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**Brad Henry, Governor**  
**M. Susan Savage,**  
**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.*

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

*[OAR Docket #06-870]*

### **RULEMAKING ACTION:**

Notice of proposed EMERGENCY rulemaking

### **PROPOSED RULES:**

Subchapter 3. Licenses

310:675-3-1.1. [AMENDED]

310:675-3-4.1. [AMENDED]

310:675-3-5.1. [AMENDED]

310:675-3-8. [AMENDED]

### **SUMMARY:**

The proposed amendments delete requirements for nursing facilities to submit the Federal Tax Waiver, ODH Form 953-H. This action is necessary because the Internal Revenue Service will no longer accept the ODH Form 953-H. The Internal Revenue Service in April 2006 advised the State Department of Health that all requests for verification of federal taxes must be submitted on the IRS Form 4506-T. The Internal Revenue Service can no longer provide the Department of Health with a "yes/no" answer as to whether an entity is in compliance with federal tax requirements.

Emergency action on this rule is needed to avoid the unnecessary cost for facilities and the Health Department to prepare and process the unusable ODH Form 953-H. If this rule amendment is approved, then the ODH Form 953-H will not be required of approximately 430 nursing and specialized nursing facilities that are due to file for license renewals in July 2006.

### **AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Sections 1-104 and 1-1901 et seq.

### **COMMENT PERIOD:**

June 1, 2006 through June 8, 2006. Interested persons may informally discuss the proposed rules with Protective Health Services staff; or before June 8, 2006, may submit written comments to Henry Hartsell, Chief, Health Resources

Development Service, Oklahoma State Department of Health, 1000 N.E. 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299; or before June 8, 2006, may send electronic mail to [hank@health.ok.gov](mailto:hank@health.ok.gov); or may ask to present written or oral views at the hearing.

### **PUBLIC HEARING:**

The public hearing will be part of the regular meeting of the State Board of Health, June 8, 2006, which begins at 1:00 p.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 N.E. 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299.

### **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 before June 8, 2006 to Henry F. Hartsell Jr. at the above address or to [hank@health.ok.gov](mailto:hank@health.ok.gov).

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

Copies of the proposed rules may be obtained from the Oklahoma State Department of Health, Health Resources Development Service, 1000 N.E. 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299, or by electronic mail request to [hank@health.ok.gov](mailto:hank@health.ok.gov).

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement has been prepared and is available at the location listed above for obtaining copies of the rule.

### **CONTACT PERSON:**

Henry F. Hartsell Jr., Chief, Protective Health Services, Health Resources Development Service, telephone (405) 271-9444 ext. 57269; facsimile: 405-271-7360; email: [hank@health.ok.gov](mailto:hank@health.ok.gov)

*[OAR Docket #06-870; filed 5-9-06]*

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# Submissions for Review

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

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

**TITLE 120. CAPITOL-MEDICAL  
CENTER IMPROVEMENT AND ZONING  
COMMISSION  
CHAPTER 10. ZONING REGULATIONS  
FOR CAPITOL-MEDICAL CENTER  
IMPROVEMENT AND ZONING DISTRICT**

*[OAR Docket #06-771]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 3. Specific District Regulations [AMENDED]

120:10-3-12. [AMENDED]

Subchapter 5. General District Provision and Additional  
Zoning Regulations

120:10-5-1. [REVOKED]

120:10-5-7. [REVOKED]

Subchapter 15. Signage Guidelines [NEW]

120:10-15-1. [NEW]

120:10-15-2. [NEW]

120:10-15-3. [NEW]

120:10-15-4. [NEW]

120:10-15-5. [NEW]

120:10-15-6. [NEW]

120:10-15-7. [NEW]

120:10-15-8. [NEW]

120:10-15-9. [NEW]

120:10-15-10. [NEW]

120:10-15-11. [NEW]

120:10-15-12. [NEW]

120:10-15-13. [NEW]

120:10-15-14. [NEW]

120:10-15-15. [NEW]

Appendix D. [NEW]

**SUBMITTED TO GOVERNOR:**

October 3, 2005

**SUBMITTED TO HOUSE:**

October 3, 2005

**SUBMITTED TO SENATE:**

October 3, 2005

*[OAR Docket #06-771; filed 4-26-06]*



# Gubernatorial Approvals

Upon notification of approval by the Governor of an agency's proposed PERMANENT rulemaking action, the agency must submit a notice of such gubernatorial approval for publication in the *Register*.  
For additional information on gubernatorial approvals, see 75 O.S., Section 303.2.

