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**Brad Henry, Governor**  
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**Secretary of State**  
**Peggy Coe, Managing Editor**

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

*[OAR Docket #05-1291]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. [RESERVED]

Subchapter 3. Concentrated Animal Feeding Operations  
[NEW]

### **SUMMARY:**

These rules fulfill the requirements of House Bill 1467 of 2005 by promulgating rules for concentrated animal feeding operations that are required to obtain federal NPDES permits. As a part of the Department's ongoing strategy to obtain the authorization to implement the federal Clean Water Act from the U.S. Environmental Protection Agency, these rules provide an incorporation by reference of the permitting requirements for concentrated animal feeding operations. These rules were previously promulgated as emergency rules.

### **AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (16), and (29), 2-18.2, 2A-1 et seq., and 2A-21 et seq.; 27A O.S. § 1-3-101(D); and Article 6, Section 31, Constitution of the State of Oklahoma.

### **COMMENT PERIOD:**

Persons may submit written and oral comments to Teena Gunter at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from November 15, 2005 through December 15, 2005.

### **PUBLIC HEARING:**

A public hearing will be held at 1:30 p.m., December 15, 2005, in the Plant Industry conference room on the second floor of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

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

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

to Teena Gunter at the above address during the period from November 15, 2005 through December 15, 2005.

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

Copies of proposed rules may be obtained by contacting Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

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

*[OAR Docket #05-1291; filed 10-24-05]*

## **TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #05-1301]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Chapter 1. Administrative Operations [AMENDED]

### **SUMMARY:**

The Oklahoma State Board of Examiners for Nursing Home Administrators (OSBENHA) intends to adopt amendments and additions to Administrative Operations. The proposed additions and amendments are necessary to clarify current language. These changes will affect currently licensed Nursing Home Administrators. Proposed additions include the following: Definitions added for Coercion, Specialized Facility and Uninvited Solicitation. Definitions added for Adverse Action, Complaint, Nursing Facility, Nursing Home Administrator, and Referral amended. Definitions added for Adult Day Care Center, Long-Term Care, Qualified Mental Retardation Professional "QMRP" and definition deleted for Residential Care Home. New language added for Complaints/Referrals; New language for the Administrator Registry.

### **AUTHORITY:**

OSBENHA, 63 O.S., Sections 330.51 et seq.

## Notices of Rulemaking Intent

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### COMMENT PERIOD:

Persons desiring to present their views may provide written comments by January 24, 2006 to the following address: OSBENHA, 3033 N. Walnut, Suite 100 E, OK City, OK 73105

### PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views orally: Wednesday, January 25, 2006 at 10:00 a.m., at the OK Dept of Libraries, OK City, OK.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

### COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by the public between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Board office.

### RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on or after November 29, 2005 at the Board office.

### CONTACT PERSON:

H. E. Hendrix, 405-521-0991

*[OAR Docket #05-1301; filed 10-26-05]*

## TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS CHAPTER 10. RULES AND REGULATIONS FOR NURSING HOME ADMINISTRATORS

*[OAR Docket #05-1302]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Chapter 10. Rules and Regulations for Nursing Home Administrators [AMENDED]

### SUMMARY:

The Oklahoma State Board of Examiners for Nursing Home Administrators (OSBENHA) intends to adopt amendments and additions to Rules and Regulations for Nursing Home Administrators. The proposed amendments and additions are necessary to clarify current language, and to revise policy and procedures. These changes will affect currently licensed Nursing Home Administrators. Proposed amendments and additions include the following: Definition added for Administrator Code of Ethics. Application process amended; Administrator-In-Training program amended; Licensure status amended; Reinstatement amended; Fee Schedule amended; Administrator responsibilities amended; and Licensure renewal amended.

### AUTHORITY:

OSBENHA, 63 O.S., Sections 330.51 et seq.

### COMMENT PERIOD:

Persons desiring to present their views may provide written comments by January 24, 2006 to the following address: OSBENHA, 3033 N. Walnut, Suite 100 E, OK City, OK 73105

### PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to present their views orally: Wednesday, January 25, 2006 at 10:00 a.m., at the OK Dept of Libraries, OK City, OK.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

### COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained for review by the public between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Board office.

### RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on or after November 29, 2005 at the Board office.

### CONTACT PERSON:

H. E. Hendrix, 405-521-0991

*[OAR Docket #05-1302; filed 10-26-05]*

## TITLE 540. PHYSICIAN MANPOWER TRAINING COMMISSION CHAPTER 10. OKLAHOMA RURAL MEDICAL EDUCATION LOAN AND SCHOLARSHIP FUND

*[OAR Docket #05-1274]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

540:10-1-4. Eligibility; amount; method of payment; renewal [AMENDED]

### SUMMARY:

Provisions related to the eligibility, amount, method of payment and renewal of the Oklahoma Rural Medical Education Loan and Scholarship Fund have been revised to reflect statutory amendments in Senate Bill 908 that modified the maximum scholarship amount for medical students participating in this scholarship program and making language gender neutral.

### AUTHORITY:

Physician Manpower Training Commission; 70 O.S. 1991 Section 625.4

### COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 9:00 A.M. on Thursday, December 15, 2005 at the following address: Physician Manpower Training Commission, 1140 Northwest 63<sup>rd</sup> Street, Suite 302, Oklahoma City, OK 73116.

### PUBLIC HEARING:

A public hearing will be held at 10:00 A.M. on Thursday, December 15, 2005 at the University of Oklahoma College of Medicine, 900 N.E. 10<sup>th</sup> Street, Oklahoma City, Oklahoma 73104. Anyone who wishes to speak must sign in at the door by 10:00 A.M.

**REQUESTS FROM COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Physician Manpower Training Commission at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. 1991 Section 303(D), a rule impact statement has been prepared and may be obtained from the Physician Manpower Training Commission at the above address.

**CONTACT PERSON:**

Cindy A. Carter, Executive Secretary, Physician Manpower Training Commission, 1140 N.W. 63<sup>rd</sup> Street, Suite 302, Oklahoma City, Oklahoma 73116, (405)843-5667.

*[OAR Docket #05-1274; filed 10-12-05]*

**TITLE 540. PHYSICIAN MANPOWER TRAINING COMMISSION  
CHAPTER 30. OKLAHOMA NURSING STUDENT ASSISTANCE PROGRAM**

*[OAR Docket #05-1275]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 5. Categories of Scholarships  
540:30-5-1. Matching Nursing Student Assistance Program  
[AMENDED]

**SUMMARY:**

Due to improved operations and better accountability and oversight, home health agencies and hospice organizations have stabilized. They should not be excluded from being approved as viable for fulfillment of employment obligation by recipient nurses.

**AUTHORITY:**

Physician Manpower Training Commission; 70 O.S. 1991 Section 697.17

**COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may do so before 9:00 A.M. on Thursday, December 15, 2005 at the following address: Physician Manpower Training Commission, 1140 Northwest 63<sup>rd</sup> Street, Suite 302, Oklahoma City, OK 73116.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 A.M. on Thursday, December 15, 2005 at the University of Oklahoma College of Medicine, 900 N.E. 10<sup>th</sup> Street, Oklahoma City. Anyone who wishes to speak must sign in at the door by 10:00 A.M.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Physician Manpower Training Commission, 1140 Northwest 63<sup>rd</sup> Street, Suite 302, Oklahoma City, OK 73116.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. 1991 Section 303(D), a rule impact statement has been prepared and may be obtained from the Physician Manpower Training Commission at the above address.

**CONTACT PERSON:**

Cindy A. Carter, Executive Secretary, Physician Manpower Training Commission, 1140 N.W. 63<sup>rd</sup> Street, Suite 302, Oklahoma City, Oklahoma 73116, (405)843-5667.

*[OAR Docket #05-1275; filed 10-12-05]*

**TITLE 540. PHYSICIAN MANPOWER TRAINING COMMISSION  
CHAPTER 45. PHYSICIAN ASSISTANT SCHOLARSHIP PROGRAM**

*[OAR Docket #05-1276]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

540:45-1-1. through 540:45-1-8. [NEW]

**SUMMARY:**

Provisions related to the purpose, terms, conditions, eligibility, amount, method of payment and renewal of the Physician Assistant Scholarship Program to reflect statutory language.

**AUTHORITY:**

Physician Manpower Training Commission; 70 O.S. 1991 Section 625.4

**COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may do so before 9:00 A.M. on Thursday, December 15, 2005 at the following address: Physician Manpower Training Commission, 1140 Northwest 63<sup>rd</sup> Street, Suite 302, Oklahoma City, OK 73116.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 A.M. on Thursday, December 15, 2005 at the University of Oklahoma College of Medicine, 900 N.E. 10<sup>th</sup> Street, Oklahoma City. Anyone who wishes to speak must sign in at the door by 10:00 A.M.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Physician Manpower Training Commission, 1140 Northwest 63<sup>rd</sup> Street, Suite 302, Oklahoma City, OK 73116.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. 1991 Section 303(D), a rule impact statement has been prepared and may be obtained from the Physician Manpower Training Commission at the above address.

## Notices of Rulemaking Intent

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### CONTACT PERSON:

Cindy A. Carter, Executive Secretary, Physician Manpower Training Commission, 1140 N.W. 63<sup>rd</sup> Street, Suite 302, Oklahoma City, Oklahoma 73116, (405)843-5667.

*[OAR Docket #05-1276; filed 10-12-05]*

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

*[OAR Docket #05-1298]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Chapter 45. Oklahoma's Water Quality Standards  
[AMENDED]

### SUMMARY:

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend, or is considering amending, various provisions of Oklahoma Administrative Code ("OAC") 785:45 as follows:

OAC 785:45-1-2, Definitions, is proposed to be amended in several ways. First, multiple terms are proposed to be revised, and at least one new term is proposed to be added, in order to make the OWRB's terminology and definitions consistent with definitions used by the Department of Environmental Quality ("DEQ") in the same subject areas. The circumstance which created the need for these amendments is a request from the DEQ to address some inconsistencies between the definitions used by both agencies. The intended effect of these amendments is to provide more consistency in rule language used by the OWRB and DEQ. Second, the definitions for "seven day-, two-year low flow" and "seasonal seven-day, two-year low flow" are proposed to be amended. The circumstance which created the need for these amendments is that the current language, promulgated in 2002, was disapproved by the U.S. Environmental Protection Agency ("EPA") pursuant to the federal Clean Water Act. The EPA specified that to correct the disapproval, the OWRB must adopt definitions which clearly refer to "receiving water", not "effluent flow". The intended effect of these amendments is to cure the problem cited by EPA and obtain EPA's approval of these amendments. Third, the term "background concentration" is proposed to be amended. The circumstance which created the need for this amendment is a request from an affected entity for clarification of this term in relation to how it is to be applied. The intended effect of this amendment is to clearly define how this existing term is to be used.

OAC 785:45-5-10, Public and private water supply, is proposed to be amended in several ways. First, the language regarding radioactive materials is being amended to update and delete obsolete language. The circumstance which created the need for these amendments is that the current citation to

"Oklahoma Radiation Protection Regulations, 1969, or its latest revision" is outdated because such regulations have been revoked. The intended effect of these amendments is to update the citation to the appropriate reference in the Code of Federal Regulations. Second, new language is proposed to be added to establish a criterion for chlorophyll-a applicable to certain waters of the state including Wister Lake, Tenkiller Ferry Reservoir, and waterbodies designated in 785:45 Appendix A as "Sensitive Water Supplies". The circumstance which created the need for these amendments is that drinking water supplies are currently at risk from the undesirable consequences of excessive algae, including taste and odor and carcinogenic compounds. The intended effect of these amendments is to provide additional protection to the public and its water supplies, and to help prevent costly treatment upgrades to public water systems.

OAC 785:45-5-12, Fish and wildlife propagation, is proposed to be amended in at least three ways. First, a citation for procedures to implement narrative criteria for toxicity is proposed to be updated. The circumstance which created the need for this amendment is that the current language contains an inappropriate and outdated reference to the state's "Continuing Planning Process document". The intended effect of this amendment is to update the reference to rules codified at OAC 785:46 Subchapter 3. Second, new language is proposed to be added to establish a narrative criterion for sediments. The circumstance which created the need for this amendment is that sedimentation causes adverse impacts in Oklahoma's streams, and needs to be addressed in Oklahoma's Water Quality Standards. The intended effect of this amendment, together with related amendments being proposed for OAC 785:46, is to provide a uniform methodology that will be used by all state environmental agencies to assess and regulate the impacts of sediments in Oklahoma's streams. Third, new language is being proposed in order to provide for determinations of regulatory low flow on a site-specific basis with respect to dissolved oxygen in stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, such as the portions of the Verdigris and Arkansas Rivers constituting the McClellan-Kerr Arkansas River Navigation System. The circumstance which created the need for these amendments is that the existing regulatory flow rules are not designed for a hydrologically modified waterbody. The intended effect of these amendments is to provide flexibility for state agencies to use appropriate regulatory flow in determination of waste discharge permit limits.

OAC 785:45-5-13, Agriculture: livestock and irrigation, is proposed to be amended in at least two ways. First, definitions are proposed to be added for technical terms used in this section. The circumstance which created the need for these amendments is that the terms "long term average concentration" and "short term average concentration" are currently used in this section but are not defined. The intended effect of these amendments is to provide definitions for consistent interpretation and application of these terms.

Second, language regarding criteria for mineral concentrations is proposed to be amended. The circumstance which created the need for these amendments is that some interested persons have perceived an inconsistency between the application of the numeric criteria and the exemption to those criteria. The intended effect of these amendments is to clarify the exemption to the numeric criteria.

OAC Sections 785:45-5-14, Hydroelectric power generation, 785:45-5-15, Industrial and municipal process and cooling water, and 785:45-5-18, Navigation, are all proposed to be revoked. Likewise, the provisions in Appendix A, Designated Beneficial Uses for Surface Waters, which identify and designate these uses, are proposed to be deleted. The circumstance which created the need for these amendments is that these uses are not dependent on water quality and consequently there are no criteria to protect these uses. This creates unnecessary complications in other areas of water quality management, such as the State's list of uses that are not supported. The intended effect of these amendments is to end the complications that arise from the unnecessary classifications of these uses in the Oklahoma Water Quality Standards.

The OWRB staff is considering amending OAC 785:45-5-20, Fish consumption, upon the request of the DEQ. The changes under consideration would amplify the narrative standard for toxic substances in aquatic organisms and would delete or revise the current language on the numerical advisory levels for fish tissue. The circumstance which created the need for these amendments is that DEQ believes the current language on advisory levels for fish consumption is problematic and lacks the flexibility desirable in order for DEQ to take action to protect public health. The intended effect of these amendments, if they are promulgated, is to eliminate any differences in advisory levels that may arise between what is prescribed in the Oklahoma Water Quality Standards and in the DEQ Continuing Planning Process document.

Language regarding the designation of beneficial uses of groundwater is proposed to be amended and added in multiple citations in 785:45, including but not limited to 785:45-7-3 and Appendix H. The amendments and new language are proposed to provide beneficial use designations for certain limited groundwater areas that are more appropriate and accurate than the default designations prescribed in 785:45-7-3. The circumstance which created the need for these amendments is that the default designated uses for certain areas of groundwater are not existing uses and likely cannot be supported due to natural conditions or irreversible human-induced impacts such as pollution. The intended effect of these amendments is to provide more accurate and appropriate designations of the uses of the groundwater in these limited areas.

Language regarding nutrient limited watersheds ("NLW") is proposed to be amended and added in multiple citations in 785:45, including but not limited to Appendix A. These amendments include two different sets of changes. The first set of amendments and new language is proposed to clarify the extent of the watersheds of pertinent waterbodies which

have been given the "NLW" designation. The circumstance which created the need for these amendments is that requests from the public have led OWRB staff to examine the definition of "watershed" as it is applied in the context of the NLW limitation. This review has indicated to OWRB staff that the inclusion of the entire watershed of a waterbody identified as NLW may not be appropriate in every case. The intended effect of these amendments is to define precisely, and in some cases to limit, the boundaries of the NLW restrictions. The second set of changes proposes to give several waterbodies the NLW designation due to excessive algae growth caused by nutrient loading that is potentially causing impairment of the beneficial uses of those waterbodies. The intended effect of these amendments is to cause implementation of more protective regulations or practices in the affected watersheds.

Appendix A, Designated Beneficial Uses for Surface Waters, is proposed to be revoked and reenacted with numerous changes. The first category of changes includes new or additional use designations for several streams which include an unnamed tributary to the North Canadian River (the receiving stream for the Town of Geary wastewater) in Canadian County; an unnamed tributary to Turkey Creek (the receiving stream for the City of Hennessey wastewater) in Kingfisher County; an unnamed tributary to Little River (the receiving stream for the Town of Bowlegs wastewater) in Seminole County; and an unnamed tributary to the Red River (the receiving stream for the Rural Water District No. 1, Choctaw County wastewater) in Choctaw County. The circumstances which created the need for these changes are that Use Attainability Analyses ("UAAs") have been completed for these streams. The UAA for each stream indicated that certain uses should be designated for that stream. In some cases, the UAA indicated that limitations for additional protection should be designated for a stream. The intended effect of the amendments is to designate the particular uses and limitations indicated by the UAAs as required by EPA regulations under the federal Clean Water Act. A second category of changes is to correct errors in descriptions of certain streams and lakes. The circumstance which created the need for these amendments is that it has been brought to the attention of the OWRB staff that the descriptions in question contain errors. The intended effect of these amendments is to correct the errors and to state the descriptions accurately.

Appendix C, Suitability of Water for Livestock and Irrigation Uses, is proposed to be revoked. The circumstance which created the need for this revocation is that this appendix has been misinterpreted as containing criteria which are binding to protect waters designated with the Agricultural beneficial use, rather than mere guidelines for such use. The intended effect of this revocation is to eliminate this ongoing misinterpretation and remove these guidelines from their misplacement in rules.

Appendix E, Requirements for Development of Site Specific Criteria for Metals, is proposed to be revoked and reenacted with corrections in grammatical (e.g., hyphenation of terms) and formatting errors. The circumstance which

## Notices of Rulemaking Intent

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created the need for these amendments is that OWRB staff has found that when this Appendix has been published, certain formulas have been re-formatted with incorrect characters. Moreover, the term "site-specific" needs to be hyphenated for grammatical correctness. The intended effect of these amendments is to correct the formatting errors and make the text grammatically correct.

Appendix F, Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except as Indicated) is proposed to be revoked and reenacted. The circumstance which created the need for these amendments is that it has come to the attention of the OWRB staff that numerous errors and discrepancies are contained within the text and values published in this appendix. The intended effect of these amendments is to correct these errors and provide accurate and complete text and values for the items in this appendix. In addition, the Oklahoma Corporation Commission staff has requested that certain watersheds identified in this appendix be divided into smaller units, because the segment averages currently identified for such watersheds are not always representative of the streams that make up that segment. The intended effect of the latter changes is to provide more accurate historical representations of certain chemical constituents of certain streams within existing stream segments.

In addition to the proposed amendments and new rules described herein, it is possible that interested persons may, during the comment period, comment or request that other provisions of Chapter 45 be amended. While the OWRB staff is not at this time proposing any other amendments, all interested persons should be on notice that it is possible that staff may propose additional amendments or new rules for adoption by the OWRB if public comment indicates that such proposals are appropriate and justified.

### **AUTHORITY:**

Oklahoma Water Resources Board, 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

### **COMMENT PERIOD:**

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 6, 2006. In addition, persons may submit oral or written comments during the public hearing described below. It is currently anticipated that proposed amendments may be presented to the OWRB for consideration or action or both, at one or more of its regular meetings on February 14, 2006 or March 14, 2006. According to 27A O.S., § 1-1-202(A)(7), each state environmental agency shall have the opportunity to present written comment to the members of the OWRB at the same time staff recommendations are submitted to the OWRB members for review and consideration. The OWRB may or may not choose to consider additional comments at the meeting or meetings in which the proposed amendments are considered or acted upon.

### **PUBLIC HEARING:**

A hearing on the proposed amendments is scheduled for January 6, 2006 at 1:00 P.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma. Persons may present their views on the proposed amendments orally or in writing during the hearing.

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

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, within the Comment Period from November 15, 2005 through January 6, 2006, in dollar amounts if possible, the increase in the level of direct costs such as fees, and 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. Business entities may submit this information in writing to Derek Smithee at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 6, 2006.

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

Copies of the proposed amendments may be reviewed at the OWRB's office location at 3800 North Classen, Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge. The proposed amendments may also be viewed on the OWRB web site at [http://www.owrb.state.ok.us/util/rules/wqs\\_revisions.php](http://www.owrb.state.ok.us/util/rules/wqs_revisions.php).

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at [http://www.owrb.state.ok.us/util/rules/wqs\\_revisions.php](http://www.owrb.state.ok.us/util/rules/wqs_revisions.php).

### **CONTACT PERSON:**

Derek Smithee, Water Quality Programs Division Chief, 405/530-8800.

*[OAR Docket #05-1298; filed 10-26-05]*

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

*[OAR Docket #05-1297]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Chapter 46. Implementation of Oklahoma's Water Quality Standards [AMENDED]

### **SUMMARY:**

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend various provisions of Oklahoma Administrative Code ("OAC") 785:46 as follows:

New language is being proposed in order to provide for determinations of regulatory low flow on a site-specific basis in stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, such as the portions of the Verdigris and Arkansas Rivers constituting the McClellan-Kerr Arkansas River Navigation System. These amendments are proposed for OAC 785:46-1-6 and OAC 785:46-19-2. The circumstance which created the need for these amendments is that the existing regulatory flow rules are not designed for a hydrologically modified waterbody. The intended effect of these amendments is to provide flexibility to use appropriate regulatory flow in determination of waste discharge permit limits.

OAC 785:46-9-5, Reasonable potential, is proposed to be amended. The proposal is to add language to clarify the tests for reasonable potential to exceed the criteria to protect the Agriculture beneficial use. The circumstance which created the need for these amendments is that some interested persons have perceived an inconsistency between the application of the numeric criteria and the exemption to those criteria. The intended effect of these amendments is to clarify the exemption to the numeric criteria.

OAC 785:46-15-3, Data requirements, is proposed to be amended in at least two ways. First, language is proposed which would allow the utilization of data more than five years old for assessment of use support in streams, and more than 10 years old for assessment of use support in lakes, in certain circumstances. The circumstance which created the need for these amendments is that the Department of Environmental Quality has encountered instances when assessments on beneficial use support could not be made because the available data did not satisfy the time requirements of the current language, yet the available data would have produced an appropriate assessment. The intended effect of these amendments is to allow older data to be used to augment more recent data and fulfill the minimum data requirements for use support decisions. Second, language pertaining to the Practical Quantitation Limit ("PQL") is proposed to be revised to address instances where the PQL is equal to the criterion value. The circumstance which created the need for this amendment is that it has come to the attention of OWRB staff that the current language has a gap which does not address situations where the criterion is equal to the PQL. The intended effect of this amendment is to allow for more precise beneficial use support decisions where the criterion is equal to the PQL.

OAC 785:46-15-5, Assessment of Fish and Wildlife Propagation support, is proposed to be amended by adding new language to establish protocols to determine whether the beneficial use of Fish and Wildlife Propagation is supported with respect to suspended and bedded sediments. In addition, the new language will contain at least two terms which are proposed to be added to and defined in 785:46-1-2, Definitions. The circumstance which created the need for these amendments is that sedimentation causes adverse impacts in Oklahoma's streams, and needs to be addressed in the implementation of Oklahoma's Water Quality Standards.

The intended effect of this amendment, together with related amendments being proposed for OAC 785:45, is to provide a uniform methodology that will be used by all state environmental agencies to assess and regulate the impacts of sediments in Oklahoma's streams.

OAC Sections 785:46-15-11, Assessment of Hydroelectric Power Generation support, 785:46-15-12, Assessment of Industrial and Municipal Process and Cooling Water support, and 785:46-15-13, Assessment of Navigation support, are all proposed to be revoked. The circumstance which created the need for these amendments is that these uses are not dependent on water quality and consequently there are no criteria to protect these uses, nor protocols to determine whether these uses are supported. This creates unnecessary complications in other areas of water quality management, such as the State's list of uses that are not supported. The intended effect of these amendments, together with the revocation of related rules in OAC 785:45 also being proposed, is to end the complications that arise from the unnecessary classifications of these uses in the Oklahoma Water Quality Standards and attempts to determine support of these uses.

### **AUTHORITY:**

Oklahoma Water Resources Board, 82 O.S., § 1085.30; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

### **COMMENT PERIOD:**

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 6, 2006. In addition, persons may submit oral or written comments during the public hearing described below. It is currently anticipated that proposed amendments may be presented to the OWRB for consideration or action or both, at one or more of its regular meetings on February 14, 2006 or March 14, 2006. The OWRB may or may not choose to consider additional comments at the meeting or meetings in which the proposed amendments are considered or acted upon.

### **PUBLIC HEARING:**

A hearing on the proposed amendments is scheduled for January 6, 2006 at 1:00 P.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma. Persons may present their views on the proposed amendments orally or in writing during the hearing.

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

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, within the Comment Period from November 15, 2005 through January 6, 2006, in dollar amounts if possible, the increase in the level of direct costs such as fees, and 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. Business entities may submit this information in writing to Derek Smithee at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 6, 2006.

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

Copies of the proposed amendments may be reviewed at the OWRB's office location at 3800 North Classen, Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge. The proposed amendments may also be viewed on the OWRB web site at [http://www.owrb.state.ok.us/util/rules/wqs\\_revisions.php](http://www.owrb.state.ok.us/util/rules/wqs_revisions.php).

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North

Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at [http://www.owrb.state.ok.us/util/rules/wqs\\_revisions.php](http://www.owrb.state.ok.us/util/rules/wqs_revisions.php).

### **CONTACT PERSON:**

Derek Smithee, Water Quality Programs Division Chief, 405/530-8800.

*[OAR Docket #05-1297; filed 10-26-05]*

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# Submissions for Review

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

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

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**TITLE 152. COMMUNITY HOSPITALS  
AUTHORITY  
CHAPTER 1. GENERAL AGENCY RULES**

*[OAR Docket #05-1290]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. Purpose and Organization

152:1-1-4. [AMENDED]

Subchapter 3. Meetings

152:1-3-1. [AMENDED]

Subchapter 5. General Course and Method of Operations

152:1-5-1. [AMENDED]

**SUBMITTED TO GOVERNOR:**

September 30, 2005

**SUBMITTED TO HOUSE:**

September 30, 2005

**SUBMITTED TO SENATE:**

September 30, 2005

*[OAR Docket #05-1290; filed 10-24-05]*

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# Gubernatorial Approvals

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

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

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**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 250. FEE SCHEDULE FOR  
CONSUMER HEALTH SERVICES**

*[OAR Docket #05-1286]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**PROPOSED RULES:**

Subchapter 3. License Classifications and Associated Fees  
For Consumer Health Services

310:250-3-1. [AMENDED]

310:250-3-6. [AMENDED]

**GUBERNATORIAL APPROVAL:**

October 6, 2005

*[OAR Docket #05-1286; filed 10-21-05]*

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**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 10. SPORT FISHING RULES**

*[OAR Docket #05-1283]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Area Restrictions and Special Fees  
800:10-5-3. Designated trout areas [AMENDED]

**GUBERNATORIAL APPROVAL:**

October 6, 2005

*[OAR Docket #05-1283; filed 10-17-05]*

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# Emergency Adoptions

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

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

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

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

## **TITLE 38. LICENSED ALCOHOL AND DRUG COUNSELORS CHAPTER 1. ADMINISTRATION**

*[OAR Docket #05-1277]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 1. Individual Proceedings [NEW]

38:1-1-1. [NEW]

38:1-1-2. [NEW]

38:1-1-3. [NEW]

38:1-1-4. [NEW]

38:1-1-5. [NEW]

38:1-1-6. [NEW]

38:1-1-7. [NEW]

38:1-1-8. [NEW]

38:1-1-9. [NEW]

38:1-1-10. [NEW]

38:1-1-11. [NEW]

38:1-1-12. [NEW]

38:1-1-13. [NEW]

38:1-1-14. [NEW]

38:1-1-15. [NEW]

38:1-1-16. [NEW]

Subchapter 3. Administrative Operations [NEW]

38:1-3-1. [NEW]

38:1-3-2. [NEW]

38:1-3-3. [NEW]

38:1-3-4. [NEW]

38:1-3-5. [NEW]

38:1-3-6. [NEW]

### **AUTHORITY:**

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S. § 1875.

### **DATES:**

#### **Comment period:**

June 15, 2005 through July 15, 2005

#### **Public hearing:**

July 18, 2005

#### **Adoption:**

August 8, 2005

#### **Approved by Governor:**

October 3, 2005

#### **Effective:**

Immediately upon Governor's approval

#### **Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

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

N/A

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

N/A

### **FINDING OF EMERGENCY:**

Title 59 O.S. §§ 1870 through 1885 created the Oklahoma Board of Licensed Alcohol and Drug Counselors and had an emergency effective date of May 19, 2004. Section 1875 requires the Board to promulgate rules necessary to implement the provisions of the Licensed Alcohol and Drug Counselors Act.

### **ANALYSIS:**

In accordance with the Administrative Procedures Act, these proposed rules implement 59 O.S. §§ 1870 through 1885, the statutory mandate to promulgate rules of conduct governing the practice of, and continuing education requirements for, certified and licensed alcohol and drug counselors.

### **CONTACT PERSON:**

Linda Winton, Agency Liaison Officer, (405) 522-6567

**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. INDIVIDUAL PROCEEDINGS**

### **38:1-1-1. Purpose**

These rules are promulgated pursuant to the requirements of the Administrative Procedures Act, 75 O.S. § 250, et seq. The purpose of these rules is to effectively implement the provisions of Licensed Alcohol and Drug Counselors Act (Title 59, § 1870 et seq.) of the Oklahoma Statutes. These rules supplement existing state and federal laws, and being duly promulgated, have the force and effect of law.

### **38:1-1-2. Definitions**

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

"Act" means Title 59 O.S., §§ 1870 et seq. of the Oklahoma Statutes.

