately stated and are unrelated to the amount of gas or electricity used or delivery or transmission thereof, such as fees for meter reading, installation, initiation, disconnection, or restoration of service, as well as charges for returned checks or for late payment, are not subject to sales tax.

SUBCHAPTER 21. USE TAX

710:65-21-2. Definitions

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

"Manufacturing operation" *means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site.* ***"Manufacturing operation"*** *does not include administration, sales, distribution, transportation, site construction, or site maintenance.* [68 O.S.Supp.1998, Section 1352(10)

"Person" means any individual, partnership, association, or corporation.

"Purchase price" ~~means the total consideration paid or given for tangible personal property~~ has the same meaning as **"gross receipts"**, as set out in 710:65-1-9.

"Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration. The term **"sale"** includes the exchange, barter, lease, or rental or tangible personal property.

"Use tax" means an excise tax charged on the sale of tangible personal property purchased from outside Oklahoma and brought into the state for consumption or use. [**See:** 68 O.S. § 1401]

710:65-21-7. Reports, payments, and penalties

(a) **General provisions.** Payment of use tax is due on the first of each month for purchases made the preceding month. Every person, whether responsible to report and remit the tax as a vendor, or as a purchaser, must file for each month for which a liability exists. If not reported and not paid on the ~~15th~~ 20th day of the month following the month in which the goods were sold for use in Oklahoma, or in which the goods were purchased for use in Oklahoma, the tax and report shall be delinquent and interest and penalty will be assessed as allowed by statute. Reports are to be made on forms which can be obtained from the Commission.

(b) **Semimonthly electronic reporting.** *Persons owing an average of Two Thousand Five Hundred Dollars ($2,500.00) or more, per month, in total use taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:*

(1) *For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month; and*

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer.*

(c) **Electronic reporting; due dates; delinquency dates.** *Persons required to remit the tax due pursuant to subsection (b) shall file a monthly use tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the tax is levied. Taxes not paid on or before the due dates specified in subsection (b) shall be delinquent from such dates.* [68 O.S.Supp.2003, § 1405(D)]

(d) **Payment.** Remittances covering the use tax liability reported shall accompany the use tax return. Use taxes will be considered delinquent and interest as provided by law will be charged if payment is not received or postmarked by the date the return is due.

(e) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(f) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(g) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day of delinquency from the date the tax becomes delinquent until it is paid.

(h) **Penalty for failure to file and remit.** A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent of the amount of tax due.

(i) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after

written demand has been served upon the taxpayer by the Commission, a penalty of twenty-five (25) percent may be assessed and collected.

(j) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent shall be added, collected, and paid.

(k) **Waiver of penalty; interest.** At the discretion of the Commission, the interest or penalty assessed, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [**See:** 68 O.S. §§ 217, 1365, 1405]

710:65-21-20. Use tax exemptions

The following are specifically exempt from use tax: [**See:** 68 O.S. §§ 1404 and 1411]

(1) Tangible personal property brought into this state by a non-resident for his or her personal use visiting or with the intent to become a resident.

(2) Tangible personal property that is purchased for resale.

(3) Tangible personal property on which sales/use tax has been paid that is equal to or greater than the rate charged by Oklahoma. If the rate charged by another state is less than the rate charged by Oklahoma, the difference ~~is taxable. Provided however, the transaction would remain subject to any applicable municipal use tax.~~ in the rate is to be multiplied by the purchase price of the tangible personal property to give the amount of tax due for that purchase. In the same manner, a credit against any municipal or county use tax paid may be taken if a municipal or county sales or use tax, respectively, has been paid to an out-of-state municipality or county.

(4) Those items specifically exempted by the Oklahoma Sales Tax Code. [**See:** 68 O.S. §§ 1350 et seq.]

(5) Tangible personal property used in or by commercial airlines and railroads.

(6) Livestock purchased for feeding or breeding purposes and later resold.

(7) For municipal and county uses tax purposes only, the municipal or county rate does not apply to goods which are brought into the city or county temporarily.

(8) As of January 1, 1991, the use of rail transportation cars to haul coal to coal-fired electric generating plants located in Oklahoma.

(9) Tangible personal property purchased for use by manufacturers in manufacturing operations located in Oklahoma.

(10) Municipal and county use taxes do not apply to property purchased in Oklahoma.

[OAR Docket #04-928; filed 5-18-04]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #04-929]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Payments
710:90-3-11. Income tax withholding for pass-through entities [NEW]
Subchapter 7. Audit
710:90-7-3. Out-of-state audits [REVOKED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. §§ 203, 2385.3, 2385.13, 2385.15, 2385.17, 2385.27
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. Returns and payments
710:90-3-11. Income tax withholding for pass-through entities [NEW]
Gubernatorial approval:
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03-3303
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
New Section 710:90-3-11 describes the scope of the duty to withhold, report, and remit Oklahoma income tax withholding for "pass-through" entities. Some unique filing considerations for the various "pass-through" entities have been explained, and various instances in which an entity will not be subject to withholding, as well as various exclusions have been provided. Due dates, filing schedules, registration requirements, and required reports are also addressed.

Section 710:90-7-3 has been revoked to reflect that audit costs are no longer statutorily imposed upon out-of-state taxpayers.
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

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 25, 2004:

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from each distribution being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;

(E) A member of a limited liability company; or,

(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes.

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the cash distribution or the Oklahoma net distributed income if determinable at the time of distribution. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the cash distribution or the Oklahoma distributed net income if determinable at the time of distribution.

(e) **Non-resident members not subject to withholding.** Persons, other than individuals, who are exempt from federal income tax are not subject to having income tax withheld under this Section. Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code are not subject to having income tax withheld under this Section. Also, insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax under 68 O.S. § 2359(c) are not subject to having income tax withheld under this Section.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

(4) When a distribution made by a pass-through entity is determined to be not subject to the provisions of this Section by the Commission; or,

(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt.

(g) **Due dates for payment of pass-through withholding.** Pass-through entities that withhold on distributions are required to file an Oklahoma Tax Commission Form OW-9-C and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) **First quarter.** For distributions made during January, February, and March, the amount withheld is due no later than April 30;

(2) **Second quarter.** For distributions made during April, May, and June, the amount withheld is due no later than July 31;

(3) **Third quarter.** For distributions made during July, August, and September, the amount withheld is due no later than October 31; and

(4) **Fourth quarter.** For distributions made during October, November, and December, the amount withheld is due no later than January 31 of the following year.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of the distribution, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with an Oklahoma Tax Commission Form 500-B, by last day of the second month after the end of its taxable year, showing the member's respective amount of income and the tax withheld.