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

*[OAR Docket #06-792]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 1. General Provisions [AMENDED]
- Subchapter 3. Organization and Operation [AMENDED]
- Subchapter 5. Declaratory Ruling Procedures [AMENDED]
- Subchapter 7. Rulemaking Procedures [AMENDED]
- Subchapter 9. Individual Procedures [AMENDED]

### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-792; filed 5-2-06]*

## **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 3. FINE MATRICES**

*[OAR Docket #06-793]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 1. Fine Schedules
- Part 17. ~~Water~~ Quality Agricultural Environmental Management Violations [NEW]
- 35:3-1-30. through 35:3-1-32. [NEW]

### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-793; filed 5-2-06]*

## **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL**

*[OAR Docket #06-794]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Chapter 13. Fuel Alcohol [NEW]

### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-794; filed 5-2-06]*

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

*[OAR Docket #06-795]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 1. General Provisions
- 35:15-1-1. [AMENDED]
- 35:15-1-2. [NEW]
- 35:15-1-3. [NEW]
- Subchapter 11. Importation of Livestock, Poultry, and Pets
- Part 3. Official Health Certificates
- 35:15-11-5. [AMENDED]
- Part 7. Livestock
- 35:15-11-15. [AMENDED]
- 35:15-11-17. [AMENDED]
- Subchapter 17. Bovine and Bison Brucellosis
- Part 1. Definitions
- 35:15-17-1. [AMENDED]
- Subchapter 19. Poultry Regulations
- 35:15-19-7. [AMENDED]
- Subchapter 40. Bovine Tuberculosis
- Part 1. Definitions
- 35:15-40-1. [AMENDED]
- Subchapter 42. Tuberculosis Eradication in Cervidae
- Part 1. Definitions
- 35:15-42-1. [AMENDED]
- Subchapter 47. Chronic Wasting Disease (CWD) in Cervidae
- Part 1. General
- 35:15-47-2. [AMENDED]

### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-795; filed 5-2-06]*

## Gubernatorial Approvals

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

*[OAR Docket #06-796]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 9. Livestock Dealers and Livestock Special Sales

Part 3. Livestock Special Sales

35:15-9-7. through 35:15-9-11. [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-796; filed 5-2-06]*

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

*[OAR Docket #06-797]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 11. Importation of Livestock, Poultry, and Pets

Part 7. Livestock

35:15-11-18. [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-797; filed 5-2-06]*

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

*[OAR Docket #06-798]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 15. Equine Infectious Anemia (EIA) [AMENDED]

Subchapter 16. Contagious Equine Metritis [NEW]

#### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-798; filed 5-2-06]*

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

*[OAR Docket #06-799]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 22. Swine Pseudorabies [AMENDED]

Part 1. General Provisions

35:15-22-1. [AMENDED]

35:15-22-2. [AMENDED]

Part 3. Requirements for Swine Entering Oklahoma

35:15-22-31. through 35:15-22-33. [AMENDED]

35:15-22-35. [AMENDED]

Part 5. Requirements for a Qualified Pseudorabies Negative Herd

35:15-22-51. [AMENDED]

35:15-22-53. [AMENDED]

Part 7. Requirements for Swine Exhibitions

35:15-22-71. [AMENDED]

Part 9. Requirements for Approved Markets

35:15-22-91. [AMENDED]

Part 11. Pseudorabies Testing, Vaccine, and Quarantine - Procedures

35:15-22-113. [AMENDED]

Subchapter 24. Swine Brucellosis [AMENDED]

Part 1. General Provisions

35:15-24-2. [AMENDED]

35:15-24-3. [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-799; filed 5-2-06]*