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Board to preside over and issue a proposed order in individual proceedings.

"Administrative Procedures Act" or "APA" means Title 75 of the Oklahoma Statutes, §§250.1 through 323.

"Alcohol and drug counseling" means the application of substance use disorders and counseling principles in order to:

(A) develop an understanding of alcoholism and drug dependency;

## Emergency Adoptions

(B) prevent, diagnose or treat alcohol and drug dependency problems;

(C) conduct assessments or diagnoses for the purpose of establishing treatment goals and objectives; and

(D) plan, implement or evaluate treatment plans using counseling treatment interventions.

**"Board"** means the Oklahoma Board of Licensed Alcohol and Drug Counselors created by Section 4 of the Act.

**"Certified alcohol and drug counseling"** is a practice which focuses on rendering services to individuals, families or groups of individuals that involve the evaluation, diagnosis, treatment, and prevention of substance use and abuse disorders as related to the total health of the client system according to alcohol and drug counseling theory.

**"Certified Alcohol and Drug Counselor" or "CADC"** means any person who is not exempt pursuant to the provisions of the Act and is not licensed under the Act, but who offers alcohol and drug counseling services while employed by an entity certified by the Oklahoma Department of Mental Health and Substance Abuse Services, or who is exempt from such certification, or who is under the supervision of a person recognized by the Board as a drug and alcohol counselor licensed by the Act who is qualified to provide such supervision.

**"Complaint"** means a written statement of alleged violation of the Act or these rules by an individual practicing alcohol and drug counseling, submitted to the Board for review and action.

**"Individual proceeding"** means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

**"Licensed alcohol and drug counseling"** is a practice which focuses on rendering services to individuals, families or groups of individuals that involve the evaluation, diagnosis, treatment, and prevention of substance use and abuse disorders as related to the total health of the client system according to alcohol and drug counseling theory.

**"Licensed Alcohol and Drug Counselor" or "LADC"** means any person who offers alcohol and drug counseling services for compensation to any person and is licensed pursuant to the provisions of the Act. The term "licensed alcohol and drug counselor" shall not include those professions exempted by the Act.

**"Oklahoma Administrative Code" or "OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

**"Respondent"** means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

**"Rule"** means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The term

"rule" includes the amendment or revocation of an effective rule, but does not include:

(A) the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license;

(B) the approval, disapproval or prescription of rates. For purposes of this subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications.

(C) statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public.

(D) declaratory rulings issued pursuant to 75 O.S. § 307.

(E) orders by an agency, or

(F) press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

### **38:1-1-3. Individual proceedings**

Article II of the Administrative Procedures Act ("APA"), 75 O.S. §§ 308a, *et seq.*, governs individual proceedings by the Board for revocation, suspension, probation and non-renewal of license or certification.

### **38:1-1-4. Sanctions**

(a) **Types of sanctions.** The following administrative sanctions may be taken against a respondent:

- (1) Non-renewal of licensure or certification;
- (2) Revocation of licensure or certification;
- (3) Probation of licensure or certification; and,
- (4) Suspension of licensure or certification.

(b) **Cause for sanctions.** The Board may sanction any license or certificate pursuant to the provisions of the Act and these rules if the person has:

- (1) Been convicted of a felony;
- (2) Been convicted of a misdemeanor determined to be of such a nature as to render the person convicted unfit to practice alcohol and drug counseling;
- (3) Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications pursuant to the provisions of the Act;
- (4) Knowingly aided or abetted a person not certified or licensed pursuant to these provisions in representing himself or herself as a certified or licensed alcohol and drug counselor in this state;
- (5) Engaged in unprofessional conduct as defined by rules promulgated by the Board;
- (6) Engaged in negligence or wrongful actions in the performance of his or her duties; or
- (7) Misrepresented any information required in obtaining a certificate or license.

(c) **Opportunity for a hearing.** No certificate or license shall be suspended or revoked, nor shall a certified or licensed alcohol and drug counselor be placed on probation or subjected to an administrative penalty until notice is served upon the certified or licensed alcohol and drug counselor and an opportunity for a hearing is provided in conformity with Article II of the Administrative Procedures Act.

(d) **Administrative penalties.** Any person, who is determined by the Board to have violated any provision of the Licensed Alcohol and Drug Counselors Act, or any rule promulgated or order issued pursuant thereto, may be subject to an administrative penalty.

(1) The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00).

(2) Administrative penalties imposed pursuant to 59 O.S. §1881 shall be enforceable in the district courts of this state.

(3) All administrative penalties collected shall be deposited into the Licensed Alcohol and Drug Counselors Revolving Fund, created by Section 14 of the Act.

**38:1-1-5. Receiving complaints**

(a) Any person may file a complaint against an LADC or CADC or a person practicing alcohol and drug counseling. A person wishing to register a complaint or alleged violation against LADC or CADC or person practicing alcohol and drug counseling may notify the Board in writing, by telephone, or by a personal visit. The Board will determine whether the complaint alleges a possible violation of the Act or this chapter.

(b) The complaint and the identity of the complainant shall be confidential and shall not be available for public inspection. Upon receipt of the complaint, the Board staff shall:

(1) stamp all pages with a Board stamp which indicates the date of receipt;

(2) review the complaint to determine if the person against whom the complaint is registered is a current licensee or certified person;

(3) log the complaint, assigning a number consisting of the year and sequence number in which it was received; further, recording the date received, name of complainant, if provided, and the name and license or certification number or the licensee or certified person;

(4) generate a letter to the complainant indicating receipt and review of the complaint, if applicable;

(5) notify the Board chair and Advisory Committee.

(c) **Petition and Notice.** In the event the Board chair or Advisory Committee determines action should be taken, an individual proceeding may be initiated by filing a petition and notice with the hearing clerk for the Board, who shall be designated by the Board chair, and by serving the petition on all respondents. The petition and notice shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference.

**38:1-1-6. Service of petition and notice**

(a) **Service.** The petition and notice shall be served on the respondent(s) personally or by certified mail, return receipt requested to the address of the respondent(s) on file with the Board.

(b) **Proof of service.** Proof of service shall be filed with the hearing clerk.

(c) **Substitute service.** If the Board is unable to obtain service on a respondent, the petition and notice shall be mailed by regular mail to the last known address of the respondent, and the Board shall file an affirmation service was attempted.

(d) **Service of other papers and documents.** Service of all other papers and documents connected with an individual proceeding shall be served on the parties or their counsel by delivering a copy in person or via facsimile or regular mail.

**38:1-1-7. Emergency actions**

When the Board chair or Hearing Officer finds that the public health, safety or welfare requires action be taken immediately and when such a finding is incorporated in an order, emergency action or summary suspension of a licensure or certification may be ordered pending the filing of a petition or the outcome of an individual proceeding.

**38:1-1-8. Procedures in individual proceedings**

(a) **Procedures.** The order of procedure in all individual proceedings shall generally be governed by the APA.

(b) **Hearing officers.** The Board chair or designee may appoint an Administrative Hearing Officer in individual proceedings filed before the Board, otherwise the proceedings are before the Board.

**38:1-1-9. Continuances**

(a) **Continuance by the Board.** The Board chair or the Hearing Officer may continue or adjourn the proceedings at any time for a specified time, with notice or motion.

(b) **Continuance by motion of parties.** Except for good cause shown, or by agreement of all parties, no continuance will be granted upon motion of a party unless written request therefore is filed and served on all parties of record and filed with the Hearing Clerk at least seven (7) days prior to the date set for hearing. A stipulation for continuance among all parties of record ordinarily will be approved, unless the Board chair or the Hearing Officer determines that the public interest requires otherwise.

**38:1-1-10. Discovery**

Discovery shall be conducted generally in accordance with the APA. The Board chair or Hearing Officer may enter specific orders directing the conduct of discovery.

**38:1-1-11. Protective orders**

The Board chair or the Hearing Officer at the hearing or at anytime upon application of a party, with or without notice,

## **Emergency Adoptions**

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may make such orders relating to discovery as may be necessary or appropriate for the protection of the parties, and to prevent hardship to and excessive burden upon a party.

### **38:1-1-12. Subpoenas**

(a) **Issuance and service.** Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Hearing Clerk upon request by a party.

(b) **Failure to obey.** The Board chair or the Petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Board chair or the Hearing Officer may, in his or her discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c) **Motions to quash.** Any person, to whom a subpoena is directed, may file a motion to quash or limit the subpoena with the Hearing Clerk, setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope and the Board Chair or Hearing Officer will rule on the motion.

### **38:1-1-13. Conduct and record of hearing**

(a) **Open to public.** Every hearing before the Board shall be conducted by the Board chair or designated Hearing Officer. Upon motion of a party to the proceeding, the Board Chair or Hearing Officer may exclude from the hearing room any witness not at that time under examination. A party to the proceeding and that party's attorney may not be excluded.

(b) **Record.** All testimony shall be taken on the record unless otherwise designated by the Hearing Officer. An electronic recording of the hearing proceedings shall be made. The recording will not be transcribed as a matter of course. The electronic recording of Board shall be the official record. Copies of the recordings shall be provided to a party on written request. The cost of transcription, if done, shall be borne by the party having the recording transcribed.

(c) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(d) **Maintenance of the record.** The record of a proceeding and the file containing the notices and the pleadings will be maintained by the Hearing Clerk in a location designated by the Hearing Clerk. All pleadings, motions, orders and other papers submitted for filing in an individual proceeding shall be stamped with the date filed by the Hearing Clerk upon receipt.

(e) **Designation on appeal.** On an appeal to district court, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the APA.

### **38:1-1-14. Sanctions for non-compliance with hearing and discovery procedures**

The Hearing Officer may impose sanctions upon the parties as necessary to serve the ends of justice.

### **38:1-1-15. Order of hearing**

(a) **Appearances and default.** At the hearing, every party shall announce an appearance. An individual may appear on their own behalf or be represented by an attorney. A corporation must be represented by counsel. Any respondent who fails to appear as directed, after service of the petition and notice of hearing as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the petition, and the Hearing Officer may default the party and issue an order sustaining the allegations.

(b) **Preliminary matters.** The following shall be taken up prior to receiving evidence:

(1) The Board and other parties may offer preliminary exhibits, including pleadings necessary to present the issues to be heard.

(2) Ruling shall be made on any pending motions, including requests for delivery of documents.

(3) Stipulations of fact and stipulated exhibits shall be received.

(4) Parties shall make opening statements where appropriate.

(5) Any other preliminary matters appropriate for dispositions prior to offers of evidence.

(c) **Rules of evidence.** The rules of evidence shall be those specified by the APA.

(d) **Presentation of the case.** At the hearing, each party may make a brief opening statement, present witnesses and exhibits, cross-examine adverse witnesses, and make closing arguments.

### **38:1-1-16. Proposed order and settlement**

(a) **Issuance and services of final order.** Not more than twenty (20) calendar days after conclusion of the hearing, the Board chair or the Hearing Officer shall issue a proposed order with findings of fact and conclusions of law. If the Board proves its allegations in the petition and notice by clear and convincing evidence, the Board chair or the Hearing Officer shall issue an order sustaining the allegations. If the Board does not meet its burden, the Board chair or Hearing Officer shall issue an order in favor of the respondent(s).

(b) **Appeal.** A party may appeal a Final Order as provided in the APA.

(c) **Settlement.** Unless precluded by law, individual proceedings may be resolved by agreed settlement or consent order, with the concurrence of the Board chair or the Hearing Officer.

## **SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS**

### **38:1-3-1. Purpose**

The purpose of this subchapter is the establishment of administrative operations of the Board and agency.

**38:1-3-2. Makeup of Board**

There shall be seven (7) members of the Board. Six (6) members shall be alcohol and drug counselors certified by an entity recognized to do professional alcohol and drug counseling in this state; provided, however, that pursuant to the Act, five (5) of the members of the Board shall subsequently secure licensure and one (1) shall secure certification. The remaining member of the Board shall represent the general public.

**38:1-3-3. Officers of the Board**

(a) The Board shall annually elect a chair, vice-chair, and any other office it deems appropriate and necessary to conduct its business.

(b) Each additional office elected shall perform those duties customarily associated with the position and other duties assigned by the Board.

(c) Officers shall serve for one (1) year and shall serve no more than three (3) consecutive years in any office to which elected.

**38:1-3-4. Quorum**

Four (4) members of the Board shall constitute a quorum for the transaction of business. All action by the Board requires a majority vote of the Board members present.

**38:1-3-5. Meeting dates**

The Board shall meet at least once every three (3) months and should be available for additional meetings as the Board may determine. Meetings shall be conducted in accordance with the provisions of the Oklahoma Open Meeting Act, Title 25 O.S. §§ 301-314.

**38:1-3-6. Agency administration**

The Board may employ an executive director who shall be in charge of the office of the Board. The executive director shall have shall have qualifications established by the Board. The executive director shall, among others:

- (1) devote his or her entire time to the duties of the office;
- (2) receive salary and benefits as provided by law;
- (3) keep and preserve all books and records pertaining to the Board;
- (4) have the authority to collect all fees and penalties provided for by the Act;
- (5) make quarterly reports to the Board of all monies collected and the sources from which derived;
- (6) have authority to approve payrolls and all claims for the Board;
- (7) have authority to employ staff, subject to Board approval;
- (8) keep a continuous inventory of all properties, excluding supplies, belonging to the board;
- (9) develop, institute and administer such administrative and professional policies and official forms as may be necessary to guarantee effective, efficient and uniform operation of the Board; and

(10) perform other duties as may be directed by the Board.

*[OAR Docket #05-1277; filed 10-12-05]*

**TITLE 38. LICENSED ALCOHOL AND DRUG COUNSELORS**  
**CHAPTER 10. LICENSURE AND CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS**

*[OAR Docket #05-1278]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 1. General Provisions [NEW]

38:10-1-1. [NEW]

38:10-1-2. [NEW]

38:10-1-3. [NEW]

38:10-1-4. [NEW]

38:10-1-5. [NEW]

38:10-1-6. [NEW]

38:10-1-7. [NEW]

38:10-1-8. [NEW]

38:10-1-9. [NEW]

Subchapter 3. Rules of Professional Conduct [NEW]

38:10-3-1. [NEW]

38:10-3-2. [NEW]

38:10-3-3. [NEW]

38:10-3-4. [NEW]

38:10-3-5. [NEW]

38:10-3-6. [NEW]

Subchapter 5. Fitness of Applicants [NEW]

38:10-5-1. [NEW]

38:10-5-2. [NEW]

38:10-5-3. [NEW]

Subchapter 7. Application [NEW]

38:10-7-1. [NEW]

38:10-7-2. [NEW]

38:10-7-3. [NEW]

38:10-7-4. [NEW]

38:10-7-5. [NEW]

38:10-7-6. [NEW]

38:10-7-7. [NEW]

38:10-7-8. [NEW]

38:10-7-9. [NEW]

Subchapter 9. Supervision [NEW]

38:10-9-1. [NEW]

38:10-9-2. [NEW]

38:10-9-3. [NEW]

38:10-9-4. [NEW]

Subchapter 11. Fees [NEW]

38:10-11-1. [NEW]

38:10-11-2. [NEW]

38:10-11-3. [NEW]

Subchapter 13. Continuing Education Requirements [NEW]

38:10-13-1. [NEW]

38:10-13-2. [NEW]

38:10-13-3. [NEW]

38:10-13-4. [NEW]

38:10-13-5. [NEW]

38:10-13-6. [NEW]

**AUTHORITY:**

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S. § 1875.

**DATES:**

**Comment period:**

June 15, 2005 through July 15, 2005

# Emergency Adoptions

**Public hearing:**

July 18, 2005

**Adoption:**

August 8, 2005

**Approved by Governor:**

October 3, 2005

**Effective:**

Immediately upon Governor's approval

**Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

Title 59 O.S. §§ 1870 through 1885 created the Oklahoma Board of Licensed Alcohol and Drug Counselors and had an emergency effective date of May 19, 2004. Section 1875 requires the Board to promulgate rules necessary to implement the provisions of the Licensed Alcohol and Drug Counselors Act.

**ANALYSIS:**

In accordance with the Administrative Procedures Act, these proposed rules implement 59 O.S. §§ 1870 through 1885, the statutory mandate to promulgate rules of conduct governing the practice of, and continuing education requirements for, certified and licensed alcohol and drug counselors.

**CONTACT PERSON:**

Linda Winton, Agency Liaison Officer, (405) 522-6765

**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**

### **38:10-1-1. Applicability**

This, and all subsequent subchapters are applicable, unless otherwise specifically noted in a subchapter, part or section of Oklahoma Administrative Code Title 38, to the Oklahoma Board of Licensed Alcohol and Drug Counselors, all employees of the Board and individuals subject to licensure or certification by the Board to provide alcohol and drug counseling (59 O.S. §§ 1873 and 1875).

### **38:10-1-2. Definitions**

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

"Act" means Title 59 O.S., §§ 1870 et seq. of the Oklahoma Statutes.

"Administrative Procedures Act" or "APA" means Title 75 of the Oklahoma Statutes, §§250.1 through 323.

"Alcohol and drug counseling" means the application of substance use disorders and counseling principles in order to:

- (A) develop an understanding of alcoholism and drug dependency;
- (B) prevent, diagnose or treat alcohol and drug dependency problems;
- (C) conduct assessments or diagnoses for the purpose of establishing treatment goals and objectives; and

(D) plan, implement or evaluate treatment plans using counseling treatment interventions.

"Board" means the Oklahoma Board of Licensed Alcohol and Drug Counselors created by Section 4 of the Act.

"Certified alcohol and drug counseling" is a practice which focuses on rendering services to individuals, families or groups of individuals that involve the evaluation, diagnosis, treatment, and prevention of substance use and abuse disorders as related to the total health of the client system according to alcohol and drug counseling theory.

"Certified Alcohol and Drug Counselor" or "CADC" means any person who is not exempt pursuant to the provisions of the Act and is not licensed under the Act, but who offers alcohol and drug counseling services while employed by an entity certified by the Oklahoma Department of Mental Health and Substance Abuse Services, or who is exempt from such certification, or who is under the supervision of a person recognized by the Board as a drug and alcohol counselor licensed by the Act who is qualified to provide such supervision.

"Consulting" means interpreting or reporting scientific fact or theory in counseling to provide assistance in solving current or potential problems of individuals, groups or organizations.

"Group supervision" is educational supervision conducted with one supervisee and no more than six supervisees in a group.

"Licensed alcohol and drug counseling" is a practice which focuses on rendering services to individuals, families or groups of individuals that involve the evaluation, diagnosis, treatment, and prevention of substance use and abuse disorders as related to the total health of the client system according to alcohol and drug counseling theory.

"Licensed Alcohol and Drug Counselor" or "LADC" means any person who offers alcohol and drug counseling services for compensation to any person and is licensed pursuant to the provisions of the Act. The term "licensed alcohol and drug counselor" shall not include those professions exempted by the Act.

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The term "rule" includes the amendment or revocation of an effective rule, but does not include:

(A) the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license;

(B) the approval, disapproval or prescription of rates. For purposes of this subparagraph, the term "rates" shall not include fees or charges fixed by

an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications.

(C) statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public.

(D) declaratory rulings issued pursuant to 75 O.S. § 307.

(E) orders by an agency, or

(F) press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

"Sexual harassment" means deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

### **38:10-1-3. Compliance with laws and rules**

(a) Any statute of the United States or of the state of Oklahoma now existing, or duly enacted in the future, shall supersede any conflicting provision of the rules of this and all subsequent chapters to the extent of such conflict, but shall not affect the remaining provisions therein.

(b) All persons and organizations affected by the rules of this and all subsequent subchapters and related laws shall be knowledgeable of the conduct pertinent in operating in accordance with all such rules and laws.

### **38:10-1-4. Organization**

(a) The Board is the entity vested with authority to make rules for the implementation of its statutorily mandated and permissible functions under 59 O.S. §§ 1870, et seq.

(b) The Board shall employ, direct and discharge staff as authorized by law and assign said staff to carry out the duties and responsibilities required to fulfill the statutory requirements of 59 O.S. §§ 1870, et seq., and the rules and directives of the Board.

### **38:10-1-5. Public records**

(a) **Official records.** Official records of the Board include information, rules, forms, the record in individual proceedings, records submitted to the Board, and other public records in accordance with the Oklahoma Open Records Act 51 O.S. §§ 24A.1, et seq.

(b) **Copies.** Copies of official records of the Board not privileged or protected from publication by law, shall be available to the public.

### **38:10-1-6. Requests for agency public information**

Any person making a request pursuant to 38:10-1-5 shall comply with the following:

(1) The request must be in writing and may be mailed Oklahoma Board of Licensed Alcohol and Drug Counselors, or sent via facsimile or made in person during regular office hours between 8:00 a.m. and 5:00 p.m.

(2) The request must describe the record(s) requested, be signed by the party making the request, and have the party's mailing address and telephone number.

(3) The requesting party shall pay a fee for copies. Said fee shall be twenty-five cents (25¢) per page, twelve dollars (\$12.00) per 3½-inch diskette, and \$1.00 per page for certified documents. For commercial requests or those that would cause excessive disruption of office function, such as documents that are archived, either internally or with the Oklahoma Archives and Records Commission, a search fee will be charged based upon the hourly rate of the individual(s) searching for, and locating, the requested records.

(4) Certain Board employee personnel records are confidential and not subject to the Oklahoma Open Records Act, including employee evaluations, payroll deductions, applications submitted by persons not hired by the Board; internal personnel investigations including examination and selection material, employees home addresses, telephone numbers, and social security numbers, medical and employee assistance records, and other personnel records where disclosure would constitute a clear invasion of privacy. Personnel records information that are subject to release are the application of a person who becomes an employee of the Board, gross receipt of public funds, dates of employment, title or position and any final disciplinary action resulting in loss of pay, suspension, demotion or termination.

(5) Any other document protected, as confidential, by any Oklahoma or federal law, or Oklahoma or federal administrative rule, or by order of a court of competent jurisdiction, is not subject to the Oklahoma Open Records Act.

### **38:10-1-7. Forms**

In order to maintain efficiency and uniformity in the administration of duties, the Board will devise and maintain forms for use by any party. The forms may be revised periodically to insure uniformity, efficiency, and expediency. The prescribed forms must be used by all affected parties unless another form is approved by the Board prior to its submission or other provisions are stated in subsequent chapters. Board employees shall make available to the public all rules and other written statements of policy adopted or used in the discharge of its functions, all forms, applications and instructions for use by the public, including those required to apply for a licensure or certification. Additionally, forms may be acquired by request under 38:10-1-7.

### **38:10-1-8. Procedures to secure a declaratory ruling as to the applicability of any rule or order of the Board**

(a) Any person subject to the rules contained in rules of the Board (Oklahoma Administrative Code Title 38) may petition for a declaratory ruling as to the applicability of a specific rule and its effect on petitioner. In petitioning the Board for a declaratory ruling, the following procedures must be followed:

## **Emergency Adoptions**

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- (1) The petition must be in writing and submitted to the Board in person, or via regular or certified mail;
  - (2) The petition shall state with specificity the rule or order in question;
  - (3) The petition shall set forth the contents of the rule or order;
  - (4) The petition shall state clearly and with specificity the basis for the action and the action or relief sought; and
  - (5) The petition shall pose the specific question(s) to be answered by the Board.
- (b) Upon receipt of the petition requesting such declaratory ruling, The Board shall consider the petition and response to the request at its next regularly scheduled Board meeting subsequent to the filing of the petition.
- (c) The Board may entertain oral presentation or argument on the request of the petitioner and, on its own motion, may request such argument or presentation.
- (d) On considering the petition, the Board, in its sound discretion may refuse to issue a declaratory ruling, may decide the issue and determine the validity of the rule or order or the applicability to the petitioner of the rule or order.
- (e) Appeals from declaratory rulings of the Board may be taken in a manner consistent with the Oklahoma Administrative Procedures Act.
- (f) A declaratory ruling or refusal to issue such ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the Oklahoma Administrative Procedures Act (75 O.S. § 307).

### **38:10-1-9. Procedures to petition the Board to request the promulgation, amendment or repeal of a rule**

Any person affected either by a rule adopted and promulgated by the Board, or the lack of a rule and regulation may petition the Board to promulgate, adopt, amend or repeal the rule pursuant to 75 O.S. § 305 and in accordance with this section.

- (1) The petition must be in writing and submitted to the Board in person or via regular or certified mail, and include:
  - (A) The proposed amendment, promulgation, or repeal of a specific rule.
  - (B) The reason for the petition to repeal, promulgate, or amend a rule.
  - (C) The effect that the repeal, amendment or promulgation of the rule would have on the petitioner.
- (2) The petitioner must print his or her name, address and telephone number on the petition and it must be signed by the petitioner.
- (3) The Board shall timely respond to such petition, either by initiating rulemaking proceedings or by denying the petition.
- (4) The petitioner will be notified by regular mail if rulemaking proceedings are initiated.

### **38:10-3-1. Purpose**

The rules of this subchapter are intended to define unprofessional conduct in the context of providing alcohol and drug counseling and to establish norms of professional conduct for Licensed and Certified Alcohol and Drug Counselors.

### **38:10-3-2. Code of ethics**

- (a) It shall be the responsibility of Licensed and Certified Alcohol and Drug Counselors to value objectivity and integrity, and in providing services, to strive to maintain the highest standards of their profession.
- (b) LADCs and CADCs shall accept responsibility for the consequences of their work and make every effort to ensure their services are used appropriately.
- (c) LADCs and CADCs shall be alert to personal, social, organizational, financial, and political situations or pressures that might lead to the misuse of their influence.
- (d) LADCs and CADCs shall not participate in, condone, or be associated with dishonesty, fraud, sexual harassment, deceit or misrepresentation.
- (e) LADCs and CADCs shall not exploit their relationships with current or former clients, supervisees, students, employees, or research participants, sexually or otherwise, for personal advantage, profit, satisfaction, or interest.
- (f) LADCs and CADCs shall not solicit the clients of one's employing agency for private practice.
- (g) LADCs and CADCs shall terminate service to clients, and professional relationships with them when such service and relationships are no longer required or in which a conflict of interest arises.
- (h) LADCs and CADCs shall not engage in any sexual act with a client or with a person who has been a client.
- (i) The LADC or CADC/client relationship shall be presumed to exist for a period of six months after the termination of services except where circumstances such as, but not limited to, selection of a new therapist shows otherwise.
- (j) The LADC and CADC shall give precedence to his or her professional responsibility over personal interests.
- (k) The LADC and CADC shall not represent that he or she performed services which he or she did not perform.
- (l) LADCs and CADCs shall not divide a fee or accept or give anything of value for receiving or making a referral.
- (m) LADCs and CADCs shall provide clients at the beginning of service written, accurate and complete information regarding the extent and nature of the services available to them, to include fees and manner of payment.

### **38:10-3-3. Client welfare**

- (a) Titles 42 and 45 CFR. All drug or alcohol abuse treatment information, whether recorded or not, and all communications between a LADC or CADC and his or her client are both privileged and confidential. In addition, the identity of all clients who have received or are receiving drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the client unless an exception under state or federal law applies. The information

## **SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT**

available to persons or agencies actively engaged in the treatment of the client shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release.

(b) **Discrimination.** LADCs and CADCs shall not participate in, condone or promote discrimination on the basis of race, color, age, gender, religion, sexual orientation, or national origin.

(c) **Credentials.** LADCs and CADCs shall not misrepresent professional qualifications, education, affiliations, or services performed.

(d) **Records.**

(1) **Retention.** LADCs and CADCs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services, or in compliance with the employing agency's records disposition schedule.

(2) **Confidentiality.** LADCs and CADCs shall be responsible for securing the safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(3) **Client access.** LADCs and CADCs shall provide the client with a copy of the client's record in accordance with state and federal law. In situations involving multiple clients, access to records is limited to those parts of the record that do not include confidential information related to another client.

(e) **Dual relationships.** LADCs and CADCs shall be aware of their influential positions with respect to clients, and shall not exploit the trust and dependency of clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, professional or close personal relationships with clients. When the possibility that a dual relationship exists, the LADC and CADC shall take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure judgment is not impaired and no exploitation occurs.

(f) **Privacy.**

(1) LADCs and CADCs shall not make inquiry into persons or situations not directly associated with the client's treatment.

(2) LADCs and CADCs shall respect the privacy of clients and hold in confidence all information obtained in the course of professional service except for the client's voluntary consent for release of information; in case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition; when the person waives the privilege by bringing any public charges against the licensee; and for compelling reasons, which include, but are not necessarily limited to:

- (i) consultation with another professional on behalf of the client;
- (ii) duty to warn;
- (iii) child abuse and sexual molestation; or,

(iv) any other situation in accordance with statutory requirements.

(g) **Referral.** The LADC or CADC shall not enter into a counseling relationship if he or she determines that he or she is unable to be of professional assistance to a client. LADCs and CADCs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LADC or CADC shall terminate the relationship.

(h) **Confidentiality.** LADCs and CADCs shall obtain informed consent of clients before audio or video taping, or recording or permitting third party observation of their activities.

(i) Any LADC or CADC who violates any provision of this subchapter shall be subject to sanction(s) as provided in the Licensed Alcohol and Drug Counselors Act.

### **38:10-3-4. Professional standards**

(a) **Violations of other laws.** It shall be professional misconduct for an LADC or CADC to violate a state or federal statute if the violation directly relates to the duties and responsibilities of the counselor or if the violation involves moral turpitude.

(b) **Drug or alcohol use.** LADCs and CADCs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Sexual contact.**

(1) **Current clients.** LADCs and CADCs shall not have any type of sexual contact with clients and shall not counsel persons with whom they have had a sexual relationship.

(2) **Former clients.** LADCs and CADCs shall not engage in sexual contact with former clients.

(d) **Updating.** LADCs and CADCs shall notify the Board of any change in address, telephone number, and employment.

### **38:10-3-5. Relations with the public and other professions**

(a) **Misrepresentation.** LADCs and CADCs shall not misrepresent nor allow the misrepresentation by others of the efficacy of the LADCs and CADCs professional services.