(2) Each non-resident member must enclose a copy of the Form 500-B to the Oklahoma income tax return as verification for this withholding. Copies of Form 500-Bs, along with the Oklahoma Tax Commission Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

SUBCHAPTER 7. AUDIT

710:90-7-3. Out-of-state audits [REVOKED]

~~When it is deemed advisable by the Commission to examine the books and records of any taxpayer at a location outside this state, the necessary and reasonable expenses including, but not limited to, travel, lodging, and meals incurred in the examination shall be charges to such taxpayer; however, the taxpayer may elect, in writing, to deliver all books and records determined to be necessary by the examiner to the office of the Commission or to an office of the taxpayer located in Oklahoma.~~

[OAR Docket #04-929; filed 5-18-04]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS

[OAR Docket #04-1032]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:25-1-4. Variances and waivers [NEW]
Subchapter 3. Responsibility, Classification and Design Standards
785:25-3-7. Minimum outlet conduit capacities [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. 2001, §105.27; 82 O.S. 2001, §110.1 and following; 82 O.S. §1085.2.
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ANALYSIS:
A new rule is being added to Subchapter 1 on General Provisions to provide that the OWRB may consider and grant waivers to requirements of other rules of the chapter for good cause shown on a case by case basis, if sound engineering principles and practices are shown and if the action taken pursuant to a variance or waiver will not increase risk to life or property. The rule on minimum outlet conduit capacities are being amended by deleting the paragraph containing a height of conduit requirement based on storage for domestic use.
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

785:25-1-4. Variances and waivers

A variance or waiver to rules specified in this chapter may be granted if the Board finds that the cost of compliance with the rule without a variance would impose significant expense without providing for additional safety of the construction for which the variance or waiver is sought, and integrity of the dam will not be adversely affected; provided, however, that if the rule for which the variance or waiver is requested relates to design criteria or otherwise calls for professional engineering judgment, the Board may require that a registered professional engineer certify that the variance or waiver being requested will not adversely affect the integrity of the dam.

SUBCHAPTER 3. RESPONSIBILITY, CLASSIFICATION AND DESIGN STANDARDS

785:25-3-7. Minimum outlet conduit capacities

(a) **Requirements for outlet conduit capacity shall be as follows:**

(1) ~~Regardless of size, all~~ All dams ~~which are constructed across definite streams and all reservoirs which have dams higher than twenty five (25) feet or storage greater than fifty (50) acre feet will be provided with an~~ subject to the Board's jurisdiction shall have at least one outlet conduit of ~~significant~~ sufficient capacity to prevent interference with natural streamflow ~~through the reservoir to the~~ and injury of downstream appropriators and domestic users. Abesnt evidence to the contrary, the

minimum size of the outlet conduits shall be as set forth in subsection (d) of this section.

(2) ~~In addition to any natural flow released, the outlet conduit shall be of sufficient capacity to pass at the same time the maximum water requirements of the owner.~~

~~(3)~~ The height of the outlet conduit ~~may be such as to allow the owner to retain a normal domestic water supply of up to a maximum of fifty (50) acre-feet of storage per one hundred and sixty (160) acres of adjacent land owned or operated~~ shall be no more than five feet (5') above the natural stream channel unless otherwise ordered by the Board. ~~Such storage must be designed as domestic in nature on the plans~~. The capacity of the reservoir below the outlet conduit shall be designated as the inactive pool.

(b) **Conduit operation.** All conduits shall be gate- or valve-operated on the upstream side and shall be maintained in an operable condition at all times.

(c) **Conduit design life.** The design life expectancy of the conduit shall be equal to or greater than the design life of the dam.

(d) **Minimum size outlet conduit requirements.** The outlet conduit must be of sufficient size to draw down the entire reservoir to the inactive pool within twenty (20) days, provided that minimum ~~Minimum~~ size outlet requirements are as follows:

~~NORMAL POOL CAPACITY (at principal spillway)~~	~~MINIMUM SIZE OF OUTLET CONDUIT~~
~~Less than 100 acre-feet~~	~~6-inch pipe~~
~~101-150 acre-feet~~	~~8-inch pipe~~
~~151-200 acre-feet~~	~~10-inch pipe~~
~~201-250 acre-feet~~	~~12-inch pipe~~
~~251-300 acre-feet~~	~~14-inch pipe~~
~~301-350 acre-feet~~	~~15-inch pipe~~
~~351-500 acre-feet~~	~~16-inch pipe~~
~~More than 500 acre-feet~~	~~24-inch pipe~~

(1) For less than 100 acre-feet normal pool capacity (at principal spillway), the minimum size of conduit is 6-inch pipe.

(2) For 101 to 150 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 8-inch pipe.

(3) For 151 to 200 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 10-inch pipe.

(4) For 201-250 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 12-inch pipe.

(5) For 251-300 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 14-inch pipe.

(6) For 301-350 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 15-inch pipe.

(7) For 351-500 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 16-inch pipe.

(8) For more than 500 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 24-inch pipe.

(e) **Amendments of minimum requirements for good cause.** Minimum size requirements may be amended by the Board for good cause. However, conduit must be of sufficient size to draw down the entire reservoir to the inactive pool within a ~~reasonably short~~ period of ~~time. For purposes of this requirement, and absent a showing acceptable to the Board to the contrary, a "reasonably short period of time" shall be a period of~~ not more than twenty (20) days.

[OAR Docket #04-1032; filed 5-25-04]

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

[OAR Docket #04-1033]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:30-1-2. Definitions [AMENDED]
Subchapter 3. Permit Application Requirements and Processing
785:30-3-5. Approval of application [AMENDED]
785:30-3-6. Well spacing [AMENDED]
Subchapter 5. Groundwater Permits
785:30-5-2. Temporary permits [AMENDED]
Subchapter 9. Maximum Annual Yield Determinations
785:30-9-2. Determination of maximum annual yield [AMENDED]
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ANALYSIS:

A primary reason for amended existing rules is the enactment of Senate Bill 288 during the 2003 legislative session that addressed sensitive sole source groundwater basins.

OAC 785:30-1-2 is being amended to add a new definition of "sensitive sole source groundwater basin or subbasin."

OAC 785:30-3-5 is being amended to add provisions about application approval to withdraw groundwater from a sensitive sole source groundwater basin as described in Senate Bill 288. Additionally, language is added to explain that Senate Bill 288 imposed a moratorium on certain use outside the counties that overlie a sensitive sole source groundwater basin. Finally, language is added to explain the procedure to be followed in making the determination of whether a proposed use would likely degrade or interfere with springs or streams emanating from a sensitive sole source groundwater basin.

OAC 785:30-3-6 on well spacing is being amended to clarify language about the basin where other existing wells draw water, and to clarify how location exceptions are considered, particularly with respect to existing wells.