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

*[OAR Docket #06-800]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 47. Chronic Wasting Disease (CWD) in Cervidae

Part 3. Herd Certification Standards

35:15-47-6. [AMENDED]

Part 7. Interstate Movement Requirements

35:15-47-18. [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-800; filed 5-2-06]*

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

*[OAR Docket #06-801]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Rural Fire Protection Program Fund Act  
Part 5. Matching Grant Program  
35:20-3-22. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-801; filed 5-2-06]*

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

*[OAR Docket #06-802]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 17. Combined Pesticide  
Part 3. Certification, Conduct of Examinations, and Recertification  
35:30-17-6. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-802; filed 5-2-06]*

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

*[OAR Docket #06-803]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 17. Combined Pesticide  
Part 11. Standards for Application of Pesticide  
35:30-17-24.1. [NEW]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-803; filed 5-2-06]*

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

*[OAR Docket #06-804]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 17. Combined Pesticide  
Part 12. Minimum residue levels for termiticides applied to soil and permitted tolerances for pesticide tank mix and concentrate sample analysis  
35:30-17-28. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-804; filed 5-2-06]*

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

*[OAR Docket #06-805]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 29. Fertilizer  
Part 3. Liquid, Dry, and Anhydrous Ammonia  
35:30-29-37. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

*[OAR Docket #06-805; filed 5-2-06]*

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

*[OAR Docket #06-806]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

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

# Gubernatorial Approvals

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## GUBERNATORIAL APPROVAL:

April 21, 2006

*[OAR Docket #06-806; filed 5-2-06]*

**TITLE 120. CAPITOL-MEDICAL  
CENTER IMPROVEMENT AND ZONING  
COMMISSION  
CHAPTER 10. ZONING REGULATIONS  
FOR CAPITOL-MEDICAL CENTER  
IMPROVEMENT AND ZONING DISTRICT**

*[OAR Docket #06-772]*

## RULEMAKING ACTION:

Gubernatorial approval of permanent rules

## RULES:

Subchapter 3. Specific District Regulations [AMENDED]  
120:10-3-12. [AMENDED]  
Subchapter 5. General District Provision and Additional  
Zoning Regulations  
120:10-5-1. [REVOKED]  
120:10-5-7. [REVOKED]  
Subchapter 15. Signage Guidelines [NEW]  
120:10-15-1. [NEW]  
120:10-15-2. [NEW]  
120:10-15-3. [NEW]  
120:10-15-4. [NEW]  
120:10-15-5. [NEW]  
120:10-15-6. [NEW]  
120:10-15-7. [NEW]  
120:10-15-8. [NEW]  
120:10-15-9. [NEW]  
120:10-15-10. [NEW]  
120:10-15-11. [NEW]  
120:10-15-12. [NEW]  
120:10-15-13. [NEW]  
120:10-15-14. [NEW]  
120:10-15-15. [NEW]  
Appendix D. [NEW]

## GUBERNATORIAL APPROVAL:

November 17, 2005

*[OAR Docket #06-772; filed 4-26-06]*

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

*[OAR Docket #06-762]*

## RULEMAKING ACTION:

Gubernatorial approval of permanent rules

## RULES:

Subchapter 11. Finance  
Part 8. General Provisions  
340:2-11-79. [AMENDED]  
340:2-11-79.1. [NEW]  
340:2-11-80. through 340:2-11-84. [REVOKED]  
340:2-11-85. through 340:2-11-87. [AMENDED]  
340:2-11-88. through 340:2-11-90. [REVOKED]  
340:2-11-91. through 340:2-11-92. [AMENDED]  
340:2-11-93. through 340:2-11-96. [REVOKED]  
340:2-11-97. through 340:2-11-98. [AMENDED]  
340:2-11-99. [REVOKED]  
340:2-11-100. [AMENDED]  
Part 9. Travel Reimbursement  
340:2-11-115. through 340:2-11-117. [AMENDED]  
340:2-11-118. [REVOKED]  
340:2-11-119. [AMENDED]  
340:2-11-119.1. [NEW]  
340:2-11-120. [REVOKED]  
340:2-11-121. [AMENDED]  
340:2-11-122. through 340:2-11-124. [REVOKED]  
**(Reference APA WF 05-06)**