(b) **Credentials claimed.** LADCs and CADCs shall claim or imply only the professional credentials possessed and shall be responsible for correcting any known misrepresentations of their credentials by others.

(c) **Advertisement.** When an LADC or CADC announces services or advertises, he or she shall represent services to the public by identifying credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent. An LADC or CADC may only advertise the highest degree earned from a regionally accredited college or university recognized by the US Department of Education. All advertisements or announcements of counseling services including telephone directory or internet listings by an LADC or CADC shall clearly state his or her licensure or certification status by the use of "LADC" or "CADC" or a statement such as "licensed by the Oklahoma Board of Licensed Alcohol and Drug Counselors" or "certified

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by the Oklahoma Board of Licensed Alcohol and Drug Counselors."

(d) **License.** Each LADC or CADC must display the original, current license or certificate, in a prominent place in the primary location of practice.

(e) **Public statements.** When an LADC or CADC provides advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, he or she shall take reasonable precautions to ensure that:

- (1) The statements are based on appropriate professional literature and practice.
- (2) The statements are otherwise consistent with the mandates of the Rules of Professional Conduct.
- (3) There is no implication that a professional counseling relationship has been established.

(f) **Rebates.** An LADC or CADC shall not give or accept a commission, rebate, or other form of remuneration for referral of clients for professional services.

(g) **Accepting fees from agency clients.** An LADC or CADC shall refuse a private fee or other remuneration for rendering services to persons who are entitled to such services through the employer of the LADC or CADC

### **38:10-3-6. Failure to comply**

An LADC or CADC who does not comply with Subchapter 3, Rules of Professional Conduct shall be guilty of professional misconduct and subject to sanction and any other penalties granted in these rules and the Act.

## **SUBCHAPTER 5. FITNESS OF APPLICANTS**

### **38:10-5-1. Purpose**

The purpose of this subchapter is to establish the fitness of an applicant as one of the criterion for licensure as a LADC or certification as a CADC and to set forth the criteria by which the Board shall determine the fitness of applicants.

### **38:10-5-2. Fitness for licensure or certification**

The substantiation of any of the following items related to the applicant may be, as the Board determines, the basis for the denial of or delay of licensure of the applicant.

- (1) Lack of necessary skills and abilities to provide adequate services.
- (2) Misrepresentation on the application or other materials submitted to the Board; or.
- (3) A violation of the Rules of Professional Conduct delineated in Subchapter 3.

### **38:10-5-3. Materials considered in determining fitness**

(a) Materials considered determining fitness of skills and abilities include but are not necessarily limited to:

- (1) Evaluations from supervisors or instructors;

(2) Statements from persons submitting references for the applicant; and;

(3) Evaluations from employers or professional associations.

(b) Materials considered to determine fitness of professional conduct include:

- (1) Allegations of clients;
- (2) Transcripts or other findings from official court, hearing or investigative proceedings; and
- (3) Any other information which the Board considers pertinent to determining the fitness of applicants.

## **SUBCHAPTER 7. APPLICATION**

### **38:10-7-1. Purpose**

(a) The purpose of this subchapter is to meet those requirements specified in the Act.

(b) Unless otherwise indicated, an applicant shall submit all required information and documentation of credentials in a manner and format prescribed by the Board

### **38:10-7-2. Requirements for licensure or certification**

(a) **Licensed Alcohol and Drug Counselor.**

(1) Prior to January 1, 2010, an application for a license to practice as a LADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant for a licensure:

- (A) Be possessed of good moral character;
- (B) Pass an oral and written examination;
- (C) Be at least twenty-one (21) years of age;
- (D) Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking or suspending a license pursuant to the provisions of the Act;
- (E) Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Act.
- (F) At a minimum, hold a master's degree in a behavioral science field that is recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors as appropriate to practice as a licensed alcohol and drug counselor;
- (G) Successfully completed at least one (1) year of full-time supervised work experience. For the purpose of the Act, "one (1) year of full-time work experience" shall be defined as two thousand (2,000) hours of work experience, of which at least one thousand (1,000) hours shall consist of providing alcohol and drug counseling services to an individual and/or the individual's family;

(H) Successfully completed at least one hundred eighty (180) clock hours of education related to alcohol and drug counseling subjects, theory, practice or research; and,

(I) Successfully completed at least three hundred (300) hours of supervised practicum experience in the field of drug and alcohol counseling.

(J) Effective January 1, 2010, an applicant for a license to practice as a licensed alcohol and drug counselor shall have:

(i) At least a master's degree in alcohol and substance abuse counseling from a college or university accredited by an agency recognized by the United States Department of Education; or

(ii) Possess at least a master's degree in a behavioral science or counseling -related field from a college or university accredited by an agency recognized by the United States Department of Education which is the content-equivalent of a graduate degree in alcohol and substance abuse counseling. In order to qualify as a "content-equivalent" degree, a graduate transcript shall reflect, at a minimum, the following knowledge areas and graduate hours:

(I) three courses in foundational knowledge, including one course in alcohol and drug addiction, one course in drug and alcohol counseling theory, and one course in the pharmacology of drugs of abuse;

(II) three courses in assessment and treatment of alcohol and drug problems, which may include group dynamics, individual and family counseling skills, specific counseling approaches, assessment methods, community resources and referral, or other courses primarily related to the assessment and treatment of alcohol and drug problems;

(III) one course in human development;

(IV) one course in psychopathology;

(V) one course in multicultural and cultural competency issues;

(VI) one course in family systems theory;

(VII) one course in ethics, which includes established ethical conduct for alcohol and drug counselors;

(VIII) one course in research methods; and,

(IX) one three-hour practicum/internship in the field of drug and alcohol counseling of at least three hundred (300) clock hours.

(iii) All courses shall be graduate level courses and shall be three (3) semester hours or four (4) quarter credit hours which shall include a minimum of forty-five (45) class hours for each course.

**(b) Certified Alcohol and Drug Counselor.**

(1) An application for certification as a CADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on

a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the Act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant for certification shall:

(A) Be possessed of good moral character;

(B) Pass an oral and written examination;

(C) Be at least twenty-one (21) years of age;

(D) Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking or suspending a license pursuant to the provisions of the Act;

(E) Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Act.

(F) At a minimum, a bachelor's degree in a behavioral science field that is recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors as appropriate to practice as a certified drug and alcohol counselor in this state;

(G) Have successfully completed at least two (2) years of full-time supervised work experience. For the purpose of the Act, "two years of full-time work experience" shall be defined as four thousand (4,000) hours of work experience of which at least two thousand (2,000) hours shall consist of providing alcohol and drug counseling services to an individual and/or the individual's family;

(H) Have successfully completed at least two hundred seventy (270) clock hours of education related to alcohol and drug counseling subjects, theory, practice or research;

(I) Successfully completed, as a part of or in addition to the education requirements established in paragraph three of this subsection, a minimum of forty-five (45) clock hours of specialized training approved by the Board in identifying co-occurring disorders and making appropriate referrals for treatment of co-occurring disorders; and

(J) Successfully completed at least three hundred (300) hours of supervised practicum experience in the field of drug and alcohol counseling.

**38:10-7-3. Private or independent practice**

No person may engage in the private or independent practice of alcohol and drug counseling work unless:

(1) licensed under the Act as a Licensed Alcohol and Drug Counselor; and,

(2) has had no less than two (2) years of full-time or the equivalent thereto of part-time experience, a total of 4,000 hours, supervised work experience, in the alcohol and drug counseling field, and shall continue to meet continuing education requirements set by the Board; or,

(3) is certified under the Act as a certified alcohol and drug counselor; and

(4) has had no less than three years of full-time or the equivalent thereto of part-time experience, a total of 6,000 hours of supervised work experience in the alcohol and

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drug counseling field, and shall continue to meet continuing education requirements set by the Board; and,

(5) is supervised by a licensed alcohol and drug counselor

### **38:10-7-4. Title of licensed or certified alcohol and drug counselors**

Only those persons licensed or certified or specifically exempt from the provisions of the Licensed Alcohol and Drug Counselors Act may:

(1) represent himself or herself by the title "licensed alcohol and drug counselor" or "certified alcohol and drug counselor;"

(2) use the title of "licensed alcohol and drug counselor" or "certified alcohol and drug counselor" or any other name, style or description denoting that the person is certified or licensed as an alcohol and drug counselor;

(3) practice alcohol and drug counseling; or

(4) advertise or otherwise offer to perform alcohol- or drug-abuse-related counseling services.

### **38:10-7-5. Issuance of license or certification**

The Board shall issue an appropriate license or certification to all applicants who meet the requirements for licensure or certification in order to identify the alcohol and drug counselor to the public as an LADC or CADC.

### **38:10-7-6. Application**

(a) Applicants for licensure or certification shall timely submit a completed application on the form prescribed by the Board, as well as the required fee(s) and documentation. The application includes:

(1) Application fee;

(2) Application form completed, signed, dated and notarized;

(3) A full-face photograph, at least two inch by three inches, taken within the last 12 months;

(4) Official transcript in sealed envelope;

(5) Signed consent authorizing the Board to conduct a criminal background check and collect any additional information or references necessary;

(6) Document of recommendation;

(7) Employment verification form;

(8) Practicum or training form;

(9) Three professional references; and,

(10) Supervision agreement form;

(b) An applicant shall:

(1) Read and be familiar with the rules for the licensed alcohol and drug counselors act;

(2) Follow all laws and rules, including the ethical standards;

(3) Notify the Board in writing within 30 days of a change in address;

(c) All application materials become the property of the Board.

(d) An application packet will not be accepted unless it is complete.

(e) The use of false or fraudulent information by an applicant may be grounds for denial of a license.

(f) Incomplete documents will be returned to the sender. The Board will hold the remaining documents, but will not accept the application until all outstanding documents have been completed and approved.

(g) The application fee is not refundable and will not be returned. When resubmitting documents that were returned to the sender as incomplete, a second application fee is not required.

(h) A document may be considered incomplete if it does not conform to the following standards:

(1) All application form blanks must be completed and questions answered. The form signed, dated and notarized. If the documentation relates to past activity, the date of the activity shall also be recorded;

(2) Documentation shall be permanent and legible (e.g., typed or printed in black ink); and,

(3) When it is necessary to correct a document, the error shall be marked through with a single line, dated, and initialed by the writer. Correction fluid shall not be used.

(i) An applicant must receive written notice of registration from the Board before accumulating any supervised work experience or taking the examination or providing chemical dependency services.

(j) Within 45 days of receipt of the completed application, the Board shall notify the applicant that the application is complete or specify the additional information required.

(k) By signing the application, the applicant accepts responsibility for remaining knowledgeable of licensure rules.

### **38:10-7-7. Examinations**

(a) An LADC or CADC applicant is eligible to take the licensing or certification examination once his or her application documentation is deemed complete and applicable fee(s) are received.

(b) Each applicant shall take and pass written and oral examinations:

(c) The Board shall administer the licensure examinations at least one (1) time each year or as often as deemed necessary.

(d) Application.

(1) The Board shall mail notification of eligibility to sit for examination to the last known address of applicant at least sixty (60) days prior to the date of the next scheduled examination.

(2) An applicant who wishes to take a scheduled examination shall complete an examination registration form and return it to the Board submitting the required fee at least thirty (30) days prior to the date of the examination.

(3) The applicant has one year from the date of receipt of his or her written notification, which shall be mailed to the last known address to register for the test. If applicant fails to register in writing for the test, eligibility for examination and his or her application will be voided.

(e) Grading. Licensure examinations shall be graded by the Board or its designee.

(f) Notice of results.

(1) The Board shall notify the applicant of the examination results within sixty (60) days of the date of the examination.

(2) Examination results shall be in writing and shall specify "pass" or "fail."

(g) **Failure to appear.** If the applicant for licensure or certification fails to appear for examination for reasons other than documented illness or other cause beyond the applicant's control after having agreed to do so by applying to take a particular examination, the applicant shall reapply and pay another examination fee before being admitted to a subsequent examination.

(h) **Failure to apply.** If an applicant fails to timely register for and take the applicable examination pursuant to section (d)(3) of this section, his or her application shall be voided, and the applicant will be so notified in writing.

(i) **Failure to pass.** In the event of failure to pass the examination, the applicant may retake the examination on the next available testing date.

**38:10-7-8. Renewal of license or certification**

(a) All licenses or certifications shall expire at the end of each fiscal year (June 30<sup>th</sup>) and shall be subject to renewal on the first day of the next fiscal year (July 1<sup>st</sup>).

(b) All licensed or certified persons must submit a complete renewal package, including fee, postmarked by June 30<sup>th</sup> of the fiscal year. Only renewals submitted on the most current forms provided by the Board will be accepted.

(c) Each LADC or CADC is responsible for renewing the license or certification and specialty designation before the expiration date.

(d) **Renewal notification.** The Board shall mail a written notice of expiration to LADC or CADC at least forty-five (45) days prior to the expiration date of the license or certification.

(e) **Failure to renew.** If the licensee or certified person fails to timely renew his or her license or certification by the expiration date, the Board shall notify him or her in writing that:

(1) suspension of the license and or certification, and forfeiture of rights and privileges granted by the license or certification; and,

(2) the LADC or CADC has the right to renew the license by payment of the renewal fee and the late renewal fee and fulfillment of all other renewal requirements for up to one (1) year following the suspension of the license.

(f) Licenses or certifications not renewed within the one (1) year renewal period shall not be reinstated and the license or certification shall be returned to the Board.

**38:10-7-9. Reciprocity**

(a) Any person who becomes a resident of Oklahoma and who is or has been, immediately preceding his residency in this state, licensed or certified in good standing to practice alcohol and drug counseling by another state and who meets the testing, educational, and work experience qualifications for licensure or certification in Oklahoma may, upon payment of the necessary fee and submission of documentation as required by the Board, be licensed or certified under these provisions.

(b) Reciprocity shall be based upon an evaluation of the licensing or certification criteria of the other state to determine if criteria are equal to or more stringent than Oklahoma licensing or certification requirements.

**SUBCHAPTER 9. SUPERVISION**

**38:10-9-1. Purpose**

The purpose of this subchapter is the establishment of guidelines for the documentation of supervised experience that must be received from all persons applying for drug and alcohol counselor licensure or certification.

**38:10-9-2. Supervision of work experience**

(a) **Licensed alcohol and drug counselor.** The one year supervised experience requirement for licensure as an LADC must be under the supervision of an alcohol and drug counselor holding the LADC license.

(b) **Certified alcohol and drug counselor.** The two year supervised experience requirement for certification as a CADC must be under the supervision of an alcohol and drug counselor holding an LADC license.

**38:10-9-3. Supervision and private or independent practice**

(a) Engaging in the private or independent practice of alcohol and drug counseling requires licensure or certification as an alcohol and drug counselor and at least two years of supervised experience for LADC and three years of supervised experience for CADC. A CADC in private or independent practice and who is not employed by an entity that is exempt from certification by the Department of Mental Health and Substance Abuse Services will need to be under supervision of a licensed alcohol and drug counselor.

(b) Requirements for supervision of private or independent practice.

(1) Anyone providing supervision on or before **December 31, 2006** must be a licensed alcohol and drug counselor and have at least one year of full time work experience, or equivalent, in providing substance abuse services.

(2) Anyone providing supervision after **December 31, 2006** must make application to the Board and meet all requirements recognized by the Board as appropriate to provide supervision.

(3) Practicum supervision may be signed off by anyone who is in a supervisory or educational role and has first hand knowledge that the candidate did complete the requirement for the practicum.

**38:10-9-4. Approved supervisor status**

(a) **Supervisor status.** On or before **December 31, 2006**, Board approved supervisor status remains in effect contingent upon maintaining a current license in good standing. After **December 31, 2006**, supervisors must be approved by the Board.

(b) **Minimum supervision for work experience.**

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(1) A supervisee must receive an average of one hour per week of live, interactive and visual supervision until the candidate becomes licensed or certified. Group supervision is acceptable if such supervision does not exceed at least one half of the total supervisory time per evaluation period.

(2) A contract will be negotiated by supervisor and supervisee and a copy furnished to the Board prior to beginning the supervision. Any supervision completed prior to approval of the supervision contract will not be accepted. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the completion of the minimum number of hours required, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision.

(3) If supervision is terminated by either party, the supervisee must notify the Board within 14 days of the termination in writing in a format prescribed by the Board.

(4) The supervisor is free to ask for a sample of the supervisee's work.

(5) When the proposed supervisor is not a staff member of the supervisee's agency, the proposed supervisor will ensure that the agency administration, or its representative, is in accord with the arrangements for supervision. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to the financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(6) An individual may contract for supervision from a Board-approved supervisor.

(7) Supervisors shall adhere to the mandates of these rules.

(c) **Minimum Supervision for private or independent practice.**

(1) The supervisor is responsible for having and maintaining knowledge about the supervisee's private practice. The supervisor is responsible for providing professional consultation and monitoring the supervisee's ethical and professional practices.

(2) The supervisor must immediately notify the Board if he or she feels any questionable ethical or professional violations on the part of the supervisee exists.

(3) Supervisor is also responsible for notifying the Board in writing within 14 days of the date supervision is terminated.

### **38:10-11-1. Schedule of fees**

Fees are non-refundable and include:

(1) **Application fee.** One-hundred and forty dollars (\$140.00) and shall be submitted with the application form.

(2) **Written examination fee.** One-hundred and twenty-five dollars (\$125.00). Shall be submitted prior to taking the written examination.

(3) **Oral examination fee.** Seventy-five dollars (\$75.00). Shall be submitted prior to taking the oral examination.

(4) **Initial license or certification fee.** One-hundred dollars shall be submitted prior to the receipt of license or certificate. The initial license or certification notices shall invoice the licensed or certified person for the interim period between the original license or certification date and the following June 30 so that subsequent renewals shall be on a July 1 annual basis.

(5) **Renewal fee.** One-hundred dollars (\$100.00). Shall be submitted upon notification by the Board on or before June 30, and validates the license or certification for twelve (12) months.

(6) **Late renewal fee.** Twenty-five dollars (\$25.00) will be charged each month, if the license or certification is not renewed by June 30. This fee combined with the renewal fee shall not exceed \$200.00. The licensed or certified person must submit this fee as well as the renewal fee on or before the following June 30 to avoid revocation.

(7) **Replacement fee.** Twenty-five dollars (\$25.00). Shall be submitted for the issuance of a license or certification to replace a license which has been lost, damaged, or is in need of revision.

(8) **Inactive license or certification fee.** Twenty-five dollars (\$25.00). Payment of this fee renders the license or certification inactive and suspends all rights and privileges granted by the license or certification for a period of no more than two (2) years. If not renewed within the two (2) year period, license or certification is considered lapsed.

(9) **Mailing list of licensed and certified counselors.** Thirty-five dollars (\$35.00).

(10) **Written verification of licensure or certification.** Five dollars (\$5.00)

(11) **Duplication of public records.** Twenty-five cents (\$.25) per page.

(12) **Investigation or prosecution.** At cost incurred.

(13) **Returned check processing fee.** Fifty Dollars (\$50.00).

(14) **Probation.** Twenty-five dollars (\$25.00) per month.

### **38:10-11-2. Method of payment**

Payment of fees shall be by personal check, cashiers check, money order or cash. Any check returned to the Board for non-payment may result in sanction(s).

## **SUBCHAPTER 11. FEES**

**38:10-11-3. Review of fees**

The Board shall periodically review the fee schedule and recommend any adjustment necessary to provide funds to meet its expenses without creating any unnecessary surplus.

**SUBCHAPTER 13. CONTINUING EDUCATION REQUIREMENTS**

**38:10-13-1. Purpose**

The purpose of this subchapter is to establish the continuing education requirements necessary for license or certification renewal.

**38:10-13-2. Continuing education standards**

(a) Continuing education hours required. As a requirement for license or certification renewal, twenty (20) clock hours of continuing education units shall be required for each license or certification held. These hours must have been obtained during the previous renewal period July through June) and approved by the Board. At least three (3) hours must be categorized as ethics training as defined by the Board.

(b) Continuing education approval. Approval of continuing education shall be at the discretion of the Oklahoma Board of Licensed Alcohol and Drug Counselors and shall be in accordance with standards acceptable to the profession of alcohol and drug counseling.

(c) Armed services. A licensed or certified person called to active duty in the armed forces of the United States for a period of time exceeding one hundred and twenty (120) days during a calendar year shall be exempt from obtaining the continuing education required during that calendar year.

(d) Exemption. A licensee or certified person experiencing physical disability, illness or other extenuating circumstances may request partial or complete exemption from the continuing education requirements. The licensee or certified person shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

(e) Prorating. Licensees or certified persons upon initial certification will have their CEU hours prorated according to the date of their initial certification.

**38:10-13-3. Documentation of attendance**

LADCs and CADCs shall retain verification of attendance documents for all continuing education hours claimed for a period of two (2) years. Acceptable continuing education verification of attendance documents include:

- (1) An official continuing education validation form furnished by the presenter; or
- (2) A letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials; or
- (3) An official graduate transcript showing course or audit credit; or

(4) A letter for approved teaching activities on the sponsor's letterhead giving the name of the program, location, dates, subject taught, and total number of hours taught.

**38:10-13-4. Audit of continuing education submissions**

(a) Each year, the Board shall randomly, or at any time for cause, select up to twenty-five (25) percent of the number of LADCs and CADCs on active status the previous year for an audit of their claimed continuing education.

(b) Licensees or certified persons selected for audit must submit verification of all continuing education credits claimed within thirty (30) days following receipt of the audit notice. The Board may, at its discretion, audit and require verification of any credits claims which it may consider questionable or fraudulent.

**38:10-13-5. Failure to complete continuing education or submit verification**

Failure to complete continuing education requirements or submit such records shall constitute failure to renew a license or certification and may result in forfeiture of the individual's rights and privileges granted by the license or certificate.

**38:10-13-6. Fraudulent continuing education submissions**

The submission of fraudulent continuing education hours shall be cause for sanction.

*[OAR Docket #05-1278; filed 10-12-05]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 25. UNDERGROUND STORAGE TANKS**

*[OAR Docket #05-1299]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

- Subchapter 2. General Requirements for Underground Storage Tank Systems
  - Part 1. Codes and Standards
    - 165:25-2-2. Incorporated codes and standards [AMENDED]
- Subchapter 3. Release Prevention and Detection Requirements
  - Part 1. Release Prohibition and Detection Requirements
    - 165:25-3-6. Monitoring requirements for piping [AMENDED]
- Subchapter 8. Special Requirements For Underground Storage Tank Systems Utilized By Marinas
  - Part 1. General Application And Compliance Provisions
    - 165:25-8-1. Application [AMENDED]
    - 165:25-8-2. Release detection requirements for marinas [NEW]
  - Part 3. Over-Water Piping Requirements
    - 165:25-8-3. Over-water piping at marinas [NEW]
    - 165:25-8-4. Installation requirements for over-water piping [NEW]
    - 165:25-8-5. Underground piping materials [REVOKED]
    - 165:25-8-7. Aboveground piping at marinas [REVOKED]
    - 165:25-8-8. Installation and monitoring requirements for piping [REVOKED]
  - Part 5. Dispenser Requirements

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165:25-8-14. Dispenser hose [AMENDED]  
165:25-8-15. Nozzles [AMENDED]  
Part 9. Dispensing Procedures  
165:25-8-29. Attendants at marinas [AMENDED]  
Part 11. Miscellaneous Safety Requirements  
165:25-8-35. Required signs [AMENDED]  
165:25-8-36. Fire extinguishers [AMENDED]

## AUTHORITY:

Oklahoma Corporation Commission, Article IX, Section 18, Oklahoma Constitution, 17 O.S. §301 et seq

## DATES:

### Adoption:

August 24, 2005

### Approved by Governor:

October 6, 2005

### Submitted to Governor:

September 1, 2005

## Effective:

Immediately upon approval of the Governor

## Expiration:

Effective through July 14, 2006, unless suspended or superseded by another rule or disapproved by the Legislature.

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

None

## FINDING OF EMERGENCY:

The adoption of these rules is based upon a determination of compelling public interest that arose last year when Marina owners and members of the legislature advised the Commission of the adverse effect existing rules placed on Marina owners. The Commission upon review of the existing rules determined that an emergency might exist, and required the Director of the Petroleum Storage Tank Division ("Director") to investigate the concerns of the Marina owners and report his findings to the Commission en banc. The Director inspected data of 59 different marinas at 12 different lakes in performing his investigation. Based upon information provided by the Department of Tourism, the Director noted that upwards of 617 million dollars is spent annually at Oklahoma lakes. The Director noted in a written report to the Commissioners that the cost of making upgrades at each Marina would approximate \$50,000. Many if not all the Marinas would not recover the costs of these upgrades in the near foreseeable future. In addition, all parties including the Commissioners were concerned about the real problem of boaters self fueling with gas cans that do not have the safety features incorporated at Marinas. Self fueling is also a threat to the environment because gasoline spilled while filling would either go to the boat scuppers and be bilge pumped out, spilled directly into the lake, or migrate to the lake from a dock or onshore fueling spill. The potential for self fueling is a real threat because the Commission was advised that a majority of Marinas would discontinue gas sales because of the prohibitive cost of mandated upgrades. Based upon these compelling public safety interests, and real threats to the environment, the Director on July 1<sup>st</sup>, 2005, recommended to the Commission that an emergency rule making addressing Marina issues be initiated. Upon adoption of the emergency rules proposed herein, by the Commission, the rules will be submitted to the Governor and the Oklahoma Legislature for gubernatorial approval as emergency rules for the 2006 legislative session.

## ANALYSIS:

The purpose of this rulemaking is to amend OAC 165:25-2-2 to allow some latitude in the Commission's rules that might not be present in codes and standards incorporated by reference. The rules are further amended at OAC 165:25-3-6 pertaining to double wall piping line tightness testing. The rules are amended at OAC 165:25-8-1 which provides requirements for marinas to upgrade their underground piping by a date certain, and requires the use of a Underground Storage Tank Installer to install UST's and piping, and redirects the requirements for dock or pier product to other rules. In addition, OAC 165:25-8-2, is amended to establish an annual line tightness test to be performed at marinas no later than April 1<sup>st</sup> of each year. A new rule OAC 165:25-8-3 is created to address concerns for over-water piping at marinas. Also, new rule OAC 165:25-8-4 is created to address concerns of over-water piping at marinas. And OAC 165:25-8-5, OAC 165:25-8-7 and OAC 165:25-8-8 are revoked, refined, and revised in new rules OAC 165:25-8-3 over-water piping at marinas, and OAC 165:25-8-4 Installation requirements for over-water piping. Rule OAC 165:25-8-14 is amended to allow the coupling of two or more hoses at marinas. Rule OAC 165:25-8-15 is amended by striking the reference to latch open devices. Rule OAC 165:25-8-29 is

amended to establish certain requirements for emergency shut-off devices at unattended dispensers. Rule OAC 165:25-8-35 is amended by striking the requirement for two inch (2") letters on required signs. Rule OAC 165:25-8-36 is amended to increase the number of required fire extinguishers at marinas from two to three, and requiring the fire extinguishers to be located within fifty feet instead of one hundred feet of certain facilities.

## CONTACT PERSON:

Jeffrey P. Southwick, (405) 522-4457.

**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. 2001 SECTION 253(D):**

## SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

### PART 1. CODES AND STANDARDS

#### 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. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. 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, Liquefied 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."

### SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

#### PART 1. RELEASE PROHIBITION AND DETECTION REQUIREMENTS

##### 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 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.

(B) New installations and facilities replacing a piping system must 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) New installations and facilities replacing a piping system 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 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.

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- (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.**
- (i) 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.
- (ii) An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.
- (iii) 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.
- (iv) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this chapter.
- (B) **Sump sensors.**
- (i) Sump Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1<sup>st</sup> of each year.
- (ii) 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) **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:
- (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, and if necessary, calibrated in accordance with manufacturer's specifications.
- (D) **Monthly vapor monitoring.** Monthly vapor monitoring may be used in lieu of an annual

line tightness test only if the vapor monitoring system is installed and monitored in accordance with 165:25-3-5.3 for vapor 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 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.

### 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.~~

(c) The tank and piping system must come in compliance with the rules of this subchapter before July 15, 2007. Compliance may be required sooner for any part of a system which poses a threat to property, people, or to the environment.

(d) A licensed UST installer must be on the jobsite at all times during the installation of an underground storage tank and/or piping.

(e) All new underground product piping at existing facilities must be installed in accordance with 165:25-2-54 "Underground storage tank piping materials".

(f) All dock or pier product piping from the shoreline to the dispensers at new facilities must be installed according to 165:25-8-3 "Over-water piping at marinas" and 165:25-8-4 "Installation requirements for over-water piping".

(g) All dock or pier product piping from the shoreline to the dispensers at existing facilities must be installed according to 165:25-8-3 "Over-water piping at marinas" and 165:25-8-4 "Installations requirements for over-water piping".

##### **165:25-8-2. Release detection requirements for marinas**

Monitoring requirements for product lines, at a minimum, must consist of an annual line tightness test conducted no later than April 1<sup>st</sup> of each year.

**PART 3. OVER-WATER PIPING REQUIREMENTS**

**165:25-8-3. Over-water piping at marinas**

- (a) 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 and NFPA 30A.
- (b) The piping must be installed according to the manufacturers installation recommendations and instructions.
- (c) Piping must be listed and approved by the manufacturer for aboveground installations.

**165:25-8-4. Installation requirements for over-water piping**

- (a) **Steel piping**
  - (1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. 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 entry boots and primary pipe fittings.
  - (2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.
  - (3) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.
  - (4) 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. The breakaway device shall be located where 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.
  - (5) There must be a normally closed explosion proof solenoid valve installed in each product line at the shoreline.
  - (6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.
  - (7) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.
  - (8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.
- (b) **Double walled piping**
  - (1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.