OAC 785:30-5-2 is being amended to clarify the general procedures for revalidation for temporary permits and to implement the meaning of language in Senate Bill 288 about revalidation of existing temporary permits to withdraw groundwater from a sensitive sole source groundwater basin. The amendments state that the request to revalidate will require the Board to determine whether the use under the revalidated temporary permit will degrade or interfere with springs or streams that emanate in whole or in part water originating from a sensitive sole source groundwater basin. The language establishes that upon agreement by the applicant a condition could be placed on the permit that the use would not degrade or interfere with springs or streams, the burden to show that such use would degrade or interfere with springs and streams would shift to the applicant. Additional language has been added that pursuant to Senate Bill 288, the revalidation of a temporary permit that allows for municipal or public water supply use outside a county that overlays in whole or in part in a sensitive sole source groundwater basin shall be considered a new application and subject to the provisions of Senate Bill 288, including the moratorium on issuance of temporary permits for such use.

OAC 785:30-9-2 is being amended to implement the provisions in Senate Bill 288, and specifies that for sensitive sole source groundwater basins or subbasins, the yield would ensure that any permit for removal of water from the basin or subbasin will not reduce the natural flow of springs or streams emanating from the basin or subbasin.

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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

785:30-1-2. Definitions

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

"Agricultural use" means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S., §§301 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Artificial recharge" means any man-made process specifically designed for the primary purpose of increasing the amount of water entering into a groundwater basin or subbasin.

"Beneficial use" means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial use" means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

"Dedicated land" means the tract or tracts of land which the applicant owns, leases, or from which the applicant holds a valid right to withdraw groundwater and which is listed in the application and used to calculate the amount of groundwater requested.

"Definite stream" means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area. [82:105.1(A)]*

"Domestic use" *means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity* of the land whether or not the animals are actually owned by such natural individual or family, *and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns* [82:1020.1(2)]. Domestic use also includes:(1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

"Enhanced recovery of oil and gas" means any process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

"Equal proportionate part or share" means the maximum annual yield of water from a groundwater basin or subbasin which shall be allocated to each acre of land overlying such basin or subbasin. It shall be that percentage of the maximum annual yield, determined as provided by 82 O.S., §1020.5 and 785:30-9-2 which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which is owned or leased by an applicant for a regular permit.

"Fresh water" means *water which has less than five thousand (5,000) parts per million total dissolved solids. All other water is salt water.* [82:1020.1(7)]

"Groundwater" means *fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82:1020.1(1)]*

"Groundwater basin" means *a distinct underground body of water overlain by contiguous land having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(3)] The area boundaries of a major or minor basin can be determined by political boundaries, geological, hydrological, or other reasonable physical boundaries.

"Groundwater subbasin" means *a subdivision of a major or minor groundwater basin overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(4)] Examples are a lateral or vertical subdivision of a groundwater basin delineated by either physical or political boundaries. Physical boundaries would be different in geological, hydrological or yield capabilities; bedrock; faults; low permeability zones or limits of pressure areas, etc. Political boundaries would be irrigation districts, planning districts, counties, city limits, etc.

"Industrial use" means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

"Irrigation use" means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.

"Life of a groundwater basin or subbasin" means that period of time during which at least fifty (50) percent of the total overlying land of the basin or subbasin will retain a saturated thickness allowing pumping of the maximum annual yield for a minimum twenty (20) year life of such basin or subbasin, provided that after July 1, 1994, the average saturated thickness will be calculated to be maintained at five feet (5') for alluvium and terrace aquifers and fifteen feet (15') for bedrock aquifers unless otherwise determined by the Board; provided further that after July 1, 1994, whether fifty (50) percent of the total overlying land of the basin or subbasin retains a saturated thickness allowing pumping for a minimum twenty (20) year life of the basin or subbasin need not be considered by the Board.

"Major groundwater basin" *means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and from which groundwater wells yield at least fifty (50) gallons per minute on the average basinwide if from a bedrock aquifer and at least one hundred fifty (150) gallons per minute on the average basinwide if from an alluvium and terrace aquifer, or as otherwise designated by the Board.* [82:1020.1(3)]

"Maximum annual yield" means a determination by the Board of the total amount of fresh groundwater that can be produced from each basin or subbasin allowing a minimum twenty (20) year life of such basin or subbasin.

"Mining use" means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

"Minor groundwater basin" *means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and which is not a major groundwater basin.* [82:1020.1(9)]

"Municipal and rural water use" means the use of water by a municipality, rural water district, water corporation, or community for the promotion and protection of safety, health and comfort, distribution to natural persons for the maintenance of life and property, public and private business pursuits, and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with other uses.

"Natural recharge" means all flow of water into a groundwater basin or subbasin by natural processes including percolation from irrigation.

"Notice by publication" means unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

"Party or interested party" means *a person or agency named and participating, or properly seeking and entitled by law to participate,* [75:250.3(7)] in hearings other than hearings on Board rules, regulations and standards.

"Permittee" means the person to whom a permit to use water has been issued by the Board or the person to whom such permit has been duly and properly transferred under Board rules.

"Person" means any individual, firm, partnership, association, corporation, business or public trust, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Power use" means water used for power generation, including, but not limited to, fossil-fueled electric power generation.

"Prior groundwater right" means the right to use ground water established by compliance with the laws in effect prior to July 1, 1973, the effective date of the Groundwater Act, and determined pursuant to 82 O.S., §1020.14 and Subchapter 11 of this Chapter.

"Public water supply" means the use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal and rural water use."

"Recreation, fish and wildlife use" means use which includes but is not limited to the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

"Salt water" means any water containing more than five thousand (5,000) parts per million total dissolved solids.

"Sensitive sole source groundwater basin or subbasin" *means a major groundwater basin or subbasin all or a portion of which has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency*, and includes

any portion of any contiguous aquifer located within five (5) miles of the known areal extent of the surface outcrop of the sensitive sole source groundwater basin [82:1020.9A].

"Special use" means and includes but is not limited to the use of groundwater for groundwater heat pump systems or artificially recharging a groundwater basin or subbasin.

"Total discharge from the basin or subbasin" means and shall include but may not be limited to the amount of fresh groundwater withdrawn and placed to beneficial use prior to July 1, 1973, which amount shall be determined from the applicable final orders of the Board determining prior groundwater rights.

"Waste by depletion" means unauthorized use of wells or groundwater; *[d]rilling a well, taking, or using fresh groundwater without a permit, except for domestic use; [t]aking more fresh groundwater than is authorized by the permit; [t]aking or using fresh groundwater in any manner so that the water is lost for beneficial use; [t]ransporting fresh groundwater from a well to the place of use in such a manner than there is an excessive loss in transit; [u]sing fresh groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well ... drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board;* [82:1020.15(A)] or *[u]sing fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water* [82:1020.15(A)].

"Waste by pollution" means *[p]ermitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin ...* or *[f]ailure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof* [82:1020.15(A)].

"Water right" means a right to the use of stream or groundwater for beneficial purposes.