## GUBERNATORIAL APPROVAL:

April 13, 2006

*[OAR Docket #06-762; filed 4-26-06]*

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

*[OAR Docket #06-763]*

## RULEMAKING ACTION:

Gubernatorial approval of permanent rules

## RULES:

Subchapter 21. Departmental Services Unit  
Part 1. Open Records  
340:2-21-12. through 340:2-21-13. [AMENDED]  
340:2-21-14. [REVOKED]  
340:2-21-15. through 340:2-21-16. [AMENDED]  
Part 3. Records Management [REVOKED]  
340: 2-21-20. through 340:2-21-35. [REVOKED]  
**(Reference APA WF 05-22)**

## GUBERNATORIAL APPROVAL:

April 13, 2006

*[OAR Docket #06-763; filed 4-26-06]*

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

*[OAR Docket #06-764]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Office of Client Advocacy
    - Part 1. Administration
      - 340:2-3-2. [AMENDED]
    - Part 3. Investigations
      - 340:2-3-32. through 340:2-3-33. [AMENDED]
      - 340:2-3-35. through 340:2-3-38. [AMENDED]
    - Part 5. Grievances
      - 340:2-3-45. through 340:2-3-46. [AMENDED]
      - 340:2-3-50. through 340:2-3-53. [AMENDED]
    - Part 7. Grievance and Abuse Review Committee
      - 340:2-3-64. [AMENDED]
    - Part 9. Ombudsman Programs
      - 340:2-3-71. [AMENDED]
- (Reference APA WF # 05-26)**

**GUBERNATORIAL APPROVAL:**

April 13, 2006

*[OAR Docket #06-764; filed 4-26-06]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 15. STATE SUPPLEMENTAL PAYMENT**

*[OAR Docket #06-765]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 340:15-1-4. [AMENDED]
- (Reference APA WF 05-24)**

**GUBERNATORIAL APPROVAL:**

April 13, 2006

*[OAR Docket #06-765; filed 4-26-06]*

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

*[OAR Docket #06-808]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Scope and Applicability
  - 340:25-1-1. through 340:25-1-2.1. [AMENDED]
  - 340:25-1-5.1. [AMENDED]
- Subchapter 3. Commissioned Peace Officers
  - 340:25-3-1. through 340:25-3-1.1. [AMENDED]
  - 340:25-3-3. [AMENDED]
- Subchapter 5. Operational Policies
- Part 7. The Case Record - Computer File Records and Case Folders
  - 340:25-5-55. [AMENDED]
- Part 9. Disclosure of Information
  - 340:25-5-66. through 340:25-67.1. [AMENDED]
- Part 11. CSED System Security
  - 340:25-5-75. [AMENDED]
- Part 13. Retention and Destruction of Records
  - 340:25-5-95. [AMENDED]
- Part 15. Case Initiation, Case Management, and Case Closure
  - 340:25-5-110. through 340:25-5-110.1. [AMENDED]
  - 340:25-5-114. [AMENDED]
  - 340:25-5-117. [AMENDED]
  - 340:25-5-123. through 340:25-5-124. [AMENDED]
  - 340:25-5-124.2. [AMENDED]
  - 340:25-5-133. [AMENDED]
- Part 17. Past Support
  - 340:25-5-140. through 340:25-5-140.1. [AMENDED]
- Part 19. Locate Services
  - 340:25-5-155. [AMENDED]
- Part 20. Medical Support
  - 340:25-5-168. [AMENDED]
- 340:25-5-170. through 340:25-5-171. [AMENDED]
- Part 21. Establishment
  - 340:25-5-176. [AMENDED]
  - 340:25-5-178. through 340:25-5-179.1. [AMENDED]
- Part 22. Review and Modification
  - 340:25-5-198. through 340:25-5-198.2. [AMENDED]
- Part 23. Enforcement
  - 340:25-5-200. through 340:25-5-200.2. [AMENDED]
  - 340:25-5-201.1. [AMENDED]
  - 340:25-5-203. [AMENDED]
  - 340:25-5-203.1. [NEW]
  - 340:25-5-211.1. through 340:25-5-214. [AMENDED]
- Part 25. Federal Offset Programs
  - 340:25-5-215. through 340:25-5-215.1. [AMENDED]
  - 340:25-5-225. [AMENDED]
- Part 27. State Tax Refund Offset Program
  - 340:25-5-235. [AMENDED]
  - 340:25-5-244. [AMENDED]
- Part 31. Consumer Reporting Agencies - Credit Bureaus
  - 340:25-5-265. through 340:25-5-265.1. [AMENDED]
- Part 33. Interstate and International Cases
  - 340:25-5-270. [AMENDED]
  - 340:25-5-285. [NEW]
- Part 37. Recovery
  - 340:25-5-305. [AMENDED]