- (2) All double walled piping installed above the water shall be installed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.
- (3) 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 entry boots and primary pipe fittings.
- (4) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.
- (5) 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. The breakaway device shall be located where 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) There must be a normally closed explosion proof solenoid valve installed in each product line at the shoreline.
- (7) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel. It must be installed so that it is accessible to the operator at all water levels.
- (8) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.
- (9) A transition sump must be rigidly anchored in place either on the dock or at the shoreline. The transition sump must contain the ball valve, solenoid valve, and emergency breakaway device. The transition sump must be either monitored with a sensor or a bypass tube must be used in order to divert a leak from the transition sump to the dispenser sump where it would be detected by a sensor.

**165:25-8-5. Underground piping materials [REVOKED]**

- (a) All underground product piping at existing facilities must be installed or upgraded before the deadline date of July 15, 2007 as follows:
  - (1) Non-metallic;
  - (2) Double-walled;
  - (3) A tracer locator wire must be installed in all piping trenches; and

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- (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 [REVOKED]

All aboveground product piping at existing facilities before the deadline date of July 15, 2007 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 onshore to over water 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 [REVOKED]

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 systems upgraded before the deadline date of July 15, 2007, 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 systems upgraded before the deadline date of July 15, 2007, 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**

**165:25-8-14. Dispenser hose**

Listed hose assemblies must be used to dispense fuel. 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.~~

**165:25-8-15. Nozzles**

Dispensing nozzles used at marine service stations must be the automatic closing type ~~without a latch open device.~~

**PART 9. DISPENSING PROCEDURES**

**165:25-8-29. Attendants at marinas**

(a) Marinas may have an attendant or supervisor on duty when the marina is open for business. The attendant's primary function will be to supervise, observe, and control the dispensing of fuels to ensure that all safety requirements are met, and to ensure that the waters of the state are not contaminated by fuel.

(b) At unattended marine facilities an emergency shut off device must be installed to meet the following requirements:

- (1) Installed between 20 to 100 feet from the fuel dispensing devices that they serve;
- (2) Device must shut down the fuel dispensing system in the event of an emergency;
- (3) Must be readily accessible to patrons; and
- (4) Emergency instructions must be conspicuously posted.

**PART 11. MISCELLANEOUS SAFETY REQUIREMENTS**

**165:25-8-35. Required signs**

All marine service stations must have a sign printed in ~~two inch (2", or 5 cm)~~ red block capital letters on a white background conspicuously posted and easily readable from ~~in~~ the dispensing area, which reads:

- (1) BEFORE FUELING:
  - (A) Stop all engines and auxiliaries.
  - (B) Shut off all electricity, open flames and heat sources.
  - (C) Check all bilges for fuel vapors.
  - (D) Extinguish all smoking materials.
  - (E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.
- (2) DURING FUELING:
  - (A) Maintain nozzle contact with the fill pipe.
  - (B) Wipe up spills immediately.
  - (C) Avoid overfilling.
  - (D) Fuel filling nozzle must be attended at all times.
- (3) AFTER FUELING:
  - (A) Inspect bilges for leakage and fuel odors.
  - (B) Ventilate until odors are gone.

# Emergency Adoptions

## 165:25-8-36. Fire extinguishers

- (a) Each marina must be provided with listed fire extinguishers that have a minimum capability of 40 pounds, Class B,C.
- (b) A minimum of ~~two~~ three extinguishers must be located at the fuel dock, and one or more must be located within ~~100~~ 50 feet (~~100'~~ or ~~30m~~ 15m) 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 readily accessible at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

[OAR Docket #05-1299; filed 10-26-05]

## TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #05-1300]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

- Subchapter 1. General Provisions  
Part 5. National Standards and Codes  
165:26-1-31. Codes and standards [AMENDED]  
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165:26-2-1.2. Compliance with nationally recognized code of practice and manufacturer's instructions [NEW]  
165:26-2-5. Requirements on fill pipes [AMENDED]  
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165:26-2-32. Secondary containment [AMENDED]  
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165:26-2-55. Underground piping materials [AMENDED]  
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165:26-3-21. General spill and overfill prevention requirements [AMENDED]  
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Part 1. General Application And Compliance Provisions  
165:26-8-2. Timeframes for registration and compliance with rules [AMENDED]  
165:26-8-2.1. Release detection requirements for marinas [NEW]  
Part 9. Over-Water Piping Requirements  
165:26-8-40. Aboveground piping at marinas [REVOKED]  
165:26-8-40.1. Over-water piping at marinas [NEW]  
165:26-8-40.2. Installation requirements for over-water piping [NEW]  
165:26-8-41. Installation and monitoring requirements for piping [REVOKED]  
Part 15. Dispenser Requirements

- 165:26-8-61. Dispenser hose [AMENDED]  
165:26-8-62. Nozzles [AMENDED]  
Part 19. Dispensing Procedures  
165:26-8-80. Attendants at marinas [AMENDED]  
Part 21. Miscellaneous Safety Provisions  
165:26-8-86. Required signs [AMENDED]  
165:26-8-88. Fire extinguishers [AMENDED]

### AUTHORITY:

Oklahoma Corporation Commission, Article IX, Section 18, Oklahoma Constitution, 17 O.S. §301 et seq

### DATES:

#### Adoption:

August 24, 2005

#### Approved by Governor:

October 6, 2005

#### Submitted to Governor:

September 1, 2005

### Effective:

Immediately upon approval of the Governor

### Expiration:

Effective through July 14, 2006, unless suspended or superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

None

### FINDING OF EMERGENCY:

The adoption of these rules is based upon a determination of compelling public interest that arose last year when Marina owners and members of the legislature advised the Commission of the adverse effect existing rules placed on Marina owners. The Commission upon review of the existing rules determined that an emergency might exist, and required the Director of the Petroleum Storage Tank Division ("Director") to investigate the concerns of the Marina owners and report his findings to the Commission en banc. The Director inspected data of 59 different marinas at 12 different lakes in performing his investigation. Based upon information provided by the Department of Tourism, the Director noted that upwards of 617 million dollars is spent annually at Oklahoma lakes. The Director noted in a written report to the Commissioners that the cost of making upgrades at each Marina would approximate \$50,000. Many if not all the Marinas would not recover the costs of these upgrades in the near foreseeable future. In addition, all parties including the Commissioners were concerned about the real problem of boaters self fueling with gas cans that do not have the safety features incorporated at Marinas. Self fueling is also a threat to the environment because gasoline spilled while filling would either go to the boat scuppers and be bilge pumped out, spilled directly into the lake, or migrate to the lake from a dock or onshore fueling spill. The potential for self fueling is a real threat because the Commission was advised that a majority of Marinas would discontinue gas sales because of the prohibitive cost of mandated upgrades. Based upon these compelling public safety interests, and real threats to the environment, the Director on July 1<sup>st</sup>, 2005, recommended to the Commission that an emergency rule making addressing Marina issues be initiated. A technical conference was held August 18<sup>th</sup>, 2005 and 8 marina owners attended. Based upon the comments made at the technical conference, staff made some small changes to the proposed rules, and submitted the rules to the Commissioners. No marina owners were in attendance at the en banc hearing held before the Commissioners on August 24<sup>th</sup>, 2005. Upon adoption of the emergency rules proposed herein, by the Commission, the rules will be submitted to the Governor and the Oklahoma Legislature for gubernatorial approval as emergency rules for the 2006 legislative session.

### ANALYSIS:

The purpose of this rulemaking is to amend OAC 165:26-1-31 to allow some latitude in the Commission's rules that might not be present in codes and standards incorporated by reference. The rules are amended to OAC 165:26-2-1.2 to require aboveground storage tank owners to comply with national codes of practice or manufacturer's instructions for new tank installation. The rules are amended at OAC 165:26-2-5 to not require a spill bucket if the fill pipe is located within the containment area. The rules are amended at OAC 165:26-2-32 to require aboveground storage tank owners to keep the containment area free of trash, debris and water. The rules are amended at OAC 165:26-2-54 to delete references to the National Fire Protection Association bulletins 30 and 30A. The rules are amended at OAC 165:26-2-55 to require new underground piping to meet certain standards. Rule OAC 165:26-2-56 is amended to strike certain dates for pressurized

piping, certain requirements are changed for suction piping, allowing the use of double walled piping and sump sensors in lieu of line tightness testing except for marinas, setting forth requirements for release detection at suction piping. Rule OAC 165:26-2-131 allowing aboveground storage tank owners to forego the fencing requirement if other means of denying access to the tank system is present. Rule OAC 165:26-2-134 is amended to delete the reference to tightness as the sole testing methodology. Rule OAC 165:26-2-171 is amended to require all aboveground storage tanks be tested to manufacturer's instructions. Rule OAC 165:26-3-21 is amended to not require a spill bucket if the fill pipe is located within the containment area. The rules are amended at OAC 165:26-8-2 which strikes requirements for marinas to upgrade their underground piping by a date certain, provides for equipment relocation, and redirects the requirements for dock or pier product to other rules. In addition, OAC 165:26-8-2.1, is a new rule to establish an annual line tightness test to be performed at marinas no later than April 1<sup>st</sup> of each year. A new rule OAC 165:26-8-40.1 is created to address concerns for over-water piping at marinas. Also, new rule OAC 165:26-8-40.2 is created to address concerns of over-water piping at marinas. Rules OAC 165:26-8-40, and OAC 165:26-8-41 are revoked, refined, and revised in new rules OAC 165:26-8-40.1 over-water piping at marinas, and OAC 165:26-8-40.2 Installation requirements for over-water piping. Rule OAC 165:26-8-61 is amended to allow the coupling of two or more hoses at marinas. Rule OAC 165:26-8-62 is amended by striking the reference to latch open devices. Rule OAC 165:26-8-80 is amended to establish certain requirements for emergency shut-off devices at unattended dispensers. Rule OAC 165:26-8-86 is amended by striking the requirement for two inch (2") letters on required signs. Rule OAC 165:26-8-88 is amended to increase the number of required fire extinguishers at marinas from two to three, and requiring the fire extinguishers to be located within fifty feet instead of one hundred feet of certain facilities.

#### CONTACT PERSON:

Jeffrey P. Southwick, (405) 522-4457.

**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

### PART 5. NATIONAL STANDARDS AND CODES

#### 165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards:

(A) Standard B31.3, 1999, "Chemical Plant and Petroleum Refinery Piping".

(B) Standard B31.4, 1998, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols".

(2) American Petroleum Institute (API) Standards:

- (A) Recommended Practice 652, "Lining of Aboveground Petroleum Storage Tank Bottoms", Second Edition, April, 1997.
- (B) Publication 1628, 1996, "A Guide, The Assessment and Remediation of Underground Petroleum Releases".
- (3) American Society for Testing and Materials (ASTM) Standards: Standard E 1739-95, 1995, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".
- (4) National Association of Corrosion Engineers (NACE) Standards: Standard Number RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".
- (5) National Fire Protection Association (NFPA) Standards:
- (A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".
- (B) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".
- (6) Underwriter's Laboratory (UL) Standards:
- (A) Standard UL142, 1987, "Steel Aboveground Tanks for Flammable and Combustible Liquids".
- (B) Standard UL842, 1980, "Valves for Flammable Fluids".
- (7) Environmental Protection Agency and National Water Well Association, 1986, EPA:NWWA (TEGD) "RCRA Groundwater Monitoring Technical Enforcement Guidance Document".
- (8) Petroleum Equipment Institute: Publication PEI/RP 200-03, "Recommended Practices for Installation of Aboveground Storage Tank Systems for Motor Vehicle Fueling".
- (9) 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)".
- (10) "Spill Prevention, Control and Countermeasure Regulation", 40 CFR 112, April 17, 2003.
- (b) The standards set forth in (a) of this Section are also available from the following sources:
- (1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42<sup>nd</sup> Street, New York City, New York, 10036; Telephone: (212) 642-4900.
- (2) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.
- (3) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.
- (4) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone(281) 492-0535.
- (5) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.

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- (6) National Groundwater Association (NWWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.
- (7) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.
- (8) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

## SUBCHAPTER 2. INSTALLATION, REPAIR AND REMOVAL

### PART 1. TANK DESIGN, CONSTRUCTION AND LOCATION

#### **165:26-2-1.2. Compliance with nationally recognized code of practice and manufacturer's instructions**

All new aboveground 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.

#### **165:26-2-5. Requirements on fill pipes**

- (a) Fill pipes that enter the top of a tank must terminate within 6 in. (15 centimeters) of the bottom of the tank. Fill pipes should be installed or arranged so that vibration is minimized.
- (b) Each fill pipe for liquid storage must be identified by an identification tag or other marking to identify 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.
- (c) If the fill pipe is located within the containment dike a spill bucket is not required.

### PART 3. SECONDARY CONTAINMENT

#### **165:26-2-32. Secondary containment**

- (a) Aboveground storage tanks, other than those with double walls as set out in 165:26-2-31, must have secondary containment for the fuels stored in them.
- (b) Multiple products stored within the same containment area must be compatible with each other.
- (c) If the secondary containment area is open to precipitation, it must be able to contain 110 percent of the capacity of the largest tank plus the volume displaced by other tanks within the containment area.
- (d) The secondary containment area must be constructed with materials that are compatible with the product being stored.

(e) The secondary containment area cannot have any uncapped drain that extends outside of the containment.

(f) The secondary containment must be kept intact and free of vegetation, trash, water, and all other items not necessary for fuel storage.

(fg) Secondary containment can be made from native soil if the soil meets or exceeds the permeability rates listed in Appendix J, or it can be made of concrete or steel. Generally, soil containment may be preferred in open rural areas and concrete in more congested urban areas. In either case the secondary containment must be impermeable for the products stored in the tanks:

- (1) When concrete is used for secondary containment the concrete must be suitable to contain the released product for as long as it would take to recover the release.
- (2) Soil containment not meeting the permeability rates listed in Appendix J must be made impermeable by use of a synthetic membrane liner made of rubber, plastic, or a geosynthetic clay liner.
- (3) A double-walled tank would meet the criteria of secondary containment.

### PART 5. PIPING

#### **165:26-2-54. Aboveground storage tank piping materials**

- (a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with ~~NEPA 30, NEPA 30A,~~ and the piping manufacturers installation recommendations and instructions.
- (b) Pipes, valves, faucets, couplings, flexible connectors, fittings and other pressure-containing parts must meet the material specifications and pressure and temperature limitations of ANSI B31.3, Petroleum Refinery Piping, or ANSI B31.4, Liquid Petroleum Transportation Piping Systems. Materials must be designed to specifications embodying recognized engineering principles, and be compatible with the fluid service.
- (c) Nodular iron must conform to ASTM A 395 Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures.
- (d) Valves at storage tanks and their connections to the tank must be of steel or nodular iron. Low melting point materials such as aluminum, copper, brass or non-ductile material such as cast iron may be used in aboveground piping provided that they are located downstream of an approved steel or nodular iron emergency valve that has been installed and located as close as practical to the shell of the tank or submerged pump.
- (e) Valves at storage tanks may be other than steel or nodular iron if the valves are installed internal to the tank. Where installed external to the tank, the material must have a ductility and melting point comparable to steel or nodular iron so as to withstand reasonable stresses and temperatures involved in fire exposure or be protected by materials having a fire resistance rating of not less than 2 hours.
- (f) Low melting point materials such as aluminum, copper, and brass, and materials that soften on fire exposure such as plastics, or non-ductile material such as cast iron may be used

underground for all liquids within the pressure and temperature limits of ANSI B31, American National Standard Code for Pressure Piping. If these materials are used outdoors in above-ground piping systems handling Class I or Class II liquids, or within buildings handling any liquid, they must be either:

- (1) Resistant to damage by fire,
- (2) Located so that any leakage resulting from the failure will not unduly expose persons, important buildings, or structures,
- (3) Located where leakage can readily be controlled by operation of an accessible remotely located valve(s), or
- (4) Located pursuant to 165:26-2-54(d).

(g) Piping, valves, and fittings may have combustible or non-combustible linings.

(h) Nonmetallic piping, including piping systems incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Nonmetallic piping must be built, installed, and used within the scope of their approvals or within the scope of Underwriters Laboratories Inc.'s Standard for Nonmetallic Underground Piping for Flammable Liquids, UL 971.

(i) If materials were installed in compliance with state or national codes in existence at the time of the installation, the Petroleum Storage Tank Division will not require a change unless they pose a hazard to people or property.

**165:26-2-55. Underground piping materials**

~~(a) All underground product piping must be installed or upgraded before the deadline dates established for the various facilities, as follows:~~

(a) All new underground product piping and ancillary equipment installed at a new facility or existing facility must have the following characteristics:

- (1) Non-metallic;
- (2) Double-walled;
- (3) A tracer locator wire must be installed in all piping trenches; and
- (4) Dispenser sumps must be installed and monitored with sensors as per 165:26-2-56.
- (5) Piping transition sumps must be installed and monitored with sensors if the interstice area of connecting piping cannot be connected in an approved manner.

(b) Existing facilities that have metallic piping that fail due to corrosion or are replacing the piping system must upgrade all piping per (a) above and come into full compliance with the rules of this Chapter and Subchapters. If the metallic line fails due to corrosion, the line must be immediately removed, and cannot be reused.

(c) Existing facilities that have metallic or single-walled nonmetallic piping and are relocating, or removing and replacing a fuel island must install dispenser sumps with sensors as per 165:26-2-56. Any additions to the metallic piping must be nonmetallic single or double-walled piping. ~~However, suction piping will have to be upgraded before the deadline dates established for the various facilities.~~

(d) Existing facilities that are replacing dispensers where the fuel islands are not being relocated, removed or replaced

may add to the existing piping using the same piping material. Dispenser sumps do not have to be installed. ~~However, suction piping will have to be upgraded before the deadline dates established for the various facilities.~~

(e) Tracer locator wire is not required to be installed in existing piping trenches containing piping which otherwise meets the requirements in subsection (a) unless the trench is opened to repair, move, or replace the piping.

**165:26-2-56. Installation and monitoring requirements for piping**

Underground piping that routinely contains regulated substances must be installed and monitored for releases in a manner that meets the following requirements:

**(1) Pressurized piping.**

(A) Piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system ~~after July 15, 2002~~ must have non-metallic double-walled piping, sumps under all dispensers and transition sumps if applicable. 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.

(C) New installations and facilities replacing a piping system ~~after July 15, 2002~~ must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump.

(D) Underground pressure piping from a master dispenser to a satellite dispenser 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. New installations and facilities replacing a piping system**

~~Installations and all suction systems upgraded before the deadline date established for the various facilities~~ must have non-metallic double-walled piping, sumps under all suction pumps and transition sumps if applicable. Sensors must be installed in each sump. 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.

**(3) Methods of release detection for pressurized piping.** Each method of release detection for underground pressurized piping must be performed in accordance with the following requirements:

**(A) Automatic mechanical line leak detectors and annual line tightness testing.**

(i) 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 by 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.

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(ii) An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(iii) 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.

(iv) A hydrostatic line tightness test must be performed annually by a certified tester.

**(B) Sump sensors.**

(i) Double walled piping with sump sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1<sup>st</sup> of each year.

(ii) 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) 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:

(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

(iv) The system must be tested annually in accordance with manufacturer's specifications and by an actual leak test to test the integrity of the electronic line leak detection equipment.

**(4) Methods of release detection for suction piping.** ~~The method of release detection for suction piping must be performed in accordance with the following requirements:~~ Each method of release detection for underground suction piping must be performed in accordance with the following requirements.

**(A) Sump Sensors.** ~~Each sump shall be monitored with a sensor, float or similar mechanical device.~~

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1<sup>st</sup> of each year.

~~(B)~~ (i) 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.

**(B) Annual Line Tightness Testing**

(i) A hydrostatic line tightness test must be performed annually by a certified tester.

### PART 13. MISCELLANEOUS SAFETY PROVISIONS

**165:26-2-131. Fencing**

(a) Tanks not enclosed in vaults must be enclosed with a chain link fence at least 6 ft. (2 m) high. The fence must be separated from the tanks by at least 10 ft (3 m) and must have a gate that is secured against unauthorized entry.

(b) The area within the fence must be kept free of vegetation, debris and any other material that is not necessary to the proper operation of the tank and piping system.

(c) 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.

(d) A fence may not be required if another method effectively restricts access to the tanks.

**165:26-2-134. Monitoring requirements**

(a) **Weekly monitoring.** Aboveground storage tank systems that comply with the containment requirements for new aboveground storage tanks must be visually monitored for leaks at least weekly. Double-walled aboveground storage tanks are exempt from weekly monitoring.

(b) **Monthly monitoring.** The approved monthly monitoring requirements are:

(1) Visual inspection of the aboveground storage tank systems to identify cracks or other defects in the secondary containment area and product transfer area.

(2) Visual inspection of the exterior surface of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies; and identify poor maintenance, operating practices or malfunctioning equipment.

(3) Visual inspection of elevated tanks or tanks on concrete slabs.

(4) Visual inspection of the area between the tank's outer shell or the tank's floor and containment area or a vapor monitoring of the soil directly under the tank bottom or perimeter and the water table, unless the tank containment has a sound concrete floor.

(5) A reconciliation measurement to 1 percent or less of daily product measurement with dispenser meter readings and deliveries or Commission-approved statistical inventory reconciliation (SIR) will be required where, due to the nature of the aboveground storage tank and /or its secondary containment, visual inspections are not adequate for purposes of determining whether a leak has occurred. Good examples would be a vertical tank that is not raised off the ground, making it impossible to visually inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment; or a system that has underground pipe that is not double-walled with interstitial sensors to detect leaks.

(c) **Annual monitoring.** Underground product lines must be ~~tightness~~ tested for leaks at least annually as per 165:26-2-56.

(d) **Manufacturer recommended monitoring.** All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or per the manufacturer's recommendation, whichever is more frequent.

**PART 17. INSTALLATION OF ABOVEGROUND STORAGE TANK SYSTEMS**

**165:26-2-171. Aboveground storage tank system installation**

(a) All owners and operators of regulated aboveground storage tank systems must ensure that the person they employ has been licensed by the Commission in accordance with OAC 165:26-1-30.3, "Licensing procedure for aboveground storage tank licensees."

(b) Tanks must be installed in accordance with this Chapter.

(c) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.

(1) All aboveground storage tanks must be tested to manufacturers instructions. ~~Aboveground singlewall Single-wall tanks shall be air tested, according to NFPA 30 2.4.2.1 or the manufacturers recommendations. The entire tank must be soaped, and inspected for bubbling prior to installation. Double wall tanks must be tested according to the manufacturer's instructions.~~

(2) Aboveground product piping shall be subjected to a air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions

(4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(5) All piping should be air tested and monitored continuously after the installation and until the completion

of the installation or precision tightness test. All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic 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 1½ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(6) Mechanical leak detector(s) must be tested in accordance with manufacturer's instructions.

(7) 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. 3gph, 0.2gph, and 0.1gph).

(8) A function test must be performed on all line leak detectors at installation.

(9) Containment sumps must be tested after all piping and conduit has been installed by filling sumps with water and monitoring the liquid level for an 8 hour period.

(10) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.

**SUBCHAPTER 3. RECORDKEEPING, RELEASE PREVENTION, DETECTION, INVESTIGATION AND REPORTING**

**PART 5. SPILL AND OVERFILL PREVENTION REQUIREMENTS**

**165:26-3-21. General spill and overfill prevention requirements**

(a) 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.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a 5 gallon spill container. A spill bucket is not required if the fill pipe is located within the containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage.

(c) A 90 percent alarm and 95 percent overfill valve are required for any tank installed after July 15, 2000 if the tank is greater than 1,100 gallon capacity or if the tank is filled by a tight fill method.

(d) Tanks installed prior to July 15, 2000 must have a 90 percent alarm or a 95 percent overfill valve.

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- (e) A 90 percent alarm is required on tanks less than 1,100 gallons that are filled with a delivery nozzle from a delivery vehicle.
- (f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

### SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

#### PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

##### **165:26-8-2. Timeframes for registration and compliance with rules**

- (a) Tanks that are greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Commission. The tank and piping system must come in compliance with the rules of this Chapter and Subchapter before July 15, 2007. ~~However, compliance~~ Compliance may be required sooner for any part of a system which poses a threat to property, people, or to the environment.
- (b) All new underground piping at existing facilities ~~or upgraded before the deadline date of July 15, 2007,~~ must be ~~done~~ installed in accordance with 165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."
- (c) All dock or pier product piping from the ~~shoreline shore transition sump~~ to the dispensers at new facilities must be installed according to 165:26-8-40, "~~Aboveground piping at marinas,~~" and 165:26-8-41, "~~Installation and monitoring requirements for piping.~~" 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".
- (d) All dock or pier product piping from the ~~shoreline transition sump~~ to the dispensers at existing facilities must be upgraded before the deadline date of July 15, 2007 according to 165:26-8-40, "~~Aboveground piping at marinas,~~" and 165:26-8-41, "~~Installation and monitoring requirements for piping.~~" 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".
- (e) Temporary tanks may not be used at marinas.

##### **165:26-8-2.1. Release detection requirements for marinas**

Monitoring requirements, at a minimum, must consist of an annual line tightness test conducted no later than April 1<sup>st</sup> of each year.

##### **165:26-8-40. Aboveground piping at marinas [REVOKED]**

- (a) ~~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 manufacturers installation recommendations and instructions. Piping must be listed and approved by the manufacturer for aboveground installations.~~
- (b) ~~A water tight transition or piping sump must be buried and installed as close as practical to the shore line as a transition from onshore piping to over water 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 sump sensors should automatically control the electricity to both the solenoid valve and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.~~
- (c) ~~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 entry boots and primary pipe fittings.~~
- (d) ~~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.~~
- (e) ~~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 located where 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.~~
- (f) ~~All aboveground piping and system components must be protected from being damaged by fire, collision and abrasion.~~
- (g) ~~All flexible piping installed aboveground on the shore, in the water, or secured to 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.~~
- (h) ~~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 would end up in the sumps.~~

#### PART 9. OVER-WATER PIPING REQUIREMENTS

**165:26-8-40.1. Over-water piping at marinas**

- (a) 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 and NFPA 30A.
- (b) The piping must be installed according to the manufacturers installation recommendations and instructions.
- (c) Piping must be listed and approved by the manufacturer for aboveground installations.

**165:26-8-40.2. Installation requirements for over-water piping**

**(a) Steel piping**

- (1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. 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 entry boots and primary pipe fittings.
- (2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.
- (3) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.
- (4) 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. The breakaway device shall be located where 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.
- (5) There must be a normally closed explosion proof solenoid valve with a pressure relief valve installed in each product line at the shoreline.
- (6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.
- (7) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.
- (8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.

**(b) Double walled piping**

- (1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.
- (2) All double walled piping installed above the water shall be enclosed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating

structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.

(3) 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 entry boots and primary pipe fittings.

(4) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.

(5) 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. The breakaway device shall be located where 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) There must be a normally closed explosion proof solenoid valve with a pressure relief valve installed in each product line at the shoreline.

(7) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel. It must be installed so that it is accessible to the operator at all water levels.

(8) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(9) A transition sump must be rigidly anchored in place either on the dock or at the shoreline. The transition sump must contain the ball valve, solenoid valve, and emergency breakaway device. The transition sump must be either monitored with a sensor or a bypass tube must be used in order to divert a leak from the transition sump to the dispenser sump where it would be detected by a sensor.

**165:26-8-41. Installation and monitoring requirements for piping [REVOKED]**

~~All piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:~~

~~(+) **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 upgraded before the deadline date of July 15, 2007, 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~~

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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 165:26-8-40(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 upgraded before the deadline date of July 15, 2007, 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 165:26-8-40(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.** 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: 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 15. DISPENSER REQUIREMENTS

### 165:26-8-61. Dispenser hose

Listed hose assemblies must be used to dispense fuel. 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.

### 165:26-8-62. Nozzles

Dispensing nozzles used at marinas must be the automatic closing type, without a latch open device.

## PART 19. DISPENSING PROCEDURES

### 165:26-8-80. Attendants at marinas

(a) Marinas may have an attendant or supervisor on duty when the marina is open for business. The attendant's primary function will be to supervise, observe, and control the dispensing of fuels to insure that all safety requirements are met, and to insure that the waters of the state are not contaminated by fuel.

(b) At unattended marine facilities an emergency shut off device must be installed to meet the following requirements:

(1) Installed between 20 to 100 feet from the fuel dispensing devices that they serve;

(2) Device must shut down the fuel dispensing system in the event of an emergency;

(3) Must be readily accessible to patrons; and

(4) Emergency instructions must be conspicuously posted.

## PART 21. MISCELLANEOUS SAFETY PROVISIONS

**165:26-8-86. Required signs**

All marinas must have a sign printed in ~~2 in.~~ (5 cm) red block capital letters on a white background conspicuously posted and easily readable from ~~in~~ the dispensing area which says:

- (1) BEFORE FUELING:
  - (A) Stop all engines and auxiliaries.
  - (B) Shut off all electricity, open flames and heat sources.
  - (C) Check all bilges for fuel vapors.
  - (D) Extinguish all smoking materials.
  - (E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.
- (2) DURING FUELING:
  - (A) Maintain nozzle contact with the fill pipe.
  - (B) Wipe up spills immediately.
  - (C) Avoid overfilling.
  - (D) Fuel filling nozzle must be attended at all times.
- (3) AFTER FUELING:
  - (A) Inspect bilges for leakage and fuel odors.
  - (B) Ventilate until odors are gone.

**165:26-8-88. Fire extinguishers**

- (a) Each marina must be provided with listed fire extinguishers which have a minimum capability of 40 pounds, Class B, Class C.
- (b) A minimum of ~~two~~ three extinguishers must be located at the fuel dock and one or more located so they will be within ~~400~~ 50 ft. (~~30m~~ 15m) 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 at least a 5/8" hose on the fuel dock. Piers which extend more than 500 ft. (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.