"Water supply" means a natural body of water, whether static or moving either on or under the surface of the ground, or in a man-made reservoir, available for beneficial use on a reasonably dependable basis.

"Well" means any type of excavation for the purpose of obtaining groundwater or to monitor or observe conditions under the surface of the earth but does not include oil and gas wells.

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

785:30-3-5. Approval of application

(a) When a person makes an application for a groundwater permit, the Board shall consider relevant evidence and data before taking final action on the application. ~~If~~ Subject to subsection (f) of this section, if the Board finds that the applicant owns the surface of the dedicated land or has a valid lease or other legal authority for the taking of groundwater from the land; the dedicated land overlies a fresh groundwater basin or subbasin; the applicant's intended use for the water is a beneficial use; and that waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur, then the Board shall approve the application and issue the appropriate permit.

(b) In making the determination of whether the lands are owned or leased by the applicant, the Board will only consider language on the face of legal instruments used to support or oppose this element.

(c) In making the determination of whether the lands owned or leased overlie the fresh groundwater basin or subbasin, if a hydrologic survey or report and determination of the maximum annual yield have not been completed, and absent specific evidence to the contrary, the Board will presume that the groundwater underlying the lands dedicated is contained in one groundwater basin as shown in United States Geological Survey and Oklahoma Geological Survey hydrologic atlases. The Board will presume that no subbasin exists unless clear and convincing evidence is presented that the groundwater subject of the application is contained in a confined aquifer and is not hydrologically connected to a main body of water underlying the general area as shown in hydrologic atlases.

(d) The Board may approve applications proposing well locations on dedicated lands which are not contiguous to other lands dedicated, as long as the lands on which the wells are to be located and the other non-contiguous lands overlie the same groundwater basin. This provision shall be subject to any well spacing orders issued by the Board.

(e) In determining whether waste will occur, the Board shall consider the following:

(1) Regarding waste by depletion, evidence concerning the manner and method of use proposed, efficiency of system proposed to be used, history and incidents of past waste and applicant's response thereto and the amount of groundwater needed for the purpose proposed in relation to the amount allocated to the land dedicated to the application may be considered by the Board.

(2) Regarding waste by pollution, the Board may consider relevant and admissible evidence regarding the manner and method of all of applicant's uses of fresh groundwater; applicant's well and water distribution system; history and incidents of permitting or causing pollution of groundwater or *failure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof* [82:1020.15]; and anything else that tends to prove that the applicant will or will not cause or allow groundwater pollution. Provided, however, *[i]f the activity for which the applicant intends to use the water is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental Quality or the State Department of Agriculture, the Board shall be precluded from making a determination whether waste by pollution will occur as a result of such activity* [82:1020.9].

(3) To ensure that waste by pollution or waste by depletion will not occur and that the activities to be conducted by the applicant will not violate Oklahoma Water Quality

Standards, the Board may impose conditions on the use of the groundwater.

(f) **Applications for use from sensitive sole source groundwater basin; moratorium.** When a person makes an application for a permit to use groundwater from a sensitive sole source groundwater basin or subbasin, in addition to the findings described in subsection (a) of this section, the Board must find that *the proposed use of groundwater is not likely to degrade or interfere with springs or stream emanating in whole or in part from water originating from the sensitive sole source groundwater basin or subbasin* [82:1020.9(A)(2)(d)] before it may approve the application and issue the appropriate permit; provided that under Title 82 of the Oklahoma Statutes, Section 1020.9A, effective August 28, 2003, a *moratorium is established on the issuance of any temporary permit that would lead to any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin or subbasin outside of any county that overlays in whole or in part said basin or subbasin* [82:1020.9A(B)(1)] and that *said moratorium shall be in effect until such time as the . . .Board conducts and completes a hydrological survey and approves a maximum annual yield that will ensure that any permit for the removal of water from a sensitive sole source groundwater basin or subbasin will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin* [82:1020.9A(B)(2)].

785:30-3-6. Well spacing

(a) **Spacing.** Within groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the ~~studied~~ same basin. This well spacing provision shall not be applicable to plugged or abandoned wells or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed.

(b) **Location exceptions.** A location exception shall be granted if the person requesting the exception shows in an individual proceeding that drilling or completing the new or proposed well at the location required to comply with the established well spacing set forth in subsection (a) of this section would be inequitable or unreasonable, that notice, as set forth in 785:30-3-4, of the location exception request is provided and that one of the following conditions is met:

(1) No objection is received from any landowner having a well located within the established well spacing distance of the proposed well requested to be authorized.

(2) There is presented substantial, competent evidence to the Board and the Board determines that the well requested to be authorized will not be pumped at a rate and/or duration that creates a cone of depression which will cause an excessive drawdown in the ~~historic average static water levels of~~ existing wells located within the established well spacing distance of the well proposed to be authorized.

(3) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.

(4) The well requested to be authorized is ~~an existing~~ a well which was drilled, completed and used prior to the date of the maximum annual yield determination and which does not meet the spacing requirements of (a) of this section.

(5) The applicant presents substantial, competent evidence to the Board and the Board determines that the amount of groundwater available in locations that would meet spacing requirements is insufficient for the purposes to be authorized.

SUBCHAPTER 5. GROUNDWATER PERMITS

785:30-5-2. Temporary permits

(a) **Temporary permit purposes; procedures for granting.**

(1) *A temporary permit is an authorization for the same purposes as a regular permit but is granted by the...Board prior to completion of the hydrologic survey and the determination of the maximum annual yield of the basin or subbasin and must be revalidated annually during its term.* [82:1020.11(B)]

(2) *The procedures provided for the granting of regular permits shall be applicable to the granting of temporary...permits except that the completion of the hydrologic survey shall not be a condition precedent.* [82:1020.10]

(b) **Amount of water allocated by temporary permit.**

(1) Except as provided in this subsection, *unless requested by a majority of the...owners of the land* [82:1020.11(B)] overlying the fresh groundwater basin or subbasin, *or by the applicant, the water allocated by a temporary permit shall not be less than two (2) acre-feet annually for each acre of land owned or leased by the applicant in the basin or subbasin.* [82:1020.11(B)]

(2) However, *if the applicant presents clear and convincing evidence that allocations in excess of two (2) acre-feet annually for each acre of land overlying the basin or subbasin will not exhaust the water thereunder in less than twenty (20) years, then the Board may issue temporary permits in such basin or subbasin in such amounts in excess of said limitation as will assure a minimum of twenty (20) year life for such basin or subbasin.* [82:1020.11(B)]

(3) Less than two (2) acre-feet per acre annually may be granted if the applicant requests a lesser amount, or if the evidence submitted shows that an amount at two acre-feet per acre would not be of beneficial use or would constitute waste.