# Gubernatorial Approvals

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340:25-5-312. [AMENDED]  
340:25-5-328. [AMENDED]  
Part 38. IV-D and Non-IV-D Central Case Registry Information  
340:25-5-339. [NEW]  
340:25-5-340.1. [AMENDED]  
Part 39. Accounting and Distribution  
340:25-5-345.1. [AMENDED]  
340:25-5-350.2. through 340:25-5-351. [AMENDED]  
**(Reference APA WF 05-08 and 05-27)**

**GUBERNATORIAL APPROVAL:**

April 13, 2006

*[OAR Docket #06-808; filed 5-3-06]*

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**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 40. CHILD CARE SERVICES**

*[OAR Docket #06-766]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Initial Application  
340:40-3-1. [AMENDED]  
Subchapter 5. Plan of Service  
340:40-5-1. [AMENDED]  
Subchapter 7. Eligibility  
340:40-7-3. [AMENDED]  
340:40-7-3.1. [NEW]  
340:40-7-4. [AMENDED]  
340:40-7-6. through 340:40-7-9. [AMENDED]  
340:40-7-11. [AMENDED]  
Subchapter 9. Procedures Relating to Case Changes  
340:40-9-1. through 340:40-9-2. [AMENDED]  
Subchapter 13. Child Care Rates and Provider Issues  
340:40-13-3. [AMENDED]  
340:40-13-5. [AMENDED]  
**(Reference APA WF 05-04 and 05-28)**

**GUBERNATORIAL APPROVAL:**

April 13, 2006

*[OAR Docket #06-766; filed 4-26-06]*

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

*[OAR Docket #06-767]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Financial Eligibility Criteria

Part 3. Income  
340:50-7-30. [AMENDED]  
Subchapter 9. Eligibility and Benefit Determination Procedures  
340:50-9-1. [AMENDED]  
340:50-9-5. [AMENDED]  
Subchapter 11. Special Procedures  
Part 3. ~~Simplified Application Processing (SAP) for Food Stamp Program (SFSP) for Temporary Assistance for Needy Families (TANF) and categorically needy Title XIX cases (ABCD) Companion State Supplemental Payment (SSP) recipient(s)~~

340:50-11-20. [AMENDED]  
340:50-11-22. through 340:50-11-23. [AMENDED]  
340:50-11-25. [AMENDED]  
340:50-11-26. [REVOKED]  
340:50-11-27. [AMENDED]  
**(Reference APA WF # 05-03 and 05-23)**

**GUBERNATORIAL APPROVAL:**

April 13, 2006

*[OAR Docket #06-767; filed 4-26-06]*

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**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

*[OAR Docket #06-768]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Eligibility for Benefits  
340:65-3-1. through 340:65-3-2. [AMENDED]  
Subchapter 5. Procedures Relating to Case Changes  
Part 1. General Provisions  
340:65-5-1. [AMENDED]  
**(Reference APA WF 05-25)**

**GUBERNATORIAL APPROVAL:**

April 13, 2006

*[OAR Docket #06-768; filed 4-26-06]*

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

*[OAR Docket #06-769]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Administration