[OAR Docket #05-1300; filed 10-26-05]

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

[OAR Docket #05-1294]

**RULEMAKING ACTION:**  
EMERGENCY adoption

- RULES:**
- Subchapter 31. Middle School Mathematics Laboratories for Public Schools with Low Student Achievement in Mathematics Program [NEW]
  - 210:15-31-1. [NEW]
  - 210:15-31-2. [NEW]

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

**DATES:**  
**Adoption:**  
August 18, 2005

**Approved by Governor:**  
October 6, 2005

**Effective:**  
Immediately upon Governor's approval

**Expiration:**  
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**FINDING OF EMERGENCY:**  
This rule is considered an emergency to add rules for the Middle School Mathematics Laboratory Program to meet legislative changes from the 2005 Session. Senate Bill 982 contains a new law and requires the State Board of Education to adopt rules to facilitate implementation of the law.

**ANALYSIS:**  
The proposed rules for the Middle School Mathematics Laboratories outline components important to implementation of the program. The rules include identification criteria for the schools that will receive the laboratories, requirements and timelines for the vendor, and implementation requirements of the schools, including quarterly data reporting to the State Department of Education. The new rules will identify up to ten schools each year with low student achievement in mathematics, representing the demographics of the state of Oklahoma. The rules will direct the vendor regarding products and services to be provided using a timeline for implementation.

**CONTACT PERSON:**  
Connie Holland, 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 31. MIDDLE SCHOOL MATHEMATICS LABORATORIES FOR PUBLIC SCHOOLS WITH LOW STUDENT ACHIEVEMENT IN MATHEMATICS PROGRAM**

**210:15-31-1. Purpose**  
This rule prescribes procedures to be used in developing and implementing the Middle School Mathematics Laboratory Program for public schools with low student achievement in mathematics at the middle school level pursuant to the provisions of state statute 70 O.S. § 1210.558.

**210:15-31-2. Middle school mathematics laboratories for public schools with low student achievement in mathematics program**

- (a) The State Department of Education shall identify ten public schools with low student achievement in mathematics at the middle school level that meet the following criteria:
  - (1) Each school shall have at least fifty percent of its students performing below satisfactory on the eighth grade mathematics criterion referenced test of the Oklahoma School Testing Program in at least one of the two preceding years.

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- (2) There shall be a limit of one school per school district each year.
- (3) There shall be representation from urban, suburban, and rural districts provided that such schools meet all other criteria.
- (4) There shall be representation from each quadrant of the state provided that such schools meet all other criteria.
- (b) Each selected school shall:
- (1) provide a classroom facility for permanent occupation of the mathematics laboratory.
- (2) implement the computer education teaching system as recommended by the vendor and the State Department of Education.
- (3) develop a Mathematics Laboratory Team which may include up to fifteen administrators, teachers, and technicians selected by school personnel to operate and utilize the computer education teaching system.
- (4) attend all professional development provided by the vendor and the State Department of Education for appropriate implementation of the program.
- (5) establish benchmark goals based upon preassessment data and state performance standards for the Oklahoma School Testing Program which will be submitted to the State Department of Education.
- (c) Each participating school shall provide disaggregated data to the State Department of Education through quarterly reports.

[OAR Docket #05-1294; filed 10-25-05]

## TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #05-1293]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 19. Local Professional Development Programs

210:20-19-2. [AMENDED]

210:20-19-3. [AMENDED]

210:20-19-4. [AMENDED]

### AUTHORITY:

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

### DATES:

#### Adoption:

August 18, 2005

#### Approved by Governor:

October 6, 2005

#### Effective:

Immediately upon Governor's approval

#### Expiration:

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

This is considered an emergency to delete rules not reflected in new law. Effective July 1, 2005, 70 O. S. § 6-194 replaces the term multicultural education with the terms racial and ethnic education.

### ANALYSIS:

The proposed rule change will assure the State Board of Education rules are compatible with House Bill 1457. The term multicultural education has been replaced with the term racial and ethnic education. Local boards of education will need to establish new school board policy for the rule change. All certified and licensed teachers will be affected by the proposed rule change.

### CONTACT PERSON:

Connie Holland, 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 19. LOCAL PROFESSIONAL DEVELOPMENT PROGRAMS

### 210:20-19-2. Professional development plan within the Comprehensive Local Education Plan

(a) The local board of education shall be responsible for the organization and implementation of the local professional development program.

(b) The professional development plan shall focus on supporting effective instruction.

(c) Each adopted plan shall address:

(1) A component in outreach to parents, guardians or custodians of students is defined as a program to promote the participation of parents in the education of their children. The component in outreach to parents, guardians or custodians of students includes:

(A) Understanding the value of parental participation in the educational process.

(B) Developing awareness of the needs and characteristics of their parent population in order to plan effective outreach activities.

(C) Developing methods for communicating with parents, designing parental involvement activities, and determining the effectiveness of the outreach program.

(D) Identifying appropriate resources to support and/or supplement the outreach program.

(2) A component in ~~multicultural~~ racial and ethnic education is defined as a program to assist teachers to function effectively with all students in a culturally diverse society. The component in ~~multicultural~~ racial and ethnic education includes:

(A) Understanding their own and their students' environment and culture, including - but not limited to - needs, abilities, attitudes, and world views.

(B) Recognizing that different cultures exist as separate and distinct entities; acknowledging the contribution of all cultural and linguistic groups to ~~the multicultural~~ society; and promoting a culturally sensitive curriculum representative of our diverse national population.

- (C) Developing strategies for the integration of cultural and linguistic teaching tools and methods in the school environment.
- (d) Local districts should review various resources when assessing needs; such as:
  - (1) existing programs and practices,
  - (2) district requirements,
  - (3) site school improvement plans, and
  - (4) needs of licensed and certified teachers and administrators.

**210:20-19-3. Professional development program management**

- (a) The local professional development plan shall identify and provide for alternative activities and delivery systems which respond to the needs identified in the local professional development plan.
- (b) The professional development plan shall include a set of guidelines for considering alternative activities. Such guidelines shall include, but may not be limited to, the following:
  - (1) Alternative activities shall show clear relationship to the identified needs.
  - (2) Alternative activities shall have direct application to increasing professional performance in a work assignment.
- (c) Professional development points shall not be given for a routine job-related assignment.
- (d) The local professional development committee shall develop and recommend to the local board of education a professional development point system to account for all professional development activities.
- (e) All certified and licensed teachers and administrators shall accrue at least seventy-five (75) professional development points within a five (5) year period with at least some points completed each year. The five (5) year period for accruing points begins on an individual's date of employment in an accredited school in Oklahoma. If an individual changes school districts within the five (5) year period, the points accrued are transferred to the receiving district and the five (5) year period continues
  - (1) If an individual is employed full time for 120 days or more, the local professional development points requirement must be fulfilled.
  - (2) A person employed one-half time or less shall be required by the local district to meet at least half of the local district's annual point requirements, not less than two (2) points, and to count such year toward the accrual of seventy-five (75) professional development points over a five (5) year period.
  - (3) If employed less than 120 days, a minimum of two (2) professional development points are required to fulfill the regulation of "some points completed each year." This person shall begin or continue his or her professional development five-year cycle the following July 1. The local professional development committee will recommend, subject to the approval of the local board of education, the number of points required of such an employee.

- (4) Points shall conform to the conditions specified in subparagraphs (A) through (D) of this paragraph:
  - (A) One point shall be equivalent to one clock hour of professional development activities.
  - (B) One semester hour of approved college credit shall be equivalent to 15 professional development points.
  - (C) Those professional development activities which cannot be appropriately specified by a particular time period shall be assigned a point value by the local professional development committee and recommended to the local board of education.
  - (D) Each local professional development committee shall include within the local professional development plan a timeframe based on the fiscal year, July 1 - June 30, for completion of earned professional development points during a given school year.
- (f) All certified and licensed teacher and administrator shall participate in continuing education and/or inservice training in outreach to parents, guardians or custodians of students and in multicultural, racial and ethnic education periodically during the four-years district Comprehensive Local Education Plan.
- (g) The district shall maintain in the personnel file of each certified and licensed teacher and administrator those records deemed necessary to fully document their participation in the professional development program.
- (h) School districts shall annually inform certified and licensed teacher and administrator in writing of their point status on a date recommended by the local professional development committee.

**210:20-19-4. Local professional development committee; appointment of members, composition, duties and responsibilities**

- (a) The membership of the local professional development committee shall be headed by a chairperson to be elected by the full committee.
- (b) These rules and regulations shall not be inconsistent with the law or rules and regulations of the State Board of Education.
- (c) The duties of the local professional development committee in designing the local education agency professional development plan include:
  - (1) Annually review the guidelines for the professional development plan established by the State Department of Education and make recommendations to the local board of education for the implementation of the plan.
  - (2) Annually submit a professional development budget proposal on or before May 10 each year.
  - (3) The annual budget proposal shall itemize proposed funding for:
    - (A) core curriculum areas and effective instruction.
    - (B) multicultural, racial and ethnic education that reflects the racial, religious, ethnic, and cultural diversity of the United States of America.
    - (C) outreach to parents, guardians, or custodians of students.

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- (D) health and safety training such as CPR, first aid, and bloodborne pathogens.
- (4) Annually submit a professional development expenditure report on or before September 15 each year.
- (5) Once every four (4) years, plan and write the local professional development plan to be included in the district Comprehensive Local Education Plan.
- (6) When it becomes necessary to amend the professional development program, the local professional development committee shall develop and recommend such amendment(s) to the local board of education for approval.

[OAR Docket #05-1293; filed 10-25-05]

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

[OAR Docket #05-1287]

#### **RULEMAKING ACTION:**

EMERGENCY adoption

#### **RULES:**

Subchapter 7. Administration  
310:675-7-9.1. [AMENDED]  
Subchapter 9. Resident Care Services  
310:675-9-1.1. [AMENDED]  
310:675-9-5.1. [AMENDED]  
Subchapter 13. Staff Requirements  
310:675-13-5. [AMENDED]

#### **AUTHORITY:**

Oklahoma State Board of Health: Title 63 O.S. Section 1-104, Section 1-1901 et seq., and Section 1-1918B

#### **DATES:**

##### **Comment Period:**

May 2, 2005 through September 15, 2005

##### **Public Hearing:**

September 15, 2005

##### **Adoption:**

September 15, 2005

##### **Approved by Governor:**

October 6, 2005

##### **Effective:**

Immediately upon Governor's approval

##### **Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature

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

n/a

##### **INCORPORATION BY REFERENCE:**

n/a

##### **FINDING OF EMERGENCY:**

The State Board of Health finds that public interest requires seeking of emergency certification of the rules in Chapter 675. Unless an emergency is declared and certified, these rules cannot go into effect until approximately July 14, 2006, which would unreasonably delay implementation of rules providing for assessment of pain for nursing facility residents. Without this rule revision, adequate standards for assessment and treatment of pain, and for training of nursing facility staff, will not be available. This proposed rule is intended to implement recommendations of the Pain Management Advisory Council as authorized by 63 O.S. Section 1-1918B, by the statutory deadline of July 1, 2005.

##### **ANALYSIS:**

The proposed amendments are intended to establish standards for assessing and documenting pain experienced by nursing facility residents.

The amendments require facility policy and procedure manuals to address pain assessment and treatment. Requirements for nursing care are amended to establish a frequency for pain assessment, and to require record keeping. Provisions on resident assessments and care plans are amended to specify minimums for individualized pain assessment. Facility staff training requirements for pain recognition, pain screening and pain management are established. The amendments implement recommendations adopted on February 17, 2005 by the State Advisory Council on Pain Management, pursuant to Title 63 O.S. Sections 1-1918A and 1-1918B. The changes are needed to implement a July 1, 2005 requirement for nursing facilities to perform pain assessments.

##### **CONTACT PERSON:**

James Joslin, Assistant Chief, Long Term Care Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57209; facsimile: 405-271-3442; email: James@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 7. ADMINISTRATION

#### **310:675-7-9.1. Written administrative policies and procedures**

- (a) The facility shall maintain written policies to govern the administration of the facility. These policies shall be reviewed annually and revised as necessary.
- (b) The facility shall not admit any person unless it has the personnel and resources to provide all services and care prescribed for that person.
- (c) All persons seeking admission shall be evaluated as to their medical, nursing and social needs. The scope of care and service to be provided by the facility, or through contract, shall be included in the resident care plan following admission.
- (d) All residents shall have accommodations that are as close to their normal living arrangements as possible. Special care and arrangements shall be provided to ensure, if possible, that the accommodations support the resident's physical, mental and psycho-social needs in terms of sanitary environment, aesthetics and associations.
- (e) Residents shall be accepted and cared for without discrimination on the basis of race, sex, color, religion, ancestry, disability, or national origin.
- (f) Emergency care shall be provided to residents in case of sudden illness or accident, including persons to be contacted in case of an emergency.
- (g) Conflict resolution procedures shall be adopted for processing complaints received from residents and employees.
- (h) Job descriptions shall be developed that detail the functions of each classification of employee.
- (i) Procedures shall be adopted for handling residents' funds and providing access to the written records regarding a resident's funds by the resident or representative.
- (j) The facility has the following responsibilities concerning physicians:
- (1) The health care services for each resident shall be under a physician's supervision.

- (2) All physician orders shall be written in ink or indelible pencil and signed by the physician.
- (3) No medication or treatment shall be administered except on a physician's order.
- (4) The facility shall have a written policy that provides for physician services to be available twenty-four hours per day.
- (5) A list of physicians shall be posted at the nursing station for use if the resident's attending physician is not available.
- (6) The facility shall arrange for one, or more, physicians to be available in an emergency and to advise the facility. The physician called at the time of any emergency shall be noted in the records. If unable to contact a physician, the resident shall be transferred to a hospital emergency room.
- (k) The facility shall adopt a nursing policy and procedure manual, which shall detail all nursing procedures performed within the facility. All procedures shall be in accordance with accepted nursing practice standards, and shall include, but not be limited to, the following:
  - (1) Ambulation, body alignment and positioning, and routine range of motion unless contraindicated by the resident's physician.
  - (2) Elimination, including a bowel and bladder training program, or frequent toileting for incontinent residents, when applicable.
  - (3) Colostomy and ileostomy care.
  - (4) Nutrition and meal service.
  - (5) Oral suctioning and tracheotomy care.
  - (6) Treatments.
  - (7) Nasogastric care.
  - (8) Oral hygiene.
  - (9) Isolation procedures.
  - (10) Universal precautions.
  - (11) Emergency procedures.
  - (12) Medication Administration.
  - (13) Pain assessment and treatment.
- (l) Each nursing station shall have a copy of the nursing policy and procedure manual, isolation techniques, and emergency procedures for fire and natural disasters.
- (m) The facility shall adopt policies and procedures for the administration of social services, activities, dietary, house-keeping, maintenance and personnel.
- (n) The facility shall adopt a policy that any person working in the facility who shows signs or symptoms of a communicable disease, shall be excluded from work, and shall be permitted to return to work only after approval of the director of nursing or charge nurse.
- (o) The facility shall adopt a procedure for taking inventory of and inconspicuously marking, for identification, the resident's personal effects (clothing and property) which shall be completed on admission of the resident and subsequently when new clothing or property is received by the resident. Identification marking shall be by a method that shall withstand repeated laundering or cleaning without loss of legibility. Jewelry, watches and similar articles of value shall not be subject to the marking requirement.
- (p) The facility shall adopt a policy that

requires reporting of the loss of personal effects to the administrator, the resident, and the resident's representative. The policy shall require the staff to assist the resident in attempting to locate the lost property and may, at the request of the resident, require the reporting of such losses to law enforcement authorities. The policy shall also indicate that a resident has the right to report losses directly to law enforcement authorities without fear of reprisal from the facility's administration or staff.

**SUBCHAPTER 9. RESIDENT CARE SERVICES**

**310:675-9-1.1. Nursing and personal care services**

- (a) The facility shall ensure that resident rights are respected in the provision of care.
- (b) Basic nursing and personal care shall be provided for residents as needed.
  - (1) Nursing care shall include, but not be limited to:
    - (A) Encouraging residents to be active and out of bed for reasonable time periods.
    - (B) ~~Weighing all residents and taking~~ Measuring resident temperature, blood pressure, pulse and respirations at least once every thirty days ~~or as conditions warrant~~ and more frequently if warranted by the resident's condition, with the results recorded in the clinical record.
      - (i) Measuring resident weight at least once every thirty days and more frequently if warranted by the resident's condition, with the results recorded in the clinical record.
      - (ii) Measuring resident pain whenever vital signs are taken and more frequently if warranted by the resident's condition, with the results recorded in the clinical record.
    - (C) Offering fluids, and making fluids available, to maintain proper hydration.
    - (D) Following proper nutritional practices for diets, enteral and parenteral feedings and assistance in eating.
    - (E) Providing proper skin care to prevent skin breakdown.
    - (F) Providing proper body alignment.
    - (G) Providing supportive devices to promote proper alignment and positioning.
    - (H) Turning bed residents every two hours or as needed, to prevent pressure areas, contractures, and decubitus.
    - (I) Performing range of motion exercises in accordance with individual assessment and care plans.
    - (J) Ensuring that residents positions are changed every two hours or as needed when in a chair and are toileted as needed.
    - (K) Establishing and implementing bowel and bladder programs to promote independence, or developing toileting schedules to promote continence.
    - (L) Performing catheter care with proper positioning of bag and tubing at all times.

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- (M) Recording accurate intake and output records for residents with tube feedings or catheters.
  - (N) Assessing the general mental and physical condition of the resident on admission.
  - (O) Updating the assessment and individual care plan when there is a significant change in the resident's physical, mental, or psychosocial functioning.
  - (P) Recognizing and recording signs and symptoms of illness or injury with action taken to treat the illness or injury, and the response to treatments and medications.
- (2) Personal care shall include, but not be limited to:
- (A) Keeping residents clean and free of odor.
  - (B) Keeping bed linens clean and dry.
  - (C) Keeping resident's personal clothing clean and neat.
  - (D) Ensuring that residents are dressed appropriately for activities in which they participate; bed-fast/chairfast residents shall be appropriately dressed and provided adequate cover for comfort and privacy.
  - (E) Ensuring that the resident's hair is clean and groomed.
  - (F) Providing oral hygiene, ~~including denture care, daily, and when necessary, and ensuring that oral care equipment and supplies are available~~ assistance at least twice daily with readily available dental floss, toothbrush and dentifrice. A denture cleaning/soaking device and brush shall be available and maintained for each resident as needed.
  - (G) Keeping toenails and fingernails clean and trimmed.
- (c) The facility shall assist the resident in securing other services recommended by a physician such as, but not limited to, optometry or ophthalmology, audiology or otology, podiatry, laboratory, radiology or hospital services. The administration shall, through social services or other means, assist each resident desiring or needing medical related services.

### 310:675-9-5.1. Assessment and care plans

- (a) A resident assessment and an individual care plan shall be completed and implemented for each resident. The care plan shall indicate the resident's current status and accurately identify the resident's needs.
- (b) The written resident assessment and care plan shall be reviewed and updated, at least quarterly, and as needed when the resident's condition indicates.
- (c) Efforts shall be made to include the resident and resident's representative in development and implementation of the care planning process.
  - (1) **Resident assessment**
    - (A) The facility shall conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment for each resident's functional capacity.
    - (B) Each resident shall have an assessment coordinated or conducted by a registered nurse.

- (C) Each individual completing a portion of the assessment shall sign, date, and certify the accuracy of that portion.
- (D) An assessment shall be completed within fourteen days after admission of the resident.
- (E) The resident assessment shall include a minimum data set (MDS) in the form required under 42 CFR 483.20. Each facility accurately shall complete the MDS for each resident in the facility, regardless of age, diagnosis, length of stay or payment category.
- (F) The MDS form shall require the following, as applicable:
  - (i) Admission assessment;
  - (ii) Annual assessment;
  - (iii) Significant change in status assessment;
  - (iv) Significant correction of prior full assessment;
  - (v) Significant correction of prior quarterly assessment;
  - (vi) Quarterly review; and
  - (vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

### (2) **Resident pain assessment**

- (A) Residents shall be screened for the presence of pain at least once every 30 days and whenever vital signs are taken.
  - (i) Licensed nursing staff shall perform the screening at least once every 30 days. Certified nurse aides may perform the screening more frequently as needed.
  - (ii) The screening instrument shall grade the intensity and severity of pain using a resident-specific pain scale;
- (B) An individualized pain assessment shall be conducted by a registered nurse for each resident:
  - (i) In conjunction with the admission, quarterly and annual assessments required at OAC 310:675-9-5.1.(c)(1)(F); and
  - (ii) With onset of pain not previously addressed in a care plan or physician's orders.
- (C) The goal is to alleviate or minimize pain while assisting the resident to maintain as high a level of functioning as possible. The pain assessment shall include, but not be limited to:
  - (i) A statement of how the resident describes the pain;
  - (ii) Intensity and severity of pain graded using a resident-specific pain scale;
  - (iii) Recent changes in pain;
  - (iv) Location(s);
  - (v) Onset and duration of pain, such as new pain within the last 3 days, recent pain within the last 3 months, or more distant pain greater than 3 months;
  - (vi) Type of pain reported or represented by resident, such as constant or intermittent, and duration or frequency of pain;

(vii) Current pain measured at its least and greatest levels;

(viii) Aggravating and relieving factors;

(ix) Treatment including a review of all therapies, including medication, and the regimen used to minimize pain;

(x) Effects of pain and effectiveness of therapy on physical and social functions;

(xi) Resident's treatment preferences and emotional responses to pain, including resident's expectations and how resident coped with pain; and

(xii) If applicable, refer to pain assessment tool for the cognitively impaired.

(D) Results shall be recorded in the resident's clinical record showing changes in pain scale and changes in level of functioning. The physician shall be contacted as necessary.

(E) Pain shall be treated promptly, effectively and for as long as necessary.

**(23) Individual care plan**

(A) An individual care plan shall be developed and implemented for each resident to reflect the resident's needs.

(B) The care plan shall be developed by an interdisciplinary team that includes a registered nurse with responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs.

(C) The care plan shall include measurable objectives and timetables to meet the resident's medical, nursing, mental and psychosocial needs identified in the assessment.

(D) The care plan shall be available to appropriate personnel providing care for the resident.

(E) An initial care plan shall be completed at the time of admission. The individualized care plan shall be completed within twenty-one days after admission.

(F) A care plan shall be completed within seven calendar days after the completion of the assessment.

**SUBCHAPTER 13. STAFF REQUIREMENTS**

**310:675-13-5. Nursing service**

(a) **General.** The nursing facility shall be organized, staffed, and equipped to provide nursing and health related services to all residents on a continuous basis.

(b) **Licenses.** All licensed nurses shall hold a current license issued by the Oklahoma Board of Nursing.

(c) **Director of nursing**

(1) A registered nurse or licensed practical nurse shall be designated as the director of nursing.

(2) The director of nursing shall be on duty on the day shift and be responsible for all resident care including, but not limited to, the physical, mental, and psycho-social needs. The director of nursing or designee shall be available by telephone when needed by facility staff.

(3) When necessary, the director of nursing may work other than the day shift but for no more than three shifts a

week. This exception shall not exceed three consecutive weeks in a three month period.

(d) **Licensed nurses**

(1) The facility shall employ licensed nurses for a sufficient number of hours to meet the residents' needs.

(2) A licensed nurse shall supervise direct care staff and shall direct nursing care for the residents.

(3) The facility shall use licensed practical nurses only for the medical procedures for which they are trained.

(e) **Consultant registered nurse**

(1) If the director of nurses is a licensed practical nurse, a registered nurse shall be employed for at least eight hours per week as a consultant.

(2) A consultant registered nurse shall evaluate and consult with the director of nursing concerning residents' needs and shall coordinate the assessment and care plan of each resident.

(3) A consultant registered nurse's visit shall document the date and the hours spent in consultation. The documentation shall be signed and reviewed by the director of nursing.

(f) **Certified medication aide**

(1) Each medication aide shall be a certified nurse aide who has passed a Department approved medication administration program.

(2) A graduate nurse or a graduate practical nurse, who has not yet been licensed, may administer medications if the nurse has passed an approved competency test for medication administration.

(3) A certified medication aide may administer physician ordered medications and treatments under the direction of a licensed nurse.

(4) The facility shall have a licensed nurse or physician on-call to handle medical emergencies. The charge person shall notify the designated person when a medical emergency arises.

(5) A certified medication aide shall complete eight hours of continuing education a year that is approved by the Department.

(g) **Nurse aide**

(1) No facility shall use, on a full-time basis, any person as a nurse aide for more than 120 days unless that person is enrolled in a training program.

(2) No facility shall use, on a temporary, per diem, or other basis, any person as a nurse aide unless the individual is listed on the Department's nurse aide registry.

(3) The facility shall contact the Department's nurse aide registry prior to employing a nurse aide to determine if the person is listed on the registry, and if there is any record of abuse, neglect, or misappropriation of resident property.

(h) **Nursing students.** Facilities participating in a state approved nursing education program may allow nursing students to administer medications to residents. The facility shall have a written agreement with the nursing education program. The agreement shall specify the scope of activities, education level, and required supervision. The facility shall maintain a current roster of nursing students in the program. Details about the

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program and its operation within the facility shall be included in the facility's policy and procedure manual.

(i) **Inservice.** The facility shall provide all direct care staff with two hours of inservice training specific to their job assignment per month. This training shall include, at least, the following:

- (1) Fire safety and first aid classes semi-annually.
- (2) Resident rights and resident adjustment to institutional life annually.
- (3) Cardiopulmonary resuscitation and Heimlich maneuver procedures annually.
- (4) All supervisory staff shall receive training in regards to applicable local, state, and federal regulations governing the facility.
- (5) Each staff person shall be provided training in pain recognition at the time of orientation and at least once a year thereafter.
- (6) Each certified nurse aide shall be provided training in pain screening at the time of orientation and at least once every six months thereafter.
- (7) Each licensed practical nurse shall be provided training in pain screening and pain management at the time of orientation and at least once every six months thereafter.
- (8) Each registered nurse shall be provided training in pain assessment and pain management at the time of orientation and at least once every six months thereafter.

[OAR Docket #05-1287; filed 10-21-05]

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

[OAR Docket #05-1284]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 85. ADvantage Program Waiver Services

317:30-5-763. [AMENDED]

(Reference APA WF # 05-02B)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180

### DATES:

#### Adoption:

May 12, 2005

#### Approved by Governor:

July 1, 2005

#### Effective:

Immediately upon Governor's approval or July 1, 2005, whichever is later

#### Expiration:

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rule

Subchapter 5. Individual Providers and Specialties

Part 85. ADvantage Program Waiver Services

317:30-5-763. [AMENDED]

(Reference APA WF # 05-01B)

### Gubernatorial approval:

May 4, 2005

### Register publication:

22 Ok Reg 2731

### Docket number:

05-1170

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of revisions to address transition services consistent with the Centers for Medicare and Medicaid directions as a result of approval of a consumer directed personal assistance service system waiver amendment, also known as CD pass.

### ANALYSIS:

ADvantage Waiver Services rules are revised to establish Institution Transition Services as a separate billable service under Medicaid for individuals who qualify for ADvantage Program services. Revisions are needed to address transition services consistent with the Centers for Medicare and Medicaid directions as a result of approval of a consumer directed personal assistance service system waiver amendment, also known as CD pass. Institution Transition Services are those services that are necessary to enable an individual to leave an institution and receive necessary support in their own home. This service may include Case Management, Nursing Assessment and Evaluation for in-home service planning, Environmental Modifications and Medical Equipment and Supplies. The Centers for Medicare and Medicaid Services has directed the State to restructure the definitions of Institution Transition Services to make them distinct and separate from the homologous, non-ITS Case Management, Skilled Nursing, Environmental Modification and Equipment and Supply services.

### CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2005, WHICHEVER IS LATER:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

#### 317:30-5-763. Description of services

Services included in the ADvantage Program are as follows:

##### (1) Case Management.

(A) Case Management services are services that assist a client in gaining access to medical, social educational or other services, regardless of payment source of services, that may benefit the client in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish waiver program eligibility. Case managers develop the client's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the client, as

determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the client's condition and available support. Case managers monitor the client's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. 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. Case Managers must meet ADvantage Program minimum requirements for qualification and training prior to providing services to ADvantage clients. Prior to providing services to clients receiving Consumer-Directed Personal Assistance Services and Supports (CD-PASS), Case Managers are required to receive training and demonstrate knowledge regarding CD-PASS service delivery model, "Independent Living Philosophy" and demonstrate competency in Person-centered planning.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training or authority, can perform on behalf of a 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.~~

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the 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 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 client. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the client's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the 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

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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 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 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 15 minute unit. No more than 6 hours are authorized per day. The number of units of service a client may receive is limited to the number of units approved on the client's approved plan of care.

(C) Adult Day Health Care Therapy Enhancement is a maximum one session per day unit of service.

(D) Adult Day Health Personal Care Enhancement is a maximum one per day unit of bathing and/or hair washing service.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the 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 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.~~

~~(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 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.~~

~~(C) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. 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 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 services, OAC 317:35-15-2 for Personal Care service, subparagraph (8)(A) of this section for 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 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 15-minute unit of service. The number of units of this service a 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 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 client's health and assessment of services to meet the client's needs as specified in the plan of care. 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) filling a one-week supply of insulin syringes for a blind diabetic who can self-inject the medication but cannot fill his/her own syringe. This service would include monitoring

the client's continued ability to self-administer the insulin;

(II) setting up oral medications in divided daily compartments for a client who self-administers prescribed medications but needs assistance and monitoring due to a minimal level or disorientation or confusion;

(III) monitoring a client's skin condition when a client is at risk of skin breakdown due to immobility or incontinence, or the client has a chronic stage II decubitus requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic client or client with circulatory or neurological deficiency;

(V) providing consultation and education to the client, 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 client, family and/or other informal caregivers as specified in the service plan.

(B) Skilled Nursing service is 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 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 client's home. Each meal has a nutritional content equal to one third of the Recommended Daily Allowance. Meals are only provided to 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 client is allowed to receive is limited on the client's plan of care.

**(10) Occupational Therapy services.**

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(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of clients with physical disabilities and related psychological and cognitive impairments. Services are provided in the client's home and are intended to help the 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 client to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the 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 client's rehabilitative progress and will report to the client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the client's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(11) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of clients disabled by pain, disease or injury. Services are provided in the client's home and are intended to help the 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 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 client's rehabilitative progress and will report to the client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the client's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(12) **Comprehensive Home Care (CHC) Personal Care.**

(A) Comprehensive Home Care (CHC) Personal Care is assistance to 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 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.