(4) *If the lands dedicated to the application overlie two or more groundwater basins or subbasins* which overlie each other *and the maximum annual yield has been determined for at least one but not all the basins or subbasins, a temporary permit may be issued to the applicant if the applicant demonstrates by substantial competent evidence*

that the water to be withdrawn by the temporary permit will not be taken from a basin or subbasin for which the maximum annual yield has been determined. [82:1020.9]

(A) If applicant intends to take water from both groundwater basins or subbasins, then a temporary permit may be issued only if the individual well(s) are or will be completed in only the basins or subbasins which have not had a maximum annual yield determined and a separate permit will be required for the withdrawal of groundwater from well(s) in each basin or subbasin for which a maximum annual yield has been determined.

(B) If existing or proposed well(s) dedicated to the application are completed in more than one groundwater basin or subbasin so that the wells are capable of taking water from both basins or subbasins, a temporary permit may not be issued.

(5) *If the land overlies two or more groundwater basins* which overlie each other *and the maximum annual yield has not been determined for any of the basins or subbasins, more than one temporary permit may be issued for the land if the applicant demonstrates by substantial competent evidence from which basin the water will be withdrawn for each of the permits.* [82:1020.9]

(c) **Annual revalidation and expiration of temporary groundwater permits.**

(1) *A temporary groundwater permit must be revalidated annually during its term.* [82:1020.11(B)]

(2) *Water use report forms will be mailed* in January *to each temporary permit holder.* [82:1020.11(B)] The water use report form shall include information about the requirement to return the completed form in a timely manner, and shall specify the date by which the form must be returned.

(3) *Timely return of the completed, signed, and dated water use report form to the Board* ~~within thirty (30) days of receipt will~~ *shall automatically revalidate a temporary groundwater permit if the revalidation is not protested and if the use report does not reflect any permit-water use violations* [82:1020.11(B)]. The return of the completed, signed and dated water use report on or before the specified return date shall be considered timely and shall be considered a timely request to revalidate the temporary permit.

(4) *The temporary permit shall lapse at expiration of its term, revocation, cancellation, suspension, or upon the issuance of a regular permit, whichever shall occur first.* [82:1020.11(B)] Failure to return a completed, signed and dated water use report form by the date specified may be considered a willful failure to report annual water usage and subject to the provisions of 785:30-5-7.

(5) Revalidation protest procedures are as follows:

(A) *If* an objection against *the revalidation of a* temporary groundwater *permit is* ~~*protested,*~~ in writing, satisfies the requirements of 785:4-5-4, and is received by the Board by February 28th of the year following the water use report year, or by a later date specified by the Board in its newsletter or on its website, then the objection shall constitute a protest against the application and *the Board* [82:1020.11(B)] will *immediately set a date for hearing and notify the applicant and protestant*(s) *of the time and place of the hearing* [82:1020.11(B)]. Objections that are not timely received or do not satisfy 785:4-5-5 will be considered only as comments in opposition to the application, but such comments will be made part of the permanent record of the proceeding. Persons who submit objections that do not qualify as protests will not be named as parties to the proceeding.

(B) *At the hearing, any interested person may appear and present evidence and argument in support of or in opposition to the protest and revalidation.* [82:1020.11(B)]

(C) *At the hearing on the revalidation protest, matters previously presented or considered and adjudicated shall not be subject to reconsideration or readjudication* [82:1020.11(B)].

(D) *The protest issues which may be entertained shall be limited to matters not previously determined,* such as (for example only) *a material or substantial change in conditions since issuance of the permit; evidence of the applicant's noncompliance with any of the terms, provisions or conditions of the permit; or subsequent violation of the Oklahoma Groundwater Law...or* these *rules and regulations* [82:1020.11(B)] related to the permit issued. Proposed findings of fact, conclusions of law and Board Order will be presented to the Board for its consideration.

(d) **Requests for revalidation of certain temporary permits to be considered as applications for new permits; moratorium.**

(1) Pursuant to Title 82 of the Oklahoma Statutes, Section 1020.9A, *[a]ny revalidation of a temporary permit, in effect* on August 28, 2003, *that allows for any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin outside any county that overlays in whole or in part said basin shall be considered a new permit application and subject to the provisions of* Senate Bill No. 288 of the First Regular Session of the 49th Legislature.

(2) A provision of Senate Bill No. 288 of the First Regular Session of the 49th Legislature establishes a moratorium *on the issuance of any temporary permit that would lead to any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin or subbasin outside of any county that overlays in whole or in part said basin or subbasin* [82:1020.9A(B)(1)] and that *said moratorium shall be in effect until such time as the . . .Board conducts and completes a hydrological survey and approves a maximum annual yield that will ensure that any permit for the removal of water from a sensitive sole source groundwater basin or subbasin will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin* [82:1020.9A(B)(2)].

(3) If the holder of a temporary permit that lists municipal use or public water supply use as an authorized purpose certifies that the groundwater will not be used outside any county that overlays in whole or in part a sensitive sole source groundwater basin or subbasin, the request to revalidate such a temporary permit shall not be considered a new permit application. The filing of such a certification shall be deemed to be a request to amend the temporary permit to add a condition to prohibit the use of the groundwater outside any county that overlays in whole or in part a sensitive sole source groundwater basin or subbasin.

SUBCHAPTER 9. MAXIMUM ANNUAL YIELD DETERMINATIONS

785:30-9-2. Determination of maximum annual yield

(a) *After completing the hydrologic survey, the Board shall make a tentative determination of the maximum annual yield of groundwater to be produced from each major groundwater basin or subbasin therein. Such determination* shall *be based upon the following:*

(1) *The total land area overlying the basin or subbasin;*

(2) *The amount of water in storage in the basin or subbasin* at the time of the survey or investigation;

(3) *The rate of recharge to the basin or subbasin and total discharge from the basin or subbasin* the time of the survey or investigation;

(4) *Transmissibility or transmissivity of the basin or subbasin; and*

(5) *The possibility of pollution of the basin or subbasin from natural sources.*

(b) *The maximum annual yield of each groundwater basin or subbasin shall be based upon a minimum basin or subbasin life of twenty (20) years from the order establishing the final determination of the maximum annual yield.* [82:1020.5]

(c) *For minor groundwater basins or subbasins therein, the tentative determination of the maximum annual yield shall be based upon present and reasonably foreseeable future use of groundwater from such basin or subbasin, recharge and total discharge, the geographical region in which the basin or subbasin is located and other relevant factors.* [82:1020.5(C)]

(d) The maximum annual yield of each minor groundwater basin or subbasin shall be based upon a minimum basin or subbasin life of twenty (20) years from the order establishing the final determination of the maximum annual yield.

(e) The maximum annual yield for a sensitive sole source groundwater basin or subbasin *will ensure that any permit for removal of water from the basin or subbasin will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin* [82:1020.9A(B)(2)].

[OAR Docket #04-1033; filed 5-25-04]

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

[OAR Docket #04-1034]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:35-1-2 Definitions [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-1. Licensing procedures [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observations wells, and water well test holes [AMENDED]
Subchapter 9. Minimum Standards for Pump Installation
785:35-9-1. Minimum standards for pump installation [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]
AUTHORITY:
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ANALYSIS:

OAC Section 785:35-1-2 is being amended to add certain definitions associated with heat exchange wells and sand point wells. The new definitions are needed to reflect the latest technological advances in the heat exchange industry and to sand point wells;

OAC Section 785:35-3-1 is being amended to add a separate and specific examination for the category of heat exchange well drilling for which separate and permanent rules are being proposed;

OAC Section 785:35-7-1 regarding location of a water well from a source of pollution is being amended to effectively require that all water wells be located, at a minimum, 50 feet from sources of pollution with the exceptions of closed or tight sewer lines and existing or proposed lagoons. The amendment further requires that all water wells be located 10 feet from a closed or tight sanitary sewer line and 300 feet from an existing or proposed lagoon. This amendment also clarifies the location from sources of pollution and construction requirements for certain non-drinking (lawn irrigation) water wells;

OAC Section 785:35-7-1 regarding the installation of cement grout surface seal for water well construction is being amended to allow, as an alternative, five (5) feet of bentonite to be installed below five (5) feet of cement grout for a minimum standard total of ten (10) feet seal. This amendment would also require that if both surface and production casing are used, the surface

seal shall in all instances be installed outside the surface casing and may be installed between the surface and production casings.

OAC Section 785:35-7-1 is being amended to add a gravel pack requirement for water well construction. This amendment would require that when gravel pack is installed in a water well, the gravel pack shall be selected and the gravel installed around the production casing in a manner to prevent or minimize the infiltration of sand and fines from the geologic formation that may be mixed and pumped from the well.

OAC Section 785:35-7-1 is being amended to add requirements for sand point well construction. This amendment would allow sand point wells to be installed to a maximum depth of 30 feet if constructed with a pilot hole to allow for the installation of three (3) feet of cement grout at the surface;

OAC Section 785:35-9-1 regarding pump installation standards to allow use of National Ground Water Association technical manuals as an alternative resource for pump installation standard is being amended. The technical manuals will be specifically named and incorporated by reference;

OAC Section 785:35-11-2 regarding the plugging requirements for contaminated monitoring wells is being amended to require the overdrilling of the casing when plugging a contaminated monitoring well if the top of the screen is less than 20 feet below land surface. The same size auger used to drill the borehole would be required to drill out the casing. This change is to make the monitoring well plugging requirements consistent with the requirements of the Oklahoma Corporation Commission.

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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

785:35-1-2. Definitions

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

"Abandoned well" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial drilling" means *drilling and installation as a business, trade, or occupation for compensation.* [82:1010.1]

"Commercial installation" means *installation as a business, trade or occupation for compensation.* [82:1020.1]

"Commercial plugging" means plugging wells or borings *as a business, trade or occupation for compensation.* [82:1020.1]

"Direct push geological boring" means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

"Drilling water" means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

"Fresh water observation well" means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

"Geotechnical boring" means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

"Geothermal well" means heat pump well.

"Groundwater well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"Heat exchange well" means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

"Heat pump well" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"Heat sink well" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"License" means a certification issued by the Board to qualified persons making application therefore authorizing such persons to engage in weather modification and control operations or the business of drilling or plugging wells or borings and installing water well pumps.

"Monitoring well" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Open-loop heat pump water supply well" means a well drilled to supply water for the purpose of heat transfer.

"Operator" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

"Piezometer" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"Pump" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, and controls.

"Pump installer" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"Sand point well" means a groundwater well with a borehole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"Site assessment observation well" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"Sleeve" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit. Not to be confused with surface casing or conductor pipe.

"Unsaturated zone monitoring well" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"Vertical closed-loop heat pump well" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"Water return well" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"Water well test hole" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"Well" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"Well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the testing for or of wells in the State of Oklahoma.

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-1. Licensing procedures

(a) **Who must file and types of certifications.**

(1) All persons engaged in the following categories of activities in this state shall make application for and obtain a license from the Board:

(A) Category 1: commercial drilling or plugging of groundwater wells including test drilling for groundwater, and commercial drilling or plugging of fresh water observation wells;

(B) Category 2: commercial drilling or plugging of monitoring wells and site assessment wells, and drilling or plugging of geotechnical borings;

(C) Category 3: commercial installation of water well pumps;

(D) Category 4: commercial drilling or plugging of wells utilized for heat exchange purposes including but not limited to the following:

(i) heat ~~pump~~ exchange wells; and

(ii) geothermal wells.

(2) The license issued by the Board shall indicate on its face each category and specific activity or activities as described in (a)(1) of this section for which the licensee is certified to perform and conduct.

(3) Each licensed person shall have at least one operator who may also be the licensee. Each operator shall be required to obtain a certification from the Board. An operator shall not conduct types of activities not authorized for the licensee under whom the operator works.

(4) To engage in activities for which certification is required, operators shall also have a valid license or shall be certified as an operator for a person having a valid license. An operators certification by itself shall not constitute proper authority to engage in activities for which licensing is required.

(5) Reconditioning of wells as a trade, business or occupation for compensation shall be considered commercial drilling.

(6) No license shall be required for any person who installs vapor observation wells within the excavation of newly installed underground tank systems, provided that the bottom of the vapor observation well does not intercept the groundwater table and is above the historic high water table level in the area, and provided further that such vapor wells shall be constructed to meet or exceed the minimum standards for the construction of monitoring wells which are located in the unsaturated zone of aquifer.

(b) **Application requirements for license.**

(1) Any person who intends to conduct any of the activities listed in 785:35-3-1(a)(1) must complete and file a verified application for license and activity certification on forms provided by the Board.

(2) The license applicant shall submit the following with the application:

(A) verification of at least two (2) years qualified experience in the activity or activities for which certification under the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required qualified experience;

(B) a list of all well rigs and equipment used or to be used in conducting the activities for which certification under license is sought;

(C) the license fee for each activity for which certification under the license is sought;

(D) the indemnity fund fee for each category of activity for which certification under the license is sought;

(E) the examination fee.

(3) Applicants who are partnerships, corporations or other entities that are not individuals shall additionally provide the following with the application:

(A) designation of one contact person who shall be an official properly authorized to act for the partnership, corporation or other entity and who shall be a certified operator;

(B) authorized signature of the contact person who shall execute and verify the application;

(C) a list of all persons employed who intend to become duly certified operators for the partnership, corporation or other entity.

(c) **Application requirements for operator certification.**

(1) Any individual who intends to conduct any of the activities listed in 785:35-3-1(a)(1) for any person who obtains a license pursuant to these rules must complete and file an application for an operator certification on forms supplied by the Board, provided however, one operator certification shall be issued with the license to the licensee.