(C) Comprehensive Home Care (CHC) 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.

(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 clients disabled by pain, disease or injury. Services are provided in the client's home and are intended to help the 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 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 client's rehabilitative progress and will report to the client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the client's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(14) **Respiratory Therapy Services.**

(A) Respiratory therapy services are provided for 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 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 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 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 client's progress and will report to the client's case manager and physician to coordinate necessary addition and/or deletion of services, based on the client's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(15) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the client and his/her family when a physician certifies that the client has a terminal illness and has six months or less to live and orders Hospice Care. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The client signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the client's illness. Once the client has elected hospice care, the hospice medical team assumes responsibility for the 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 client and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the client's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the 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 client in a Nursing Facility (NF) only when the 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 days during any 30 day period. A 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 client or 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,

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(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.

### **(18) Consumer-Directed Personal Assistance Services and Support (CD-PASS).**

(A) Consumer-Directed Personal Assistance Services and Supports are Personal Services Assistance, Advanced Personal Services Assistance and Employer Support Services that enable an individual in need of assistance to reside in their home and in the community of their choosing rather than in an institution and to carry out functions of daily living, self care, and mobility. CD-PASS services are delivered as authorized on the service plan. The client employs the Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from the Employer Support Services provider, for ensuring that the employment complies with State and Federal Labor Law requirements. The client may designate an adult family member or friend, an individual who is not a PSA or APSA to the client, as an "authorized representative" to assist in executing these employer functions. The client:

(i) recruits, hires and, as necessary, discharges the PSA or APSA;

(ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Consumer Directed Agent/Case Manager to obtain Advantage skilled nursing services assistance with training when necessary. Prior to performing an Advanced Personal Services Assistance task for the first time, the SPSA must demonstrate competency in the tasks in an on-the-job training session conducted by the client and the client must document the attendant's competency in performing each task in the ASPA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(B) The service Personal Services Assistance may include:

(i) assistance with mobility and with transfer in and out of bed, wheelchair or motor vehicle, or both;

(ii) assistance with routine bodily functions that may include:

(I) bathing and personal hygiene;

(II) dressing and grooming;

(III) eating including meal preparation and cleanup;

(iii) assistance with homemaker type services that may include shopping, laundry, cleaning and seasonal chores;

(iv) companion type assistance that may include letter writing, reading mail and providing escort or transportation to participate in approved activities or events. "Approved activities or events" means community civic participation guaranteed to all citizens including but not limited to, exercise of religion, voting or participation in daily life activities in which exercise of choice and decision making is important to the client that may include shopping for food, clothing or other necessities, or for participation in other activities or events that are specifically approved on the service plan.

(C) Advanced Personal Services Assistance are maintenance services provided to assist a client with a stable, chronic condition with activities of daily living when such assistance requires devices and procedures related to altered body function if such activities, in the opinion of the attending physician or licensed nurse, may be performed if the individual were physically capable, and the procedure may be safely performed in the home. Advanced Personal Services Assistance is a maintenance service and should never be used as a therapeutic treatment. Clients who develop medical complications requiring skilled nursing services while receiving Advanced Personal Services Assistance should be referred to their attending physician who may, if appropriate, order home health services. The service of Advanced Personal Services Assistance includes assistance with health maintenance activities that may include:

(i) routine personal care for persons with ostomies (including tracheotomies, gastrostomies and colostomies with well-healed stoma) and external, in dwelling, and suprapubic catheters which includes changing bags and soap and water hygiene around ostomy or catheter site;

(ii) remove external catheters, inspect skin and reapplication of same;

(iii) administer prescribed bowel program including use of suppositories and sphincter stimulation, and enemas (Pre-packaged only) with clients without contraindicating rectal or intestinal conditions;

(iv) apply medicated (prescription) lotions or ointments, and dry, non-sterile dressings to unbroken skin;

(v) use lift for transfers;

(vi) manually assist with oral medications;

(vii) provide passive range of motion (non-resistive flexion of joint) delivered in accordance

with the plan of care, unless contraindicated by underlying joint pathology;

(viii) apply non-sterile dressings to superficial skin breaks or abrasions; and

(ix) use Universal precautions as defined by the Center for Disease Control.

(D) The service Employer Support Services is assistance with employer related cognitive tasks, decision-making and specialized skills that may include:

(i) assistance with Individual Budget Allocation planning and support for making decisions, including training, reference material and consultation, regarding employee management tasks such as recruiting, hiring, training and supervising the Personal Service Assistant or Advanced Personal Service Assistant;

(ii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the client, on prospective hires for PSAs or APSAs;

(iii) for making available Hepatitis B vaccine and vaccination series to PSA and APSA employees in compliance with OSHA standards;

(iv) for performing Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(I) employer payroll, at a minimum of semi monthly, and associated mandatory withholding for taxes, Unemployment Insurance and Workers' Compensation Insurance performed on behalf of the client as employer of the PSA or APSA; and

(II) other employer related payment disbursements as agreed to with the client and in accordance with the client's Individual Budget Allocation.

(E) The service of Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a client may receive is limited to the number of units approved on the Service Plan.

(F) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a client may receive is limited to the number of units approved on the Service Plan.

(G) The service of Employer Support Services is billed per month unit of service. The Level of service and number of units of Employer Support Services a client may receive is limited to the Level and number of units approved on the Service Plan.

**(19) Institution Transition Services.**

(A) Institution Transition Services are those services that are necessary to enable an individual to leave the institution and receive necessary support through ADvantage waiver services in their home and/or in the community. Institution Transition Services may include, as necessary, any one or a combination of the following:

(i) Case Management;

(ii) Nursing Assessment and Evaluation for in-home service planning;

(iii) Environmental Modifications including Assessment for Transition Environmental Modification Services; and/or,

(iv) Medical Equipment and Supplies.

(B) Institution Transition Case Management Services are services as described in OAC 317:30-5-763(1) required by the individual's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or to enable the individual to function with greater independence in the home, and without which, the individual would continue to require institutionalization. ADvantage Transition Case Management Services assist institutionalized individuals that are eligible to receive ADvantage services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist in the transition, regardless of the funding source for the services to which access is gained. Transition Case Management Services may be authorized for periodic monitoring of an ADvantage client's progress during an institutional stay, and for assisting the client transition from institution to home by updating the service plan, including necessary Institution Transition Services to prepare services and supports to be in place or to start on the date the client is discharged from the institution. Transition Case Management Services may be authorized to assist individuals that have not previously received Advantage services but have been referred by the AA or OKDHS to the Case Management Provider for assistance in transitioning from the institution to the community with Advantage services support.

(i) Institution Transition Case Management services are prior authorized and billed per 15 minute unit of service using the appropriate HCPC and modifier associated with the location of residence of the client served as described in OAC 317:30-5-763(1)(C).

(ii) A unique modifier code is used to distinguish Institution Transition Case Management services from regular Case Management services.

(C) Institution Transition Skilled Nursing Services are nursing services, required by the individual's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or to enable the individual to function with greater independence in the home, and without which, the individual would continue to require institutionalization. Institutional Transition Skilled Nursing services are solely for assessment/evaluation and service planning for in-home assistance services.

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- (i) Institution Transition Skilled Nursing services are prior authorized and billed per assessment/evaluation visit using the appropriate HCPC.
- (ii) A unique modifier code is used to distinguish Institution Transition Skilled Nursing Services from regular Skilled Nursing Services.
- (D) Institution Transition Environmental Modifications are those physical adaptations to the home, required by the individual'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 individual would continue to require institutionalization. Such adaptations are the same as described under OAC 317:30-5-763(4)(A) and may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual. Excluded are those adaptations or improvements to the home which are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair central air conditioning, etc. Adaptations which add to the total square footage of the home are excluded from this benefit. All services shall be provided in accordance with applicable state or local building codes. Services may include accessibility evaluation of the client's home and follow-up evaluation of the adequacy of installed environmental modifications to meet the client's accessibility and environmental adaptive needs. Accessibility evaluation services must be performed by an Accessibility Specialist who is trained and certified through a Federal or State agency approved program for Americans with Disabilities Act (ADA) Accessibility Guidelines - Title III (Public Accommodations) or by a physical or occupational therapist. Accessibility evaluation services do not include evaluations of the need for modifications or equipment that serve a therapeutic or rehabilitative function for which a therapist evaluation is necessary.
- (i) Institution Transition Environmental Modification services are prior authorized and billed using the appropriate HCPC.
- (ii) A unique modifier code is used to distinguish Institution Transition Environmental Modification Services and Assessments from regular Environmental Modification Services and Assessments.
- (E) Institution Transition Specialized medical equipment and supplies are those devices, controls, or appliances, specified in the plan of care, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, 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 individual would continue to require institutionalization. This service also includes 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. Item reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the State plan and shall exclude those items which are not of direct medical or remedial benefit to the individual. All items shall meet applicable standards of manufacture, design and installation.

- (i) Institution Transition Medical Equipment and Supply services are prior authorized and billed using the appropriate HCPC.
- (ii) A unique modifier code is used to distinguish Institution Transition Medical Equipment and Supply Services from regular Medical Equipment and Supply services.
- (F) Institutional Transition Services may be authorized and reimbursed under the following conditions:
- (i) The service is necessary to enable the individual to move from the institution to their home;
- (ii) The individual is eligible to receive ADvantage services outside the institutional setting;
- (iii) Institutional Transition Services are provided to the individual within 120 days of discharge from the institution;
- (iv) Transition Services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.
- (G) If the client has received Institution Transition Services but fails to enter the waiver, any Institution Transition Services authorized and provided are reimbursed as "Medicaid administrative" costs and providers follow special procedures specified by the AA to bill for services provided.

[OAR Docket #05-1284; filed 10-20-05]

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

[OAR Docket #05-1285]

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 17. ADvantage Waiver Services  
317:35-17-3. [AMENDED]  
(Reference APA WF # 05-02A)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.180

**DATES:**

**Adoption:**

May 12, 2005

**Approved by Governor:**

July 1, 2005

**Effective:**

Immediately upon Governor's approval or July 1, 2005, whichever is later

**Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rule**

Subchapter 17. ADvantage Waiver Services

317:35-17-3. [AMENDED]

(Reference APA WF # 05-01A)

**Gubernatorial approval:**

May 4, 2005

**Register publication:**

22 Ok Reg 2741

**Docket number:**

05-1169

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of revisions to address transition services consistent with the Centers for Medicare and Medicaid directions as a result of approval of a consumer directed personal assistance service system waiver amendment, also known as CD pass.

**ANALYSIS:**

ADvantage Waiver Services rules are revised to establish Institution Transition Services as a separate billable service under Medicaid for individuals who qualify for ADvantage Program services. Revisions are needed to address transition services consistent with the Centers for Medicare and Medicaid directions as a result of approval of a consumer directed personal assistance service system waiver amendment, also known as CD pass. Institution Transition Services are those services that are necessary to enable an individual to leave an institution and receive necessary support in their own home. This service may include Case Management, Nursing Assessment and Evaluation for in-home service planning, Environmental Modifications and Medical Equipment and Supplies. The Centers for Medicare and Medicaid Services has directed the State to restructure the definitions of Institution Transition Services to make them distinct and separate from the homologous, non-ITS Case Management, Skilled Nursing, Environmental Modification and Equipment and Supply services.

**CONTACT PERSON:**

Joanne Terlizzi at (405)522-7272

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR JULY 1, 2005, WHICHEVER IS LATER:**

**SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES**

**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 when there is a reasonable expectation that within a 30 day period, the person's health, due to disease process or disability, would, without appropriate services, deteriorate and 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 the following criteria:

(A) require nursing facility level of care [see OAC 317:35-17-2];

(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 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) (5) 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

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- (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/or~~
  - (5) expenditures are for Institution Transition Services, and the annualized expenditures for ADvantage services to a client under any combination of 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;
  - (13) Personal Emergency Response System (PERS);
  - (14) Consumer-Directed Personal Assistance Services and Supports (CD-PASS);
  - (15) Institution Transition Services; and
  - (16) Medicaid medical services for individuals age 21 and over within the scope of the State Plan.
- (d) The 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 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 determines ADvantage program eligibility through the service plan 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 and other professional assessments 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.
  - (2) if the client poses a physical threat to self or others as supported by professional documentation.
  - (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.
  - (4) 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.
- (g) Individuals determined ineligible for ADvantage program services are notified in writing by 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.

[OAR Docket #05-1285; filed 10-20-05]

**TITLE 429. OKLAHOMA LOTTERY COMMISSION**  
**CHAPTER 1. GENERAL ADMINISTRATION**

[OAR Docket #05-1279]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

429:1-1-1. [RESERVED]

429:1-1-2. through 429:1-1-5. [NEW]

**AUTHORITY:**

Oklahoma Lottery Commission, 3A O.S., Section 710.

**DATES:**

**Adoption:**

October 5, 2005

**Approved by Governor:**

October 10, 2005

**Effective:**

Immediately upon gubernatorial approval

**Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Oklahoma Lottery Commission finds that a compelling public interest requires these emergency rules be adopted to ensure the integrity and successful operation of a lottery in Oklahoma. The Oklahoma Lottery Education Act was added by Laws 2003, Enrolled House Bill 1278, State Question No. 705, Legislative Referendum 330, approved at the general election held November 2, 2004 and amended by Enrolled House Bill 1649 in 2005. These rules are necessary for the lottery to operate.

**ANALYSIS:**

The rules establish general operating rules for the Lottery Commission, establish selection criteria for retailers, payment of commissions to retailers, and other requirements for retailers. The rules also establish rules for the instant and online lottery games, establish rules for the determination of prize winners and for the introduction, promotion and operation of each game. The rules also establish minimum prize amounts.

**CONTACT PERSON:**

Rollo Redburn, Administrative Rules Liaison, 521-0547

**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):**

**429:1-1-1. RESERVED**

**429:1-1-2. Applicability**

This Chapter explains the nature and general operations of the Oklahoma Lottery Commission. The rules have been promulgated for the purpose of administrating and enforcing the Oklahoma Education Lottery Act, Sections 701 et seq. of Title 3A of the Oklahoma Statutes. The Oklahoma Lottery Commission (OLC) Board of Trustees may amend these Rules and/or adopt new Rules as necessary to administer the Act. In the event of a conflict between the Act and these Rules, the Act will govern.

**429:1-1-3. Definitions**

In addition to terms defined in the Oklahoma Education Lottery Act, 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 Education Lottery Act.

**"Active Game"** means a lottery game currently available for sale from the Oklahoma Lottery Commission.

**"Activated Pack"** means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

**"Altered Ticket"** means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

**"Authorized Location"** means a business authorized by a contract with OLC to sell OLC Lottery products. **"Authorized Location"** and **"Authorized Retailer"** are synonymous terms.

**"Automatic Win Symbol"** means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

**"Breaks"** means a gap of one or more numbered instant tickets in a pack number sequence.

**"Cancelled Ticket"** means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

**"Caption"** means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

**"Certified Drawing"** means a drawing in which the lottery and an independent accountant attests that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

**"Claim Center"** means an OLC authorized location available to pay claims for prizes of more than \$600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars (\$5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

**"Claim Form"** means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

**"Claimant"** means a player who has submitted a claim for prize payment.

**"Claim Period"** means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

**"Computer Selected Items"** means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

**"Counterfeit Ticket"** means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

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**"Defectively Printed Tickets"** means the same as mis-registered ticket.

**"Display Printing"** means the printing on the ticket not associated with the ticket game play.

**"District Office"** means an OLC claim center, if any, in various cities in Oklahoma.

**"Disputed Ticket"** means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

**"Doubler"** means any method used on a ticket to double a prize amount.

**"Draw Procedures"** means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

**"Drawing"** means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

**"Duplicate Ticket"** means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

**"Electronic Funds Transfer" or EFT** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

**"Entry"** means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

**"Executive Director"** means the chief executive officer and administrator of the Oklahoma Lottery Commission.

**"Finalist"** means a person selected through a preliminary drawing for participation in a grand prize drawing.

**"Floating Image Play Area"** means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

**"Game Board"** means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

**"Game Name"** means the name of the Instant or Online game, as specified in the game procedures.

**"Game Number"** means the preprinted number on an instant ticket which identifies a particular game.

**"Game Report"** means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

**"Game Specifications Document"** means the same as working papers.

**"Grand Prize Drawing"** means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

**"High-Tier Prize"** means a prize of \$601 or more.

**"Instant Game"** means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

**"Instant Game Procedures"** means the document summarizing the game specifications as provided in the working papers for each Instant Game.

**"Instant Game Promotion Procedures"** means the OLC approved procedures for player participation in any Instant Game Promotion.

**"Jackpot"** means a large prize; often the top prize in an online game.

**"Lottery Retailer" or "Retailer"** means a business entity contracted to OLC to sell lottery tickets.

**"Low-Tier Prize"** means a prize of twenty-five dollars (\$25) or less.

**"Mid-Tier Prize"** means a prize of \$25.01-\$600.

**"Minor"** means an individual younger than 18 years of age.

**"Miscut Ticket"** means a ticket cut during production such that the ticket is not whole and able to be validated.

**"Misregistered Ticket"** means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

**"Mutilated Ticket"** means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

**"Non-Cash Prize"** means merchandise prizes offered in lottery games or lottery promotions.

**"Oklahoma Lottery Retailer Contract"** means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract," "Oklahoma Ticket Sales Contract," "Lottery Retail Sales Contract,"** and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract"**.

**"OLC"** means the Oklahoma Lottery Commission.

**"Online Game"** means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "Online Game" does not include a game played via the Internet.

**"Online Game Procedures"** means the document summarizing game specifications for each online game offered for sale by OLC.

**"Online Game Promotion Procedures"** means the document summarizing promotion specifications for each online game promotion offered by OLC.

**"Online Terminal"** means the OLC authorized sales terminal used to sell various online lottery number games.

**"Pack" or "Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

**"Pack Number"** means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

**"Play Area"** means the covered area of an instant ticket that contains the ticket play symbols.

**"Play Central<sup>®</sup> Lottery Kiosk"** means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

**"Play Panel"** means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

**"Play Slip"** means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

**"Play Spot"** means an authorized area on an instant ticket containing one play symbol and one caption.

**"Play Station"** means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

**"Play Style"** means the method of play to determine a winner for an individual game or game promotion.

**"Play Symbol"** means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

**"Player-Selected Item"** means a number or item or group of numbers or items selected by a player in connection with an online game.

**"Point of Sale Material"** or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries). **"Point of Purchase Material"** or **"POP"** is synonymous with POS.

**"Preliminary Drawing"** means an event for the selection of contestants for a grand prize drawing.

**"Price Point"** means the retail selling price of an individual game ticket.

**"Printer Omitted Tickets"** means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

**"Prize"** means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

**"Prize Drawing"** means a method for determining game or game promotion winners, as defined in OLC procedures.

**"Prize Structure"** means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

**"Retailer"** means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

**"Retailer Commission"** means the amount of money paid to retailers for selling lottery products.

**"Retailer Paid Prizes"** means prizes which may be paid by retailers subject to OLC validation procedures.

**"Retail Sales Price"** means the OLC designated price OLC retailers must charge for a ticket when sold.

**"Retailer Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

**"Retailer Validation Code"** means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

**"Settled Pack"** means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

**"Share"** means any intangible evidence of participation in a lottery game.

**"Ticket"** means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

**"Ticket Number"** means the number on the ticket that refers to the ticket sequence within the pack.

**"Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

**"Unreadable Ticket"** means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

**"Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

**"Validation Procedures"** means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

**"Valid Ticket"** means a ticket which meets all OLC game specifications and OLC validation requirements.

**"Variant"** means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

**"VIRN (Void If Removed Numbers)"** means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

**"Wild"** means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

**"Working Papers"** means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

### **429:1-1-4. Public accountability**

- (a) The OLC and Board will operate pursuant to the Oklahoma Open Records Act and the Oklahoma Open Meeting Act.
- (b) In the promulgation of rules, the Board shall be subject to the Administrative Procedures Act (75 OS, §250 et seq).

### **429:1-1-5. Procedures for Retailer Appeal to Board**

- (a) The provisions of this rule are provided to retailers who wish to appeal the cancellation, denial, revocation, temporary suspension, suspension or rejection of renewal of a lottery retailer contract by the executive director or designee.
- (b) These rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the resolution of retailer appeals. They shall not be construed to limit legal rights or obligations of any party.
- (c) The executive director shall designate a member of the Oklahoma Lottery Commission (OLC) staff to evaluate lottery retailer contracts. That designee may:

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- (1) Temporarily suspend a lottery retailer contract without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the OLC; or,
- (2) Cancel, suspend, deny, revoke, terminate, or reject renewal of a lottery retailer contract when it is in the best interest of the lottery, the public welfare, or the State of Oklahoma, and shall promptly notify the retailer of such action.
- (d) Retailers will be notified by certified mail at the last retailer address known to the OLC. The notification will outline the reasons for OLC's action and advise retailers of their right to appeal to the executive director.
- (e) Retailers shall have twenty (20) days from the date of the notice of the (1) temporary suspension or (2), cancellation, suspension, denial, revocation, termination, or rejection of renewal of a lottery retailer contract to appeal to the executive director. Appeals shall be filed and signed by the retailer and shall set out therein:
- (1) The name, address and retailer's certificate number;
- (2) The argument and/or legal authority upon which each assignment of error is made;
- (3) A statement of relief sought by the retailer; and
- (4) A verification by the retailer that the statements and facts contained therein are true.
- (f) The executive director will consider the appeal of the (1) temporary suspension or (2) cancellation, suspension, denial, revocation, or termination or rejection of renewal of a lottery retailer contract by the OLC designee and shall fix a date for a hearing.
- (1) The hearing date shall be set within thirty (30) days of the date the appeal is received.
- (2) Notice of the time, date and location of the hearing will be sent to the parties.
- (3) The executive director shall issue a written order after the hearing which shall be sent by certified mail to the retailer within thirty (30) days of the hearing date.
- (g) Any aggrieved party to the contract may appeal the order of the executive director to the Board of Trustees of the OLC by filing a notice of such appeal with the executive director within twenty (20) days of the mailing of the written order by the executive director. Such appeal must specify the grounds upon which the party alleges the executive director's order to be erroneous.
- (h) The Board of Trustees will hear the appeal of the order of the executive director and shall fix a date of hearing, at which time the Board shall be authorized and empowered to hear evidence pertinent to the appeal.
- (1) Notice of the time, date and location of the hearing will be sent to the parties.
- (2) The Board may, in its discretion, vacate, modify, or affirm, in part or whole, the order of the executive director.
- (3) The Board shall issue a written order in each case within sixty days of the hearing date.
- (i) Orders of the Board shall be subject to judicial review (3A OS, §730).

[OAR Docket #05-1279; filed 10-17-05]

## **TITLE 429. OKLAHOMA LOTTERY COMMISSION** **CHAPTER 10. RETAILER PROVISIONS**

[OAR Docket #05-1280]

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

429:10-1-1. [RESERVED]

429:10-1-2. through 429:10-1-12. [NEW]

### **AUTHORITY:**

Oklahoma Lottery Commission; 3A O.S., Section 710.

### **DATES:**

#### **Adoption:**

October 5, 2005

#### **Approved by Governor:**

October 10, 2005

#### **Effective:**

Immediately upon gubernatorial approval

#### **Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

The Oklahoma Lottery Commission finds that a compelling public interest requires these emergency rules be adopted to ensure the integrity and successful operation of a lottery in Oklahoma. The Oklahoma Lottery Education Act was added by Laws 2003, Enrolled House Bill 1278, State Question No. 705, Legislative Referendum 330, approved at the general election held November 2, 2004 and amended by Enrolled House Bill 1649 in 2005. These rules are necessary for the lottery to operate.

### **ANALYSIS:**

The rules establish general operating rules for the Lottery Commission, establish selection criteria for retailers, payment of commissions to retailers, and other requirements for retailers. The rules also establish rules for the instant and online lottery games, establish rules for the determination of prize winners and for the introduction, promotion and operation of each game. The rules also establish minimum prize amounts.

### **CONTACT PERSON:**

Rollo Redburn, Administrative Rules Liaison, 521-0547

**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):**

### **429:10-1-1. RESERVED**

### **429:10-1-2. Definitions**

In addition to terms defined in the Oklahoma Education Lottery Act, 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 Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

**"Altered Ticket"** means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

**"Authorized Location"** means a business authorized by a contract with OLC to sell OLC Lottery products. **"Authorized Location"** and **"Authorized Retailer"** are synonymous terms.

**"Automatic Win Symbol"** means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

**"Breaks"** means a gap of one or more numbered instant tickets in a pack number sequence.

**"Cancelled Ticket"** means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

**"Caption"** means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

**"Certified Drawing"** means a drawing in which the lottery and an independent accountant attests that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

**"Claim Center"** means an OLC authorized location available to pay claims for prizes of more than \$600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars (\$5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

**"Claim Form"** means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

**"Claimant"** means a player who has submitted a claim for prize payment.

**"Claim Period"** means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

**"Computer Selected Items"** means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

**"Counterfeit Ticket"** means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

**"Defectively Printed Tickets"** means the same as mis-registered ticket.

**"Display Printing"** means the printing on the ticket not associated with the ticket game play.

**"District Office"** means an OLC claim center, if any, in various cities in Oklahoma.

**"Disputed Ticket"** means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

**"Doublor"** means any method used on a ticket to double a prize amount.

**"Draw Procedures"** means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

**"Drawing"** means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

**"Duplicate Ticket"** means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

**"Electronic Funds Transfer" or EFT** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

**"Entry"** means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

**"Executive Director"** means the chief executive officer and administrator of the Oklahoma Lottery Commission.

**"Finalist"** means a person selected through a preliminary drawing for participation in a grand prize drawing.

**"Floating Image Play Area"** means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

**"Game Board"** means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

**"Game Name"** means the name of the Instant or Online game, as specified in the game procedures.

**"Game Number"** means the preprinted number on an instant ticket which identifies a particular game.

**"Game Report"** means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

**"Game Specifications Document"** means the same as working papers.

**"Grand Prize Drawing"** means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

**"High-Tier Prize"** means a prize of \$601 or more.

**"Instant Game"** means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

**"Instant Game Procedures"** means the document summarizing the game specifications as provided in the working papers for each Instant Game.

**"Instant Game Promotion Procedures"** means the OLC approved procedures for player participation in any Instant Game Promotion.

**"Jackpot"** means a large prize; often the top prize in an online game.

**"Lottery Retailer" or "Retailer"** means a business entity contracted to OLC to sell lottery tickets.

**"Low-Tier Prize"** means a prize of twenty-five dollars (\$25) or less.

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**"Mid-Tier Prize"** means a prize of \$25.01-\$600.

**"Minor"** means an individual younger than 18 years of age.

**"Miscut Ticket"** means a ticket cut during production such that the ticket is not whole and able to be validated.

**"Misregistered Ticket"** means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

**"Mutilated Ticket"** means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

**"Non-Cash Prize"** means merchandise prizes offered in lottery games or lottery promotions.

**"Oklahoma Lottery Retailer Contract"** means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract," "Oklahoma Ticket Sales Contract," "Lottery Retail Sales Contract,"** and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract"**.

**"OLC"** means the Oklahoma Lottery Commission.

**"Online Game"** means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "Online Game" does not include a game played via the Internet.

**"Online Game Procedures"** means the document summarizing game specifications for each online game offered for sale by OLC.

**"Online Game Promotion Procedures"** means the document summarizing promotion specifications for each online game promotion offered by OLC.

**"Online Terminal"** means the OLC authorized sales terminal used to sell various online lottery number games.

**"Pack"** or **"Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

**"Pack Number"** means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

**"Play Area"** means the covered area of an instant ticket that contains the ticket play symbols.

**"Play Central<sup>®</sup> Lottery Kiosk"** means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

**"Play Panel"** means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

**"Play Slip"** means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

**"Play Spot"** means an authorized area on an instant ticket containing one play symbol and one caption.

**"Play Station"** means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

**"Play Style"** means the method of play to determine a winner for an individual game or game promotion.

**"Play Symbol"** means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

**"Player-Selected Item"** means a number or item or group of numbers or items selected by a player in connection with an online game.

**"Point of Sale Material"** or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries). **"Point of Purchase Material"** or **"POP"** is synonymous with POS.

**"Preliminary Drawing"** means an event for the selection of contestants for a grand prize drawing.

**"Price Point"** means the retail selling price of an individual game ticket.

**"Printer Omitted Tickets"** means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

**"Prize"** means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

**"Prize Drawing"** means a method for determining game or game promotion winners, as defined in OLC procedures.

**"Prize Structure"** means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

**"Retailer"** means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

**"Retailer Commission"** means the amount of money paid to retailers for selling lottery products.

**"Retailer Paid Prizes"** means prizes which may be paid by retailers subject to OLC validation procedures.

**"Retail Sales Price"** means the OLC designated price OLC retailers must charge for a ticket when sold.

**"Retailer Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

**"Retailer Validation Code"** means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

**"Settled Pack"** means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

**"Share"** means any intangible evidence of participation in a lottery game.

**"Ticket"** means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

**"Ticket Number"** means the number on the ticket that refers to the ticket sequence within the pack.

**"Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

**"Unreadable Ticket"** means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

**"Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

**"Validation Procedures"** means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

**"Valid Ticket"** means a ticket which meets all OLC game specifications and OLC validation requirements.

**"Variant"** means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

**"VIRN (Void If Removed Numbers)"** means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

**"Wild"** means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

**"Working Papers"** means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

**429:10-1-3. Retailer Compensation**

(a) Retailers will earn six-percent (6%) for each dollar of ticket sales plus three-quarters of one-percent (.75%) for each dollar of prizes \$600.00 or less paid by the retailer.

(b) In the event OLC designates certain retailers to pay prizes of up to \$5,000, pursuant to the Act and Section 2.05.2 of these Rules, retailers so designated shall earn six-percent (6%) for each dollar of ticket sales plus three-quarters of one-percent (.75%) for each dollar of prizes \$5,000 or less paid by the retailer.