(2) The applicant for an operator certification shall submit the following with the application:

(A) verification of at least one (1) year of qualified experience in the activity or activities for which the operator certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required qualified experience;

(B) the operator certification fee;

(C) the examination fee.

(d) **Completion of application and notification.**

(1) Any application for license or operator certification not completed within six (6) months from the date of receipt shall be cancelled and fees submitted therewith forfeited.

(2) Upon receipt of a properly completed application and all items required to be submitted, the Board shall inform said applicant of the dates, times, and places of the examination for which he is eligible.

(e) **Administration and procedures relating to examination.**

(1) Upon notification of the dates, times, and places of examinations, the applicant shall notify the Board of the date, time, and place the applicant will be present to take the examination relating to the activities listed in 785:35-3-1(a)(1) for which the license or operator certification is sought. There shall be ~~three (3)~~ four (4) kinds of examinations:

(A) an examination relating to groundwater wells~~, heat pump wells~~ and fresh water observation wells,

(B) an examination relating to monitoring wells, site assessment observation wells, and geotechnical boring, ~~and~~

(C) an examination relating to pump installation activities, including but not limited to related electrical work performed from the output side of a fused disconnect or breaker box, and

(D) an examination relating to heat exchange wells.

(2) The applicant shall not be allowed to confer with any other person or refer to outside materials for answers to examination questions.

(3) After completion of the appropriate examination(s) within a reasonable time, the Board shall grade the examinations and pass upon qualifications of applicants for licensing and certification.

(4) An applicant, at any time within 30 days of the date he is notified of the results of an examination, may inspect his or her examination paper in the offices of the Board during the normal business hours for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

(5) Any applicant who fails an examination will be promptly notified by the Board. After a minimum time period of thirty (30) days, and if a subsequent examination is scheduled between the date of notification and the six (6) months expiration period of the application, the applicant may request to take the subsequent examination but must pay the appropriate examination fee each time the applicant requests to take the examination.

(f) **Issuance of license.**

(1) Upon acceptance of the applicant's qualifications the Board will issue the license with appropriate category and activity certifications to the applicant along with the required operator certifications.

(2) No license and no operator certificate shall be issued to any person who has not been a resident of the State of Oklahoma for at least ninety (90) days prior to the date of issuance of the license, unless the reciprocity provisions for nonresidents as set forth in (B) of this paragraph apply.

(A) The applicant for a license or operator certificate as the case may be, shall submit written verification of Oklahoma residency as required in this subsection.

(B) The Board may waive the ninety (90) day residency requirement as outlined in this subsection for any nonresident of the State of Oklahoma if the nonresident's particular state, territory, or possession of the United States extends similar privileges to the persons licensed under the provisions herein. If the applicant's state of residency has a licensing requirement, then the nonresident must be licensed and in good standing in that state. The license fees charged to a nonresident applicant shall be at least equal to the fees charged for similar nonresident license by the state, territory, or possession of the United States in which the applicant is a resident, but in no case shall the fee be less than four hundred dollars ($400.00).

(g) **Changing the designation of license or moving an operator certification.**

(1) Any individual licensee may request modification of the license designation to that of a partnership, corporation or other legal entity. The Board shall approve the request and issue a modified license after the following conditions are met:

(A) the licensee holds an active valid license;

(B) the licensee gives written notice of the request to the Board;

(C) the licensee provides the name of the contact person who is an official properly authorized to act for the partnership, corporation or other entity;

(D) a list of all persons employed by the partnership, corporation or other entity who are or intend to become duly certified operators.

(E) payment of fee(s) required for change of license and any new operator certifications.

(2) An operator who has obtained a certification to drill under the license of a partnership, firm, or corporation can transfer that certification to another partnership, firm, or corporation on the following conditions provided that an operator cannot conduct activities during any period that he is not associated with a licensee, and provided further that an operator certification will not be renewed unless the operator is associated with a licensee:

(A) the transfer fee is submitted to the Board with the transfer request, and

(B) the operator associates with the new licensee within thirty (30) days, or has provided notice to the Board of his current address within thirty (30) days after leaving the previous licensee.

(h) **Adding activities to be certified under license or operator certification.**

(1) A licensee or certified operator may request to add activities to be certified under the license or operator certification.

(2) The Board shall consider approval of request after the following conditions are met:

(A) verification of at least two (2) years qualified experience in the additional activity or activities for which the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required experience; verification of at least one (1) year qualified experience in the additional activity or activities for which certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required experience;

(B) submittal of an update of the list of rigs or other equipment to be used in the additional activity or activities;

(C) submittal of the additional license or operator certification fee;

(D) submittal of the additional indemnity fund fee;

(E) submittal of the examination fee;

(F) passing the examination.

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells, ~~heat exchange wells,~~ and water well test holes whether constructed by a person having a valid license or by any other person.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells~~, heat exchange wells~~ and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(b) **Minimum location standards.**

(1) ~~Except as provided otherwise in this subsection, every~~ Every new groundwater well, fresh water observation well, ~~heat exchange well~~ and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) ~~50 feet if the well is upgradient from possible pollution sources~~ 10 feet from a closed or tight sanitary sewer line,

(B) ~~75 feet if the well is on the same ground level from possible pollution sources~~ 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) ~~100 feet if the well is downgradient from possible pollution sources~~ 50 feet from all other pollution sources, provided however, if the well is located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed.

~~(D) Provided however, if the possible pollution source is an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, the minimum distance from the outside perimeter of the possible pollution source shall be 300 feet.~~

~~(E) Owners of wells or other federal or state agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph.~~

(2) If not prohibited by the owner of the well or other ~~federal or state~~ governmental agency requirements, groundwater wells which will not be used for drinking water~~, fresh water observation wells, and heat exchange wells~~ may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection~~, and~~.

~~(E) except for a heat exchange well near a building foundation, the well must be located at the maximum distance possible from the possible pollution source, and~~

~~(F) if a heat exchange well is drilled, the well annulus must be completely sealed with high solids bentonite grout, bentonite pellets or chips from the bottom of the hole to within twenty feet (20') of land surface and a minimum of twenty feet (20') of cement shall be placed above the bentonite to land surface to form the cement surface seal.~~

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, ~~Requirements~~ requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least eight (8) inches above the natural ground level or preferably twelve (12) above the natural ground level or eight (8) inches above the floor surface for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding. ~~Provided, this (D) shall not apply to heat exchange wells.~~

(E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel, or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Except for sand point wells, ~~Cement~~ cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing ~~or heat exchange tubing~~ by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed ~~inside the surface pipe casing and where possible~~ outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

(i) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and

(ii) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, and the surface seal shall be a minimum of one and one-half inch ($1\frac{1}{2}$") thick.

(2) ~~This~~ The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate ~~at~~ no deeper than four feet (4') from the natural land surface after all settling of the cement or bentonite/cement has occurred, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of six (6) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty (30');

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

SUBCHAPTER 9. MINIMUM STANDARDS FOR PUMP INSTALLATION

785:35-9-1. Minimum standards for pump installation

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to the installation of all water well pumps and pumping equipment, whether installed by a person having a valid license or by any other person.

(2) **Pump installation practices.** All pump installations shall be completed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the well from pumping equipment, casing connectors, fittings, piping, sanitary seals or caps.

(3) **Construction materials.** All materials used in the construction of the pumping system shall be of a type and strength to prevent waste or pollution of the groundwater of the state.

(4) **Temporary abandonment practices.** When a well is to be temporarily removed from service, the top of the well casing shall be properly sealed with a water-tight cap that cannot be easily removed.

(b) **Well casing connections.** Minimum standards for well casing connections are as follows:

(1) **Above-grade connection.** An above-grade connection into the top or side of a well casing shall be at least eight inches (8"), but preferably twelve inches (12"), above the land surface and shall be constructed so as to exclude dirt or other foreign matter by at least one of the following methods, as may be applicable:

(A) Threaded connection;

(B) Welded connection;

(C) Rubber expansion sealer;

(D) Bolted flanges with rubber gaskets;

(E) Overlapping well cap; or

(F) If a water well pump is mounted or sealed on a concrete pedestal, the casing shall extend at least one inch (1") into the base of the pedestal and at least eight inches (8") above the land surface.

(2) **Below-grade connection.** A connection to a well casing made below ground, or less than eight inches (8") above the land surface, shall be protected by a pitless

adapter or pitless unit. Such pitless adapters shall be installed below the frost line. A below-ground connection shall not be submerged in water at the time of installation. Holes cut in the casing through which the pitless adapters are installed must be sized and constructed so as to guarantee a watertight seal with the pitless adapter in place.

(3) **Above-grade capping.** For water wells with pitless adapters, the portion of the well casing above the land surface shall be capped with a water-tight, vented pitless adapter cap that cannot be easily removed.

(c) **Pump installation.** The minimum standards for installation of pumps and pumping systems are as follows:

(1) **Pumps and pumping equipment.**

(A) **Priming requirements.** A pump shall be designed, installed, and maintained so that priming is not required for ordinary use. Pumps installed on irrigation systems may be primed, but the priming water shall contain a chlorine residual and be clear and free of contamination. An irrigation well equipped with a centrifugal pump may be primed without chlorination when the pump is filled with water taken directly from the well.

(B) **Cross connections prohibited.** Cross connections between water wells and other systems or equipment containing substances such as wastewater, pesticides or fertilizers are prohibited unless equipped with a protective device such as a break tank or backflow preventer, which the owner agrees to install, test and maintain to assure proper operation.

(2) **Pump discharge lines.** A buried discharge line between the well casing and the pressure tank in any installation, including a deep well turbine or a submersible pump, shall not be under negative pressure at any time.

(3) **Vents.** All wells shall be vented with watertight joints terminating at least two feet (2') above the 100 year flood elevation or eight inches (8"), but preferably twelve inches (12"), above the land surface. The casing vent shall be screened. Vents may be offset. All submersible pumps shall be installed with a vented cap on the top of the well casing or pitless unit to prevent drawing surface water, mud, sand, or other substances into the well. Where the well casing on small diameter wells is used as a suction pipe, the casing need not be equipped with a vented cap, provided the casing is properly sealed or capped. If toxic or flammable gases are present, they shall be vented from the well. The vent shall extend to the outside atmosphere at least six (6) feet above land surface or to a point where the gases will not present a hazard. Openings in pump bases shall be sealed watertight.

(4) **Disinfection.** The well and pumping equipment shall be disinfected with a chlorine concentration of at least one hundred (100) parts per million of chlorine throughout the well. The chlorine solution shall be introduced into the well in a manner to flush the well casing surfaces above the static water level. A minimum contact period of two (2) hours shall be provided before purging and flushing the chlorine solution from the distribution system. Disinfection in a well repair operation may be accomplished at the beginning of the operation with chlorine applied to obtain a concentration of two hundred (200) parts per million for the period of the well repair operation. The water shall be purged prior to taking of water samples or use being made of the water. The licensee or operator shall be responsible for disinfecting the well, pump or pumping equipment. The well owner may pump and flush the well following disinfection, provided the owner has been instructed regarding the proper procedures by the licensee or operator.

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-2. *Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings*

(a) **Monitoring wells and site assessment observation wells.** Monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present or was previously present in the well and the top of the screen is less than 20 feet below land surface, the casing shall be removed or drilled out. Overdrilling of the casing of the monitoring well is required when plugging monitoring wells. The same size auger used to drill the borehole shall be used to drill out the casing. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall

be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface or to land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) **Geotechnical borings except direct push geotechnical borings.** Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings, uncontaminated surface clay, cement, and/or bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) **Direct push geotechnical borings.** Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface.

(d) **Cement grout requirements.** If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located.

[OAR Docket #04-1034; filed 5-25-04]

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

1:2004-18.

EXECUTIVE ORDER 2004-18

To the Honorable Members of the House of Representatives and the Honorable Members of the State Senate of Oklahoma.

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 of Article VI of the Oklahoma Constitution, hereby convoke the First Extraordinary Session of the Forty-ninth Oklahoma Legislature to convene at the State Capitol at 1:30 p.m. on May 19, 2004. I recommend for consideration the conducting of a comprehensive and detailed investigation of the activities of the Insurance Commissioner, Carroll Fisher, pursuant to HR 1040, for the purpose of determining whether Articles of Impeachment should be preferred against him and, if impeachable offenses are found, to institute impeachment proceedings.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the Oklahoma House of Representatives, the Secretary of the Senate, and the Director of the Office of State Finance.

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 18th day of May, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-973; filed 5-18-04]

1:2004-19.

EXECUTIVE ORDER

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Joint State and local damage assessments have been made in Cherokee and Kay Counties, which received damages as a result of severe rain storms that occurred March 3rd through 6th, 2004.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by severe rain storms in Cherokee and Kay Counties that threatened the lives and property of the people of this State and the peace, health and safety of the public.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. This declaration of emergency shall terminate as provided in 63 O.S. §683.9.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 21st day of May 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1052; filed 5-25-04]

1:2004-20.

EXECUTIVE ORDER 2004-20

I, Brad Henry, Governor of the State of Oklahoma, in observation of Memorial Day, hereby direct the appropriate steps be taken to fly the American and Oklahoma flags at the State Capitol Building at half staff from 8:00 a.m. until noon on Monday, May 31, 2004, to honor those Americans who gave their lives for the freedom we enjoy today.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented at the State Capitol Building.

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 21st day of May, 2004.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1053; filed 5-25-04]