**429:10-1-4. Retailer Selection Criteria**

In addition to the retailer selection criteria in the Act, OLC will consider the criteria enumerated herein:

(1) It is the intent of OLC that all retailers sell both instant and online (computerized or pick-you-own numbers) games, thus retailer selection criteria for retailers of instant tickets and retailers of online (computerized or pick-your-own numbers) games are identical.

(2) Retailer applicants shall, at the time of application, consent to the requirements of the Act and the requirements enumerated herein, which may be revised and/or amended by the OLC subject to Board approval and notification to retailers.

(3) Persons applying to become lottery retailers shall be charged a uniform application fee of \$95. The OLC may designate a portion of this fee as a non-refundable application fee and the remaining portion to cover the retailer bonding requirements;

(4) All lottery retailer contracts may be renewable annually from the date of issuance at the discretion of the OLC, unless sooner canceled or terminated.

**429:10-1-5. Acceptance and return of instant lottery tickets**

(a) All instant lottery tickets ordered by retailer and accepted from OLC or its authorized distributor are deemed to be purchased by retailer at the price established by OLC, less appropriate retailer commissions and/or OLC approved adjustments.

(b) Retailers will accept only complete ticket orders and will not be allowed to accept a part of the ticket order delivered to them.

(c) Retailers shall be responsible for lost, stolen, missing, damaged or destroyed active packs of instant tickets and will be charged the full price of the tickets minus any applicable commissions, unless the tickets are recovered by OLC. If a retailer notifies the OLC within 24 hours of any active pack of tickets becoming lost, stolen, missing, damaged or destroyed and files a police report, in instances when packs are stolen, and cooperates in the investigation by the OLC, the OLC may reduce the retailer's costs to \$25.00 for each active pack.

(d) Retailers are responsible for lost, stolen, missing, damaged or destroyed inactive instant tickets. If a retailer notifies the OLC within 24 hours of any inactive pack of tickets becoming lost, stolen, missing, damaged or destroyed and files a police report, in instances when packs are stolen, and cooperates with OLC in the investigation by OLC, the OLC may waive any retailer cost for each inactive pack.

(e) The OLC will accept full inactive pack returns only as follows:

(1) after the official notification to retailers announcing an end of game, retailers shall have three (3) weeks after the official end date to return all full and inactivated packs of tickets to a lottery representative; or,

(2) within ten (10) days of termination, suspension, cancellation, revocation or non-renewal of the retailer's contract with the OLC.

(f) The OLC will accept partial pack returns only as follows:

(1) within three (3) weeks of the termination, suspension, cancellation, revocation or non-renewal of the retailer's contract with the OLC.

(2) A maximum of four (4) breaks in ticket number sequence per pack will be allowed.

(3) The tickets must be returned to a designated OLC representative.

(g) The OLC will accept the return of all instant tickets damaged prior to delivery acceptance by the retailer. These tickets must be returned to a designated OLC representative within one week of receipt of the tickets. The OLC may, at their sole discretion, elect to accept the return of tickets damaged after delivery.

(h) Retailers shall keep sufficient inventory to support all sales between a two week delivery cycle. Retailers who frequently require emergency or special orders may be assessed a delivery charge at the discretion of the OLC.

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### **429:10-1-6. Acceptance of online tickets**

- (a) Retailers shall agree that all online tickets cannot be cancelled once printed.
- (b) Retailers shall utilize the online game sales confirmation screen or prompt to advise players of the cost of the player's ticket selection cost whenever the total cost exceeds \$20.00; for each individual transaction, this player confirmation will occur prior to actual printing and sale of the tickets.

### **429:10-1-7. Payment of prizes**

- (a) During the retailer's normal business hours, retailers are required to pay prizes \$600.00 or under. Retailers are encouraged to pay in cash, but they may pay mid-tier prizes (\$25.01 to \$600) with a business check or money order if this is disclosed in advance to the claimant. Consistent reported failure to pay prizes to claimants or the issuance of a non-sufficient funds (NSF) check to claimants may be sufficient grounds to suspend or terminate the retailer contract.
- (b) OLC may authorize designated retailers to pay prizes up to five-thousand dollars (\$5,000.00), without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.
- (c) Before attempting to validate a winning ticket, the retailer should instruct the claimant to write their name on the back of the ticket.
- (d) Retailer must establish that the ticket is a winning ticket by using the OLC validation procedures/system. If the retailer does not receive the appropriate authorization to pay, the ticket should be returned to the claimant with instructions to file a claim with OLC.
- (e) After validating and paying a winning instant game ticket, the retailer should deface the ticket in a manner sufficient to prevent subsequent attempts to claim the ticket prize amount.
- (f) For prizes greater than \$600, retailers will provide claimants with OLC claim forms, if available, or direct them to the OLC office, or the OLC website.
- (g) A retailer shall not charge any player or claimant a fee for selling a ticket, validating a winning ticket, paying a winning ticket, verifying a non-winning ticket, providing a claim form, or for any other assistance not authorized by OLC.
- (h) If a claimant of a winning ticket is less than 18 years of age, retailers must instruct the claimant that the Act prohibits prize payment to any person 18 year of age or under and return the ticket to the claimant.

### **429:10-1-8. Minimum sales requirement**

- (a) The OLC will establish minimum weekly instant and/or online sales requirements which will be communicated to retailers. Failure to achieve these minimum weekly sales levels may result in suspension or cancellation of the retailer's contract at the sole discretion of OLC.
- (b) In order to promote and maintain the availability of lottery retailers in remote and/or sparsely populated areas of the

state, OLC may waive these minimum sales requirements at OLC's sole discretion.

### **429:10-1-9. Merchandising**

- (a) Each retailer shall offer all available instant games for sale to the public.
- (b) The retailer shall use ticket dispensers provided by OLC for the sale of lottery tickets, and shall place the dispenser and online game lottery sales terminal(s) in a prominent location in the retail establishment near the cash register or check-out area.
- (c) The retailer shall prominently display point-of-sale materials supplied by the OLC, which may include door decals, game posters, display tickets, danglers, change mats, lighted interior signs, banners, odds of winning, or any other items provided by the OLC unless the OLC agrees otherwise in writing.
- (d) Retailer must agree to make available to potential lottery customers player information supplied by OLC, to explain game rules, to provide adequate supplies of claim forms, game or game promotion entry envelopes, play selection slips, and to provide adequate space for a play station.

### **429:10-1-10. Settlement and retailer invoicing**

- (a) The accounting period for purposes of preparing retailer invoices shall be weekly from Sunday at 12:00 midnight through the following Sunday at 12:00 midnight.
- (b) All packs of instant tickets activated in an accounting period and for which the prize validation requirements specified in (c) of this Section have occurred, and all sales of online game tickets occurring within the accounting period will be invoiced to the retailer, less any retailer commissions and/or OLC authorized adjustments. The retailer invoice will be available through the OLC lottery sales terminal after 5:00 a.m. on Monday, immediately following the end of the accounting period.
- (c) For instant games, all ticket packs activated by the retailer or by the OLC on behalf of the retailer for which eighty percent (80%) of the winning low-tier tickets contained in the pack have been validated by the end of the previous accounting period will be included in the current retailer weekly invoice. Any pack which has been activated for a period of forty-five (45) days will be invoiced to the retailer, even if eighty percent (80%) of the pack's winning low-tier tickets have not been validated.
- (d) The retailer invoice will provide a calculation of the proceeds due the OLC. The proceeds will be equal to the retail value of instant game ticket packs, plus the retail value of on-line ticket sales, less applicable sales or cashing commissions, less any winning tickets paid by the retailer during the accounting period, plus or minus any adjustments to the retailer account authorized by OLC.
- (e) For purposes of calculating the retailer invoice, free ticket prizes validated by the retailer shall have the same value as the applicable retail value of free ticket(s) provided to the claimant.

**429:10-1-11. Banking, deposits and payment requirements**

(a) The Act requires each retailer to establish a separate bank account in an institution insured by the Federal Deposit Insurance Corporation (FDIC) and to provide the OLC with authorization to transfer lottery proceeds from this account using Electronic Funds Transfer (EFT). All funds due the OLC shall be considered State funds until paid to the OLC and are to be deposited into this separate bank account no later than the close of the next banking day after the date of their collection by the retailer.

(b) The OLC will provide notification of the amount of the accounting period EFT by way of an invoice to the retailer. Lottery proceeds due the OLC, as calculated on the invoice for an accounting period, will be transferred from the retailer bank account to the OLC on the Tuesday morning following the accounting period. When the Monday immediately preceding a scheduled Tuesday EFT transfer is a legal holiday, the transfer will occur on Wednesday morning.

(c) On the EFT funds transfer day (Tuesday morning), if all net lottery proceeds as detailed on the retailer invoice are not in the separate retailer bank account and this results in a non-sufficient funds (NSF) sweep, the retailer will be deemed to be in default. OLC will immediately contact the retailer and:

(1) If it is a first NSF default, require the retailer to deposit the required funds into the EFT lottery account to enable a wire transfer to be completed that day. A \$25.00 NSF fee will be charged as an adjustment to the retailer account.

(2) If a second NSF default occurs within a 6 month period, OLC may immediately suspend the retailer's terminal operation until the required funds are brought to OLC or received by an OLC representative. A \$25.00 NSF fee will be charged as an adjustment to the retailer account.

(3) If a third NSF default occurs within the same 6 month period provided in paragraph 2 of this subsection, the OLC may terminate the retailer contract immediately and commence collection proceedings on all money due to OLC.

**429:10-1-12. Damage to OLC Provided Equipment**

(a) Retailers shall exercise due diligence in protecting OLC provided equipment from damage.

(b) Retailers shall report any damaged equipment to OLC or OLC's authorized representative as soon as practical.

(c) Failure to report damaged equipment in a timely manner or repeated instances of equipment damage may be cause for cancellation or suspension of the retailer's contract.

*[OAR Docket #05-1280; filed 10-17-05]*

**TITLE 429. OKLAHOMA LOTTERY COMMISSION  
CHAPTER 10. RETAILER PROVISIONS**

*[OAR Docket #05-1296]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

429:10-1-3. [NEW]

429:10-1-4. [NEW]

**AUTHORITY**

Oklahoma Lottery Commission, 3A O.S., Section 710.

**DATES:**

**Adoption:**

October 11, 2005

**Approved by Governor:**

October 20, 2005

**Effective:**

Immediately upon gubernatorial approval

**Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

**INCORPORATIONS BY REFERENCE:**

N/A

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

429:10-1-3. [NEW]

429:10-1-4. [NEW]

**Gubernatorial approval:**

October 10, 2005

**Register publication:**

23 Ok Reg 174

**Docket number:**

05-1280

**FINDING OF EMERGENCY:**

The Oklahoma Lottery Commission finds that a compelling public interest requires these emergency rules be adopted to ensure the integrity of a lottery in Oklahoma and provide for the best interest of the state and Commission. This proposed rule is a revision to the emergency rules adopted on October 4, 2005 and approved by the Governor on October 10, 2005. The Oklahoma Lottery Education Act was added by Laws 2003, Enrolled House Bill 1278, State Question No. 705, Legislative Referendum 330, approved at the general election held November 2, 2004 and amended by Enrolled House Bill 1649 in 2005. These rules are necessary for the lottery to operate.

**ANALYSIS:**

The rules provide criteria for payments to retailers. The rules also establish selection criteria and certain requirements for retailers, establish a \$95.00 retailer application fee, renewable annually, and prohibit certain retailers from becoming approved by the Lottery Commission. Section 429:10-1-3 is submitted with these emergency rules to correct a scrivener's error in the section approved by the Governor on October 10, 2005.

**CONTACT PERSON:**

Rollo Redburn, Administrative Rules Liaison, 521-0547

**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):**

**429:10-1-3. Retailer Compensation**

(a) Retailers will earn six-percent (6%) for each dollar of ticket sales plus three-quarters of one-percent (.75%) for each dollar of prizes \$600.00 or less paid by the retailer.

(b) In the event OLC designates certain retailers to pay prizes of up to \$5,000, pursuant to the Act and 429:10-1-7(b) (relating to payment of prizes), retailers so designated shall

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earn six-percent (6%) for each dollar of ticket sales plus three-quarters of one-percent (.75%) for each dollar of prizes \$5,000 or less paid by the retailer.

## **429:10-1-4. Retailer Selection Criteria**

In addition to the retailer selection criteria in the Act, OLC will consider the criteria enumerated herein:

(1) It is the intent of OLC that all retailers sell both instant and online (computerized or pick-you-own numbers) games, thus retailer selection criteria for retailers of instant tickets and retailers of online (computerized or pick-your-own numbers) games are identical.

(2) Retailer applicants shall, at the time of application, consent to the requirements of the Act and the requirements enumerated herein, which may be revised and/or amended by the OLC subject to Board approval and notification to retailers.

(3) Persons applying to become lottery retailers shall be charged a uniform application fee of \$95. The OLC may designate a portion of this fee as a non-refundable application fee and the remaining portion to cover the retailer bonding requirements;

(4) All lottery retailer contracts may be renewable annually from the date of issuance at the discretion of the OLC, unless sooner canceled or terminated.

(5) It is the intent of OLC that contracting with supervised lenders [See 14A O.S., §3-501 (relating to supervised vendors)], pawnshops, payday lenders, deferred deposit lenders and businesses whose primary business is categorized as a check casher for the sale of OLC products is not in the best interest of OLC and the State, thus applications from such businesses to become an OLC retailer will not be accepted or approved by OLC.

*[OAR Docket #05-1296; filed 10-26-05]*

## **TITLE 429. OKLAHOMA LOTTERY COMMISSION CHAPTER 15. INSTANT GAMES**

*[OAR Docket #05-1281]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

429:15-1-1. [RESERVED]

429:15-1-2. through 429:15-1-14. [NEW]

Appendix A. [NEW]

Appendix B. [NEW]

### **AUTHORITY:**

Oklahoma Lottery Commission, 3A O.S., Section 710.

### **DATES:**

#### **Adoption:**

October 5, 2005

#### **Approved by Governor:**

October 10, 2005

#### **Effective:**

Immediately upon gubernatorial approval

#### **Expiration:**

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

The Oklahoma Lottery Commission finds that a compelling public interest requires these emergency rules be adopted to ensure the integrity and successful operation of a lottery in Oklahoma. The Oklahoma Lottery Education Act was added by Laws 2003, Enrolled House Bill 1278, State Question No. 705, Legislative Referendum 330, approved at the general election held November 2, 2004 and amended by Enrolled House Bill 1649 in 2005. These rules are necessary for the lottery to operate.

### **ANALYSIS:**

The rules establish general operating rules for the Lottery Commission, establish selection criteria for retailers, payment of commissions to retailers, and other requirements for retailers. The rules also establish rules for the instant and online lottery games, establish rules for the determination of prize winners and for the introduction, promotion and operation of each game. The rules also establish minimum prize amounts.

### **CONTACT PERSON:**

Rollo Redburn, Administrative Rules Liaison, 521-0547

**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):**

## **429:15-1-1. RESERVED**

## **429:15-1-2. Definitions**

In addition to terms defined in the Oklahoma Education Lottery Act, 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 Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

"Altered Ticket" means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

"Authorized Location" means a business authorized by a contract with OLC to sell OLC Lottery products. "Authorized Location" and "Authorized Retailer" are synonymous terms.

"Automatic Win Symbol" means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

"Breaks" means a gap of one or more numbered instant tickets in a pack number sequence.

"Cancelled Ticket" means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

"Caption" means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

"Certified Drawing" means a drawing in which the lottery and an independent accountant attests that the drawing

equipment functioned properly and that a random selection of a winning combination has occurred.

**"Claim Center"** means an OLC authorized location available to pay claims for prizes of more than \$600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars (\$5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

**"Claim Form"** means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

**"Claimant"** means a player who has submitted a claim for prize payment.

**"Claim Period"** means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

**"Computer Selected Items"** means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

**"Counterfeit Ticket"** means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

**"Defectively Printed Tickets"** means the same as mis-registered ticket.

**"Display Printing"** means the printing on the ticket not associated with the ticket game play.

**"District Office"** means an OLC claim center, if any, in various cities in Oklahoma.

**"Disputed Ticket"** means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

**"Doublor"** means any method used on a ticket to double a prize amount.

**"Draw Procedures"** means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

**"Drawing"** means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

**"Duplicate Ticket"** means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

**"Electronic Funds Transfer" or EFT** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

**"Entry"** means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

**"Executive Director"** means the chief executive officer and administrator of the Oklahoma Lottery Commission.

**"Finalist"** means a person selected through a preliminary drawing for participation in a grand prize drawing.

**"Floating Image Play Area"** means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

**"Game Board"** means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

**"Game Name"** means the name of the Instant or Online game, as specified in the game procedures.

**"Game Number"** means the preprinted number on an instant ticket which identifies a particular game.

**"Game Report"** means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

**"Game Specifications Document"** means the same as working papers.

**"Grand Prize Drawing"** means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

**"High-Tier Prize"** means a prize of \$601 or more.

**"Instant Game"** means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

**"Instant Game Procedures"** means the document summarizing the game specifications as provided in the working papers for each Instant Game.

**"Instant Game Promotion Procedures"** means the OLC approved procedures for player participation in any Instant Game Promotion.

**"Jackpot"** means a large prize; often the top prize in an online game.

**"Lottery Retailer" or "Retailer"** means a business entity contracted to OLC to sell lottery tickets.

**"Low-Tier Prize"** means a prize of twenty-five dollars (\$25) or less.

**"Mid-Tier Prize"** means a prize of \$25.01-\$600.

**"Minor"** means an individual younger than 18 years of age.

**"Miscut Ticket"** means a ticket cut during production such that the ticket is not whole and able to be validated.

**"Misregistered Ticket"** means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

**"Mutilated Ticket"** means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

**"Non-Cash Prize"** means merchandise prizes offered in lottery games or lottery promotions.

**"Oklahoma Lottery Retailer Contract"** means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract," "Oklahoma Ticket Sales Contract," "Lottery Retail Sales**

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**Contract,"** and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract"**.

**"OLC"** means the Oklahoma Lottery Commission.

**"Online Game"** means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "Online Game" does not include a game played via the Internet.

**"Online Game Procedures"** means the document summarizing game specifications for each online game offered for sale by OLC.

**"Online Game Promotion Procedures"** means the document summarizing promotion specifications for each online game promotion offered by OLC.

**"Online Terminal"** means the OLC authorized sales terminal used to sell various online lottery number games.

**"Pack"** or **"Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

**"Pack Number"** means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

**"Play Area"** means the covered area of an instant ticket that contains the ticket play symbols.

**"Play Central<sup>®</sup> Lottery Kiosk"** means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

**"Play Panel"** means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

**"Play Slip"** means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

**"Play Spot"** means an authorized area on an instant ticket containing one play symbol and one caption.

**"Play Station"** means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

**"Play Style"** means the method of play to determine a winner for an individual game or game promotion.

**"Play Symbol"** means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

**"Player-Selected Item"** means a number or item or group of numbers or items selected by a player in connection with an online game.

**"Point of Sale Material"** or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries). **"Point of Purchase Material"** or **"POP"** is synonymous with POS.

**"Preliminary Drawing"** means an event for the selection of contestants for a grand prize drawing.

**"Price Point"** means the retail selling price of an individual game ticket.

**"Printer Omitted Tickets"** means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

**"Prize"** means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

**"Prize Drawing"** means a method for determining game or game promotion winners, as defined in OLC procedures.

**"Prize Structure"** means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

**"Retailer"** means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

**"Retailer Commission"** means the amount of money paid to retailers for selling lottery products.

**"Retailer Paid Prizes"** means prizes which may be paid by retailers subject to OLC validation procedures.

**"Retail Sales Price"** means the OLC designated price OLC retailers must charge for a ticket when sold.

**"Retailer Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

**"Retailer Validation Code"** means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

**"Settled Pack"** means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

**"Share"** means any intangible evidence of participation in a lottery game.

**"Ticket"** means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

**"Ticket Number"** means the number on the ticket that refers to the ticket sequence within the pack.

**"Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

**"Unreadable Ticket"** means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

**"Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

**"Validation Procedures"** means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

**"Valid Ticket"** means a ticket which meets all OLC game specifications and OLC validation requirements.

**"Variant"** means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

**"VIRN (Void If Removed Numbers)"** means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

**"Wild"** means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

"Working Papers" means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

**429:15-1-3. Ticket responsibility**

- (a) A ticket is a bearer instrument until signed on the back by the ticket holder.
- (b) The OLC will not be responsible for lost, stolen, or destroyed tickets.
- (c) The OLC will not be responsible for mutilated, altered, unreadable tickets or tickets tampered with in any manner.
- (d) The OLC will not be responsible for tickets claimed by a player in error for a lower prize at a retailer.
- (e) The OLC may not pay prizes to any claimant who purchases a ticket from an unauthorized retailer or unauthorized person.

**429:15-1-4. Sale of instant game tickets**

- (a) Only retailers who have a current contract with OLC are authorized to sell Instant Game tickets and tickets may be sold only at the authorized location.
- (b) Each Instant Game ticket shall be sold for the retail sales price authorized by OLC and stated in the Instant Game Procedures.

**429:15-1-5. Determination of prize winner**

- (a) The play symbols shall be used by a player to determine eligibility for instant game prizes.
- (b) A player's eligibility to win a prize is subject to OLC ticket validation requirements.
- (c) For each individual game, the player shall uncover the play area on the front of the ticket to reveal the play symbols. Eligibility to win a prize is based on the approved play style provided in the OLC Instant Game Procedures, and which may include:
  - (1) Match Three. If three identical play symbols are revealed on the ticket, the player shall win the prize indicated.
  - (2) Match Three with Specific Match Variant. The player shall win the prize indicated in either of the following ways:
    - (A) The player matches three identical play symbols; or
    - (B) The player matches two identical play symbols and the variant as specified in the Instant Game Procedures.
  - (3) Three Match Three. If three identical play symbols or numbers are revealed across one of the three lines, the player shall win the prize indicated.
  - (4) Add Up. If the player adds up all of the play numbers printed on the ticket and the amount is greater than or equal to the required total amount printed on the ticket, the player shall win the prize indicated.

- (5) Three in Line. If the player finds three identical play symbols, either diagonally, vertically, or horizontally, on the same ticket, the player shall win the prize indicated.
- (6) Key Number Match. If the player finds a play number or symbol that matches the designated key number play numbers or symbols, the player shall win the prize indicated.
- (7) Your Number(s) Beat Their Number(s). If the player finds a play number(s) designated as "yours" that is greater than the play number(s) designated as "theirs," the player shall win the prize indicated.
- (8) Three Consecutive Numbers or Symbols in Sequence. If the player finds three play numbers or symbols in a specified consecutive order among the play numbers or symbols, the player shall win the prize indicated.
- (9) Doubler. If the player finds a play symbol designated as a doubler, the player prize won shall double in amount.
- (10) Any other play style developed by OLC.

**429:15-1-6. Ticket validation requirements**

- (a) Each Instant Game ticket shall be validated according to OLC validation procedures prior to payment of a prize.
- (b) An Instant Game ticket shall comply with all of the following:
  - (1) The ticket shall not be stolen or appear on any list of printer omitted tickets on file with the OLC;
  - (2) The ticket shall not be counterfeit or forged, in whole or in part;
  - (3) The ticket shall not be mutilated, altered, or unreadable;
  - (4) The ticket shall have been issued by the OLC in an authorized manner;
  - (5) The ticket shall pass the confidential OLC validation and security tests appropriate to the applicable play style;
  - (6) The validation number of an apparent winning ticket shall appear on the OLC's official file of validation numbers of winning tickets. A ticket with that validation number shall not have been paid previously;
  - (7) The ticket shall be intact, and not miscut, and have exactly one play symbol and exactly one caption in each of the play spots, exactly one pack number, exactly one ticket number, exactly one retailer validation code, and exactly one validation number on the ticket;
  - (8) The game, pack, ticket, and validation numbers must be present in their entirety and be fully legible. The validation numbers shall correspond, using the OLC's files, to the play symbols on the ticket;
  - (9) The play symbols, captions, validation number, retailer validation code, pack number, and ticket number must be right side up and not reversed in any manner;
  - (10) The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
  - (11) Each of the play symbols must be exactly one of those described in the Instant Games Procedures, and each of the captions must be exactly one of those described in the Instant Games Procedures;

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(12) Each of the play symbols on the ticket must be printed in the correct symbol font and correspond precisely to the artwork on file at the OLC. Each of the captions must be printed in the caption font and must correspond precisely to the artwork on file at the OLC. The retailer validation code must be printed in the retailer validation code font and must correspond precisely to the artwork on file at the OLC. The validation number must be printed in the validation number font and must correspond precisely to the artwork on file at the OLC;

(13) The display printing must be regular in every respect and correspond precisely with the artwork on file at the OLC.

(c) Any ticket not passing all of the validation tests and requirements is void and ineligible for any prize and shall not be paid. The OLC may, in its sole discretion, reimburse the player for the cost of the void ticket. This shall be the claimant's only remedy.

(d) If a defective ticket is purchased by a player, the only OLC liability shall be reimbursement for the cost of the defective ticket.

### **429:15-1-7. Disputed ticket**

If a dispute arises between the OLC and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the OLC may, exclusively at OLC's determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's only remedy.

### **429:15-1-8. Game end date or game promotion end date and prize claim period.**

(a) The OLC, at any time, may announce the game end date for an individual game or game promotion.

(b) No tickets shall be sold past the game end date.

(c) Instant Game prizes shall be claimed no later than 90 days after the game end date of the individual game.

(d) Instant Game Promotion end dates and related promotion entry dates will be provided in the Instant Game Promotion Procedures for each Instant Game Promotion.

### **429:15-1-9. Governing law**

In purchasing a ticket, the customer agrees to comply with, and abide by, the Act, and all rules and final decisions of the OLC, and all procedures and instructions established by the OLC for the conduct of the game or game promotion.

### **429:15-1-10. Required prize withholding**

All prizes are subject to applicable federal tax withholdings, state income tax, and other required state withholdings, or delinquent state debt.

### **429:15-1-11. Game report**

Following the time period in which prizes may be claimed after termination of a game, the OLC shall prepare a report that

shows, at a minimum, the total number of tickets sold and the number of prizes awarded in the game.

### **429:15-1-12. Grand Prize Drawing**

(a) This section shall apply to individual games that provide for a grand prize drawing, if any.

(b) Game drawing procedures shall be provided to retailers and the public.

(c) Eligibility for a grand prize drawing shall be determined by, but not limited to, a direct entry to a grand prize drawing or an entry into a preliminary draw as provided in Instant Game Procedures or Instant Game Promotion procedures. The OLC shall determine any prizes to be awarded and the method of payment which shall be stated in the Instant Game Procedures or Instant Game Promotion Procedures.

(d) Preliminary draws and grand prize drawings shall be conducted at times and places and pursuant to the methods stated in the OLC Instant Game Procedures or Instant Game Promotion Procedures.

(e) An entry to a preliminary or grand prize drawing submitted by a player in accordance with the applicable procedures is eligible to be included in a drawing.

(f) Entries to a preliminary or grand prize drawing shall be delivered to the address or location designated by OLC no later than the last day of the time frame specified.

(g) The number of preliminary draw and grand prize drawing winners selected to advance or to win a prize shall be specified. The odds of winning an entry into these drawings for a prize of a specific amount need not be uniform throughout the game and are subject to change by the OLC, depending on the number of entries received.

(h) Each grand prize drawing finalist shall submit a completed claim form and the ticket, if appropriate, to the OLC within the required claim filing period. Failure to submit these items within the claim filing period and failure to have a valid ticket will be cause for ineligibility to the grand prize drawing.

(i) Each grand prize drawing finalist will be notified by the OLC of the date of his/her appearance, if any, at the grand prize drawing.

(j) If a dispute arises between the OLC and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the OLC may, at its sole discretion, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's exclusive remedy.

### **429:15-1-13. Instant Game Procedures**

(a) The OLC shall make available to retailers and the public Instant Game Procedures for each Instant Game prior to it being introduced for sale to the public.

(b) The Instant Game Procedures for each game shall contain, at a minimum, the following:

- (1) game number;
- (2) game name;
- (3) retail sales price;
- (4) play style;
- (5) pack size;
- (6) play symbols

- (7) captions or play symbol captions;
- (8) number and value of prizes;
- (9) retailer paid prizes;
- (10) prize drawings, if any.
- (c) The play style for an individual game shall be fully described in the Instant Game Procedures and may take the form of one or more of the following methods of play:
  - (1) Match Three - like amounts or symbols;
  - (2) Match Three with Specific Match Variant;
  - (3) Three Match Three;
  - (4) Add Up;
  - (5) Three In Line;
  - (6) Key Number Match;
  - (7) Your Number(s) Beats Their Number(s);
  - (8) Three Consecutive Numbers or Symbols in Sequence;
  - (9) Doubler; or
  - (10) Any other play style developed by OLC.
- (d) Instant game procedures will follow the format provided as an example only in Appendix A.

- 429:15-1-14. Instant Game Promotion Procedures**
- (a) OLC shall make available to retailers and the public specifics for each Instant Game Promotion prior to the promotion being introduced to the public for participation.
  - (b) The Instant Game Promotion Procedures shall contain, at a minimum, the following:
    - (1) Game promotion name;
    - (2) Retail sales price, if any;
    - (3) Play style;
    - (4) Odds;
    - (5) Prize levels;
    - (6) Method of player entry;
    - (7) Prize drawings or winner selection method; and
    - (8) Deadline for player entry.
  - (c) Instant Game Promotion Procedures will follow the format provided as an example only in Appendix B.

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## APPENDIX A. INSTANT GAME PROCEDURES [NEW]

The following information is provided as an example only.

Oklahoma Lottery Commission

### INSTANT GAME PROCEDURES INSTANT GAME NO. 01 "GAME NAME"

Date

1. **Instant Game Number:**
2. **Game Name:**
3. **Retail Sales Price:**
4. **Overall Odds:**
5. **Play Style:**
6. **Pack Size:**
7. **Play Symbols:**
8. **Captions or Play Symbol Captions:**

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
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9. **Prize Levels:**

Prize Levels

10. **Retailer Paid Prizes:**

11. **Prize Drawings (if any):**

Approved

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James R. Scroggins  
EXECUTIVE DIRECTOR

\_\_\_\_\_ Date

**APPENDIX B. INSTANT GAME PROMOTION PROCEDURES [NEW]**

The following information is provided as an example only.

Oklahoma Lottery Commission

**INSTANT GAME PROMOTION PROCEDURES  
INSTANT GAME NO. 01 "GAME NAME"**

Date

1. **Game Promotion Name:**
2. **Retail Sales Price, if any:**
3. **Play Style:**
4. **Odds:**
5. **Prize Levels:**
6. **Method of Player Entry:**
7. **Prize drawings or winner selection method:**
8. **Deadline for player entry:**

Approved

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James R. Scroggins  
EXECUTIVE DIRECTOR

Date

*[OAR Docket #05-1281; filed 10-17-05]*

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# Emergency Adoptions

## TITLE 429. OKLAHOMA LOTTERY COMMISSION CHAPTER 20. ONLINE GAMES

[OAR Docket #05-1282]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

429:20-1-1. [RESERVED]  
429:20-1-2. through 429:20-1-17. [NEW]  
Appendix A. [NEW]  
Appendix B. [NEW]

### AUTHORITY:

Oklahoma Lottery Commission, 3A O.S., Section 710.

### DATES:

#### Adoption:

October 5, 2005

#### Approved by Governor:

October 10, 2005

#### Effective:

Immediately upon gubernatorial approval

#### Expiration:

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Oklahoma Lottery Commission finds that a compelling public interest requires these emergency rules be adopted to ensure the integrity and successful operation of a lottery in Oklahoma. The Oklahoma Lottery Education Act was added by Laws 2003, Enrolled House Bill 1278, State Question No. 705, Legislative Referendum 330, approved at the general election held November 2, 2004 and amended by Enrolled House Bill 1649 in 2005. These rules are necessary for the lottery to operate.

### ANALYSIS:

The rules establish general operating rules for the Lottery Commission, establish selection criteria for retailers, payment of commissions to retailers, and other requirements for retailers. The rules also establish rules for the instant and online lottery games, establish rules for the determination of prize winners and for the introduction, promotion and operation of each game. The rules also establish minimum prize amounts.

### CONTACT PERSON:

Rollo Redburn, Administrative Rules Liaison, 521-0547

**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):**

#### 429:20-1-1.      RESERVED

#### 429:20-1-2.      Definitions

In addition to terms defined in the Oklahoma Education Lottery Act, 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 Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

"Altered Ticket" means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

"Authorized Location" means a business authorized by a contract with OLC to sell OLC Lottery products. "Authorized Location" and "Authorized Retailer" are synonymous terms.

"Automatic Win Symbol" means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

"Breaks" means a gap of one or more numbered instant tickets in a pack number sequence.

"Cancelled Ticket" means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

"Caption" means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

"Certified Drawing" means a drawing in which the lottery and an independent accountant attests that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Claim Center" means an OLC authorized location available to pay claims for prizes of more than \$600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars (\$5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

"Claim Form" means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

"Claimant" means a player who has submitted a claim for prize payment.

"Claim Period" means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

"Computer Selected Items" means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

"Counterfeit Ticket" means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

"Defectively Printed Tickets" means the same as mis-registered ticket.

"Display Printing" means the printing on the ticket not associated with the ticket game play.

"District Office" means an OLC claim center, if any, in various cities in Oklahoma.

"Disputed Ticket" means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

"Doubler" means any method used on a ticket to double a prize amount.

**"Draw Procedures"** means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

**"Drawing"** means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

**"Duplicate Ticket"** means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

**"Electronic Funds Transfer" or EFT** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

**"Entry"** means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

**"Executive Director"** means the chief executive officer and administrator of the Oklahoma Lottery Commission.

**"Finalist"** means a person selected through a preliminary drawing for participation in a grand prize drawing.

**"Floating Image Play Area"** means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

**"Game Board"** means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

**"Game Name"** means the name of the Instant or Online game, as specified in the game procedures.

**"Game Number"** means the preprinted number on an instant ticket which identifies a particular game.

**"Game Report"** means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

**"Game Specifications Document"** means the same as working papers.

**"Grand Prize Drawing"** means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

**"High-Tier Prize"** means a prize of \$601 or more.

**"Instant Game"** means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

**"Instant Game Procedures"** means the document summarizing the game specifications as provided in the working papers for each Instant Game.

**"Instant Game Promotion Procedures"** means the OLC approved procedures for player participation in any Instant Game Promotion.

**"Jackpot"** means a large prize; often the top prize in an online game.

**"Lottery Retailer"** or "Retailer" means a business entity contracted to OLC to sell lottery tickets.

**"Low-Tier Prize"** means a prize of twenty-five dollars (\$25) or less.

**"Mid-Tier Prize"** means a prize of \$25.01-\$600.

**"Minor"** means an individual younger than 18 years of age.

**"Miscut Ticket"** means a ticket cut during production such that the ticket is not whole and able to be validated.

**"Misregistered Ticket"** means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

**"Mutilated Ticket"** means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

**"Non-Cash Prize"** means merchandise prizes offered in lottery games or lottery promotions.

**"Oklahoma Lottery Retailer Contract"** means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, "**Retailer Contract,**" "**Oklahoma Ticket Sales Contract,**" "**Lottery Retail Sales Contract,**" and "**Lottery Retailer Sales Contract**" all mean "**Oklahoma Lottery Retailer Contract**".

**"OLC"** means the Oklahoma Lottery Commission.

**"Online Game"** means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "Online Game" does not include a game played via the Internet.

**"Online Game Procedures"** means the document summarizing game specifications for each online game offered for sale by OLC.

**"Online Game Promotion Procedures"** means the document summarizing promotion specifications for each online game promotion offered by OLC.

**"Online Terminal"** means the OLC authorized sales terminal used to sell various online lottery number games.

**"Pack"** or "**Pack Size**" means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

**"Pack Number"** means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

**"Play Area"** means the covered area of an instant ticket that contains the ticket play symbols.

**"Play Central<sup>®</sup> Lottery Kiosk"** means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

**"Play Panel"** means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

**"Play Slip"** means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

**"Play Spot"** means an authorized area on an instant ticket containing one play symbol and one caption.

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**"Play Station"** means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

**"Play Style"** means the method of play to determine a winner for an individual game or game promotion.

**"Play Symbol"** means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

**"Player-Selected Item"** means a number or item or group of numbers or items selected by a player in connection with an online game.

**"Point of Sale Material"** or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries). **"Point of Purchase Material"** or **"POP"** is synonymous with POS.

**"Preliminary Drawing"** means an event for the selection of contestants for a grand prize drawing.

**"Price Point"** means the retail selling price of an individual game ticket.

**"Printer Omitted Tickets"** means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

**"Prize"** means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

**"Prize Drawing"** means a method for determining game or game promotion winners, as defined in OLC procedures.

**"Prize Structure"** means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

**"Retailer"** means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

**"Retailer Commission"** means the amount of money paid to retailers for selling lottery products.

**"Retailer Paid Prizes"** means prizes which may be paid by retailers subject to OLC validation procedures.

**"Retail Sales Price"** means the OLC designated price OLC retailers must charge for a ticket when sold.

**"Retailer Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

**"Retailer Validation Code"** means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

**"Settled Pack"** means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

**"Share"** means any intangible evidence of participation in a lottery game.

**"Ticket"** means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

**"Ticket Number"** means the number on the ticket that refers to the ticket sequence within the pack.

**"Ticket Order Quantity"** means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

**"Unreadable Ticket"** means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

**"Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

**"Validation Procedures"** means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

**"Valid Ticket"** means a ticket which meets all OLC game specifications and OLC validation requirements.

**"Variant"** means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

**"VIRN (Void If Removed Numbers)"** means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

**"Wild"** means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

**"Working Papers"** means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

### **429:20-1-3. Ticket Responsibility**

(a) A ticket is a bearer instrument until signed on the back by the ticket holder.

(b) The OLC will not be responsible for lost, stolen, or destroyed tickets.

(c) The OLC will not be responsible for mutilated, altered, unreadable tickets, or tickets tampered with in any manner.

(d) The OLC will not be responsible for tickets claimed by a player in error for a lower prize at a retailer.

(e) The OLC may not pay prizes to any claimant who purchases a ticket from an unauthorized retailer or unauthorized person.

### **429:20-1-4. Sale of Online Game tickets**

(a) Only retailers who have a current contract with OLC are authorized to sell Online Game tickets, and tickets may be sold only at the authorized location.

(b) Each Online Game ticket shall be sold for the retail sales price authorized by OLC and stated in the Online Game Procedures.

### **429:20-1-5. Determination of Prize Winner**

(a) The numbers appearing on an Online ticket shall be used by the player to determine eligibility for Online Game prizes.

(b) A player's eligibility to win a prize is subject to the OLC ticket validation requirements.

(c) Eligibility to win a prize is based on the approved play style provided in the Online Game Procedures.

(d) An online game play may only be claimed for the highest prize category won.

(e) For purposes of calculation of any prize to be paid in any Online game, the winning prize amount shall be rounded down to the nearest dollar.

### **429:20-1-6. Ticket Validation Requirements**

(a) Each Online game ticket shall be validated according to OLC validation procedures prior to payment of a prize.

(b) An Online game ticket shall comply with all of the following:

(1) The ticket validation number shall be present in its entirety and shall correspond to the prize validation file and with the data printed on the ticket;

(2) The ticket shall not be mutilated, altered, unreadable, or tampered with in any manner;

(3) The ticket shall not be counterfeit or a duplicate of another winning ticket;

(4) The ticket shall have been issued by the lottery through an authorized Online game sales terminal in an authorized manner;

(5) The ticket shall be validated in accordance with confidential OLC procedures for claiming, validating and payment of prizes;

(6) The ticket shall have been recorded in the OLC central computer system or recording media before the drawing and the ticket shall match this OLC record in every aspect;

(7) The validation number data and the drawing date of an apparent winning ticket shall appear on the official file of winning tickets and a single play grid with the exact data and the ticket may not have been previously paid;

(8) The ticket may not be misregistered or defectively printed to an extent that it cannot be validated by the lottery;

(9) The ticket shall pass all other confidential security tests of OLC.

(c) Any ticket not passing all of the validation tests and requirements is void and ineligible for any prize and shall not be paid. The OLC may, in its sole discretion, reimburse the player for the cost of the void ticket. This shall be the claimant's only remedy.

(d) If a defective ticket is purchased by a player, the only OLC liability shall be reimbursement for the cost of the defective ticket.

### **429:20-1-7. Disputed ticket**

If a dispute arises between OLC and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the OLC may, exclusively at OLC's determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's only remedy.

### **429:20-1-8. Game end date or game promotion end date and prize claim period.**

(a) The OLC, at any time, may announce the end date for an individual game.

(b) No tickets shall be sold past the game end.

(c) Online game prizes shall be claimed no later than 180 days after the drawing date of the individual game.

(d) Online Game Promotion end dates and related promotion entry dates will be provided in the Online Game Promotion Procedures for each online game promotion.

### **429:20-1-9. Draw procedures**

Drawings procedures for online games and Online Game promotions will be defined in an OLC approved and secure draw procedures document.

### **429:20-1-10. Governing law**

In purchasing a ticket, the player agrees to comply with, and abide by, the Act, and all rules and final decisions of the OLC, and all procedures and instructions established by the OLC for the conduct of the game or game promotion.

### **429:20-1-11. Prize withholdings**

All prizes are subject to applicable federal tax withholdings, state income tax, and other required state withholdings, or delinquent state debt.

### **429:20-1-12. Game report**

Following the time period in which prizes may be claimed after termination of a game, the OLC shall prepare a report that shows, at a minimum, the total number of tickets sold and the number of prizes awarded in the game.

### **429:20-1-13. Prize amounts for online games**

(a) The total amount of prize money allocated to the winnings pool for online games shall be a minimum of forty-five percent (45%) of the total gross Online Game sales.

(b) The allocation of the Online Game winnings to the prize pool categories shall be provided in the Online Game Procedures.

(c) All online game prizes shall be paid in a lump sum cash payment, except prizes of one-million dollars (\$1,000,000) or more which may be paid as provided in (d) and (e) of this section.

(d) First prize.

(1) The amount allocated to the first prize prize pool in an online large-jackpot game may be used to purchase securities or an annuity for each winning ticket.

(2) The first prize will be payable to winning ticket holders by an initial cash payment plus equal payments as established by OLC.

(3) Any winning ticket owned by multiple owners shall be funded as outlined in Paragraph 1 and 2 of this section to the owners as declared on the claim form for claiming the online prize.

(4) The first prize may be payable to winning ticket holder(s) in a lump sum cash payment equal to the cash value of the first prize prize pool. The decision to accept a

## **Emergency Adoptions**

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lump sum payment must be unanimously agreed to by all owners of the winning ticket.

(e) In the event that a prize of one-million dollars (\$1,000,000) or more is owned by multiple owners and the resulting prize amount payable to each owner is less than one-million dollars (\$1,000,000), each owner of the prize amount will be paid in a lump sum cash amount.

### **429:20-1-14. Game Sell-Out Prohibited**

No OLC office or OLC retailer shall directly and knowingly sell a ticket or combination of tickets to any person or entity which would guarantee such a purchaser a prize in an online game or online game promotion.

### **429:20-1-15. Entry of Plays**

(a) Online Game plays may only be entered manually using the authorized lottery sales terminal or by means of a playslip provided by the OLC and hand-marked by the player or by other means approved by the OLC.

(b) Retailers shall not permit facsimile playslips, copies of playslips, or other materials not printed or approved by the OLC to be inserted into the sales terminal's playslip reader.

(c) Retailers shall not permit any device to be connected to a lottery sales terminal to enter plays, except as approved by OLC.

### **429:20-1-16. Online Game Procedures**

(a) OLC shall make available to retailers and the public specifics for each Online Game prior to the game being introduced to the public for sale.

(b) The Online Game Procedures shall contain at a minimum the following:

- (1) The game name;
- (2) The retail sales price;
- (3) The game play style;
- (4) The game odds;
- (5) The game prize levels;
- (6) The retailer paid prize levels; and
- (7) The method of prize drawings.

(c) This section shall also apply to any multi-state game offered for sale by OLC.

(d) Online Game Procedures will follow the format provided as an example only in Appendix C.

### **429:20-1-17. Online Game Promotion Procedures**

(a) OLC shall make available to retailers and the public specifics for each Online Game Promotion prior to the promotion being introduced to the public for participation.

(b) The Online Game Promotion Procedures shall contain, at a minimum, the following:

- (1) The game promotion name;
- (2) Retail sales price, if any;
- (3) Play style;
- (4) Odds;
- (5) Prize levels;
- (6) Method of player entry;
- (7) Method of prize drawings; and
- (8) Promotion entry deadlines.

(c) This section shall also apply to any multi-state game promotion offered by OLC.

(d) Online Game Promotion Procedures will follow the format provided as an example only in Appendix D.

**APPENDIX A. ONLINE GAME PROCEDURES [NEW]**

The following information is provided as an example only.

**Oklahoma Lottery Commission**

**ONLINE GAME PROCEDURES**

Date

1. **Game Name:**
2. **Retail Sales Price:**
3. **Play Style:**
4. **Odds:**
5. **Prize Levels:**
6. **Retailer Paid Prize Levels:**
7. **The Method of Prize Drawings:**

Approved

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James R. Scroggins    Date  
EXECUTIVE DIRECTOR

**APPENDIX B. ONLINE GAME PROMOTION PROCEDURES [NEW]**

The following information is provided as an example only.

**Oklahoma Lottery Commission  
ONLINE GAME PROCEDURES**

Date

1. **Game Name:**
2. **Retail Sales Price:**
3. **Play Style:**
4. **Odds:**
5. **Prize Levels:**
6. **Retailer Paid Prize Levels:**
7. **The Method of Prize Drawings:**

Approved

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James R. Scroggins    Date  
EXECUTIVE DIRECTOR

*[OAR Docket #05-1282; filed 10-17-05]*

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# Executive Orders

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

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

## TITLE 1. EXECUTIVE ORDERS

**1:2005-25.**

### EXECUTIVE ORDER 2005-25

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby establish the Governor's Emergency Medical Services (EMS) Readiness Task Force.

Members of Oklahoma's EMS make extraordinary commitments to serve our state and nation. These brave men and women are often the first to administer critical medical attention in times of crisis. They are the essential front line of healthcare, especially in rural Oklahoma.

The EMS Readiness Task Force will help identify the pressing needs of Oklahoma's EMS system. The Task Force shall study EMS funding, supervision of Emergency Medical Technicians by qualified physicians, Quality Improvement systems, Emergency Medical Dispatch systems, and personnel training and retention. In consultation with the Oklahoma Office of Homeland Security, the Task Force shall assess the readiness of Oklahoma's EMS to respond to various emergencies.

The Governor's EMS Readiness Task Force is hereby created and shall consist of not more than fifteen (15) members. Appointees may include persons who are or have been engaged in fields related to EMS systems. Additional members of the Task Force representing State Government may be designated by the Governor as deemed necessary. All members shall be appointed by the Governor to serve at his pleasure. All members shall serve without compensation. Task Force members employed by a state agency shall be reimbursed travel expenses related to their service on the Task Force as authorized by state law by their respective state agency. Remaining Task Force members shall be reimbursed travel expenses related to their service on the Task Force, as authorized by state law, by the Oklahoma Department of Health.

The Task Force shall meet at such times and places as it deems appropriate and shall be staffed by the Oklahoma Department of Health. The Task Force shall elect a chair and vice chair from its membership. The Task Force shall submit a preliminary report to the Governor regarding its progress and status by January 5, 2005. A final report shall be submitted to the Governor, Speaker of the House of Representatives and

President Pro Tempore of the Senate within one year of the date of this Order.

The Task Force shall conduct a comprehensive review of issues affecting Oklahoma's EMS system. The Task Force shall study and make recommendations regarding benefits and initiatives impacting the EMS system statewide. Any plans developed by the Task Force shall include a cost benefit analysis and suggestions for resources to meet any needed funding.

This Executive Order shall be distributed to the Oklahoma Department of Health which shall cause the provisions of the Order to be implemented.

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 20th day of October, 2005.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

[OAR Docket #05-1288; filed 10-21-05]

**1:2005-25A.**

### AMENDED EXECUTIVE ORDER 2005-25

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby establish the Governor's Emergency Medical Services (EMS) Readiness Task Force.

Members of Oklahoma's EMS make extraordinary commitments to serve our state and nation. These brave men and women are often the first to administer critical medical attention in times of crisis. They are the essential front line of healthcare, especially in rural Oklahoma.

The EMS Readiness Task Force will help identify the pressing needs of Oklahoma's EMS system. The Task Force shall

## Executive Orders

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study EMS funding, supervision of Emergency Medical Technicians by qualified physicians, Quality Improvement systems, Emergency Medical Dispatch systems, and personnel training and retention. In consultation with the Oklahoma Office of Homeland Security, the Task Force shall assess the readiness of Oklahoma's EMS to respond to various emergencies.

The Governor's EMS Readiness Task Force is hereby created and shall consist of not more than fifteen (15) members. Appointees may include persons who are or have been engaged in fields related to EMS systems. Additional members of the Task Force representing State Government may be designated by the Governor as deemed necessary. All members shall be appointed by the Governor to serve at his pleasure. All members shall serve without compensation. Task Force members employed by a state agency shall be reimbursed travel expenses related to their service on the Task Force as authorized by state law by their respective state agency. Remaining Task Force members shall be reimbursed travel expenses related to their service on the Task Force, as authorized by state law, by the Oklahoma Department of Health.

The Task Force shall meet at such times and places as it deems appropriate and shall be staffed by the Oklahoma Department of Health. The Task Force shall elect a chair and vice chair from its membership. The Task Force shall submit a preliminary report to the Governor regarding its progress and status by January 5, 2006. A final report shall be submitted to the Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate within one year of the date of this Order.

The Task Force shall conduct a comprehensive review of issues affecting Oklahoma's EMS system. The Task Force shall study and make recommendations regarding benefits and initiatives impacting the EMS system statewide. Any plans developed by the Task Force shall include a cost benefit analysis and suggestions for resources to meet any needed funding.

This Executive Order shall be distributed to the Oklahoma Department of Health which shall cause the provisions of the Order to be implemented.

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 26 day of October, 2005.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #05-1303; filed 10-27-05]*

**1:2005-26.**

### EXECUTIVE ORDER 2005-26

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby establish the Governor's Teachers' Retirement System Task Force to study the effect the Teachers' Retirement System (TRS) of Oklahoma has on the employment of qualified educators.

The purpose of the TRS Task Force shall be to conduct a comprehensive study of the effect various educator retirement benefit plans have on a state's ability to attract and retain qualified educators. The Task Force's review shall include, but shall not be limited to, the following:

1. A comparison of various types of benefit plans for educators, including defined benefit plans, defined contribution plans and hybrid benefit plans, including but not limited to cash-balance plans, combination plans, floor-offset plans and pension-equity plans;
2. A comparison of benefits, contributions, costs, investment options, liabilities, portability, risks and vesting options of defined benefit plans, defined contribution plans and hybrid benefit plans
3. An analysis of the process of converting from the current structure of the Teachers Retirement System of Oklahoma to other types of benefit plans, including but not limited to analysis of cost to the employer and employees, obligations, risks and length of time required for conversion;
4. An analysis of the financial condition of other states' educator retirement systems and the funding mechanisms of each;
5. An analysis of the impact that various types of benefit plans have on the ability of states to attract and retain qualified educators; and
6. Such other matters relevant to a thorough study of educator retirement benefit plans as the task force may select.

The Governor's TRS Task Force shall consist of eleven (11) members to be appointed by, and to serve at the pleasure of, the Governor as follows:

1. One member shall be a retired teacher currently receiving benefits from the Teachers' Retirement System of Oklahoma;
2. One member shall be an active classroom teacher who is a member of the system;
3. One member shall be a representative of the Oklahoma State System of Higher Education;

4. One member shall have demonstrated professional experience in retirement and benefit systems;
5. One member shall be a board member of the TRS of Oklahoma;
6. The Executive Director or designee of the TRS of Oklahoma;
7. The Director of the Office of State Finance or designee;
8. One State Representative;
9. One State Senator;
10. The State Director of the Oklahoma Department of Career and Technology Education or designee; and
11. The State Superintendent of Public Instruction or designee.

The Task Force shall meet at such times and places as it deems appropriate. Members shall serve without compensation. Task Force members employed by a state agency shall be reimbursed travel expenses related to their service on the Task Force as authorized by state law by their respective state agency. Legislative member of the Task Force shall be reimbursed by their respective houses for necessary travel expenses incurred in the performance of their duties as authorized by state law. Remaining Task Force members shall also be reimbursed travel expenses related to their service on the Task Force as authorized by state law by the TRS of Oklahoma.

Administrative support for the Task Force, including, but not limited to, personnel necessary to ensure the proper performance of the duties and responsibilities of the Task Force, shall be provided by the TRS of Oklahoma and the Office of State Finance. Support shall include, to the extent practical, actuarial and legal advisors retained by the TRS. The Task Force shall elect a chair and vice chair from its membership.

The Task Force shall submit a final report to the Governor not later than January 15, 2006. The final report shall summarize their comprehensive study and contain recommendations on the most desirable benefit plan to maximize the ability of Oklahoma to attract and retain the most qualified educators. The final report shall also identify the cost and funding mechanism for the recommended benefit plan.

This Executive Order shall be distributed to the TRS of Oklahoma and the Office of State Finance which shall cause the provisions of the Order to be implemented.

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 21 day of October, 2005.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #05-1289; filed 10-21-05]*

**1:2005-27.**

**EXECUTIVE ORDER 2005-27**

I, Brad Henry, Governor of the State of Oklahoma, by the authority conferred upon me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, other laws of the State of Oklahoma, and the Federal Workforce Investment Act (Public Law 102-367), do hereby establish the Governor's Council for Workforce and Economic Development to serve as the State's Workforce Investment Board. Executive Order 2004-06 is hereby revoked.

The Governor's Council for Workforce and Economic Development shall succeed and is established in lieu of the Oklahoma Workforce Investment Board. Pursuant to the Federal Workforce Investment Act, the Council will guide the development of a comprehensive and coordinated workforce development system for the state and monitor its operation. In addition, the Council will review and make recommendations that will align the workforce system, including education, with the economic development goals of the state for the purpose of creating workforce and economic development systems that are integrated and will provide Oklahoma a competitive advantage in a global economy.

Activities of the Council shall be coordinated by the Secretary of Commerce and Tourism and directed by the Deputy Secretary of Commerce for Workforce Development, or their successors in office or function. Administrative and staffing support for the Council shall be coordinated by the office of Workforce Solutions within the Department of Commerce.

Also established with this executive order is the Workforce Solutions Staff Team. This interagency team will be comprised of executive level staff from all workforce, education and economic development agencies of the state for the purpose of providing staff support to the Council and to create efficiencies, eliminate duplication, and eliminate barriers to jointly providing a service delivery system. Other members may be included on this team as the Governor, Secretary of Commerce or Deputy Secretary of Commerce may deem necessary to accomplish this goal.

## Executive Orders

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Included among the duties and responsibilities of the Council in the development, monitoring and aligning of the workforce system with economic development are:

Perform duties required of the state governance board by the federal Workforce Investment Act;

Identify the human resource investment needs of Oklahoma business and industry, together with those of the citizens of the state, so that each might respond to and meet the needs of the others and thus together build a robust, diversified economy;

Review and evaluate workforce development programs within the state, formulate recommendations to increase their efficiency and effectiveness, eliminate duplication, and align with economic goals. Recommendations shall be communicated to the Governor, Legislature, state and federal government agencies and appropriate individuals and entities within the private sector;

Increase academic capability and technical skills within the state workforce and foster lifelong learning among Oklahoma's citizens;

Strengthen collaboration among institutions which provide education and training services, government agencies which coordinate employment and other human resource investment activities, and Oklahoma business and industry to create a seamless system to nurture healthy economic development; and,

Enhance rural economic development capability and capacity, giving particular attention to regional collaboration and partnering.

Membership of the Council shall include representatives of private employers who reflect Oklahoma's projected and desired business and industry base and public officials from agencies which provide programs and services related to workforce, education and economic development. All Council members shall be in positions to influence policy and hiring decisions within their organizations. Initial appointments to the Council shall conform to the following described schedule:

1. A majority of the Council shall come from described private sector employers
2. State officials shall include incumbents or designees of the following named offices, or their successors in office or function:
  - a. Governor
  - b. Two (2) members of the Senate, appointed by the President Pro Tempore
  - c. Two (2) members of the House of Representatives, appointed by the Speaker
  - d. Secretary of Commerce and Tourism
  - e. Secretary of Education
  - f. Secretary of Human Services

- g. Chancellor of the Oklahoma State Regents for Higher Education
- h. Director of Career and Technology Education
- i. State Superintendent of Public Instruction
- j. Executive Director of the Employment Security Commission
- k. Director of the Department of Rehabilitation Services

3. Two (2) members from organizations with experience in the delivery of workforce services, including community colleges or other community-based workforce service organizations.

4. Two (2) members from organizations or individuals that have experience with respect to youth activities.

5. Two (2) members that are chief elected officials from a city and county.

6. Two (2) members that represent labor organizations.

7. Additional members, at the discretion and pleasure of the Governor, may be appointed representing:

- a. Local welfare agencies
- b. Public housing agencies
- c. Administrators of programs which receive federal or state human resources funding
- d. Representative of a Local Workforce Board Chairs Association
- e. Entities with special knowledge and qualifications regarding special educational and career development needs of hard-to-serve individuals
- f. State and local economic development representatives
- g. Juvenile justice programs
- h. State Human Resources Organization
- i. Representatives of Tourism, Agriculture, Corrections and Transportation
- j. Representatives of Oklahoma Tribes or Nations
- k. Representatives of minorities in Oklahoma

Private sector members shall be appointed by and serve at the pleasure of the Governor for a two-year term beginning October 1, 2005, and may be reappointed. However, of the initial private sector members appointed, half shall be appointed for an initial term of one (1) year beginning October 1, 2005. In addition, private members may be removed from office for failure to attend three consecutive Council meetings. Chair of the Council shall be from the private sector and shall be appointed by and serve at the pleasure of the Governor.

The Council shall meet at such times and places as it deems appropriate. Members shall serve without compensation. Council members employed by a state agency shall be reimbursed travel expenses related to their service on the Council as authorized by state law by their respective state agency. Legislative members of the Council shall be reimbursed by their respective houses for necessary travel expenses incurred in the performance of their duties as authorized by state law. Remaining council members shall also be reimbursed travel

expenses related to their service on the Council by the Oklahoma Department of Commerce as authorized by state law. No member of the Council shall profit, directly or indirectly, from any transaction with the Council.

The Council shall be supported by funds available to state agencies pursuant to state and federal laws and regulations. Each member of the Council whose agency qualifies pursuant to state and federal law to receive and use such funds shall assist by providing support and funding of the Council in carrying out the responsibilities.

This Executive Order shall be distributed to all members of the Governor's Cabinet and the executive heads of all heads of appropriate and affected state agencies who shall cause the provisions of this order to be implemented.

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 24 day of October, 2005.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #05-1295; filed 10-25-05]*

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**1:2005-28.**

**EXECUTIVE ORDER 2005-28**

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and

Oklahoma flags on State property at half-staff from 8 a.m. until 5 p.m. on Wednesday, November 2, 2005, in honor of Rosa Parks.

Rosa Parks demonstrated that one dedicated person can help change the world, no matter how daunting or difficult the task first appears. She stood up for what was right, without regard to personal consequences, and in the process, helped build a better country. She was an inspiration to her generation and will continue to serve as an inspiration for every generation to come. Rosa Parks is an American Icon.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 31st day of October, 2005.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #05-1308; filed 11-1-05]*

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