Part 3. Operations  
340:100-3-36. [NEW]  
340:100-3-38. [AMENDED]  
Subchapter 5. Client Services  
Part 3. Service Provisions  
340:100-5-22.6. [NEW]  
Subchapter 6. Group Home Regulations  
Part 17. Residents' Funds  
340:100-6-76. [AMENDED]  
(Reference APA WF 05-21)

**GUBERNATORIAL APPROVAL:**  
April 13, 2006

*[OAR Docket #06-769; filed 4-26-06]*

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

*[OAR Docket #06-779]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Administration of Plans  
360:10-3-4. [AMENDED]  
360:10-3-20. [AMENDED]  
360:10-3-30. [NEW]  
Subchapter 5. Coverage and Limitations  
Part 11. Medicare Supplement  
360:10-5-75. [AMENDED]  
360:10-5-77. [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 6, 2006

*[OAR Docket #06-779; filed 4-28-06]*

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

*[OAR Docket #06-780]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

360:15-1-2. [AMENDED]  
360:15-1-12. [AMENDED]  
360:15-1-18. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 6, 2006

*[OAR Docket #06-780; filed 4-28-06]*

**TITLE 380. DEPARTMENT OF LABOR  
CHAPTER 40. OKLAHOMA  
OCCUPATIONAL HEALTH AND SAFETY  
STANDARDS ACT RULES**

*[OAR Docket #06-784]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

380:40-1-5. Recordkeeping [AMENDED]  
380:40-1-14. Complaints by employees [AMENDED]  
380:40-1-23. Safety Pays OSHA Consultation Services -  
Private Sector [NEW]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-784; filed 5-2-06]*

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

*[OAR Docket #06-871]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 1. Administration [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-871; filed 5-9-06]*

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

*[OAR Docket #06-872]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 18. Standards and Criteria for Alcohol and Drug  
Treatment Programs [AMENDED]

# Gubernatorial Approvals

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**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-872; filed 5-9-06]*

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

*[OAR Docket #06-873]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 21. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Facilitators [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-873; filed 5-9-06]*

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

*[OAR Docket #06-874]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 22. Certification of Alcohol and Drug Assessment and Evaluations Related to Driver's License Revocation [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-874; filed 5-9-06]*

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**TITLE 450. DEPARTMENT OF MENTAL  
HEALTH AND SUBSTANCE ABUSE  
SERVICES  
CHAPTER 30. STATE-OPERATED  
INPATIENT SERVICES**

*[OAR Docket #06-875]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 15. Forensic Review Board [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-875; filed 5-9-06]*

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**TITLE 550. OKLAHOMA POLICE PENSION  
AND RETIREMENT SYSTEM  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

*[OAR Docket #06-773]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Collections and Disbursements 550:1-7-2. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-773; filed 4-28-06]*

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**TITLE 550. OKLAHOMA POLICE PENSION  
AND RETIREMENT SYSTEM  
CHAPTER 15. OKLAHOMA POLICE  
DEFERRED OPTION PLAN**

*[OAR Docket #06-774]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

550:15-1-2. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-774; filed 4-28-06]*

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**TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM  
CHAPTER 20. PURCHASE OF TRANSFERRED CREDITED SERVICE**

[OAR Docket #06-775]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

550:20-1-2. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

[OAR Docket #06-775; filed 4-28-06]

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

[OAR Docket #06-776]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Relationships with Department Established by Law

612:1-7-2. Relationships with appointed state officials [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

[OAR Docket #06-776; filed 4-28-06]

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

[OAR Docket #06-777]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Policy Development and Program Standards  
Part 3. Policy Development

612:3-5-12. Policy Development [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

[OAR Docket #06-777; filed 4-28-06]

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

[OAR Docket #06-778]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

612:10-1-2. [AMENDED]

612:10-1-5. [AMENDED]

Subchapter 3. Client Participation in Cost of Services

612:10-3-4. [AMENDED]

612:10-3-5. [AMENDED]

Subchapter 7. Vocational Rehabilitation and Visual Services

Part 1. Scope of Vocational Rehabilitation and Visual Services

612:10-7-1. [AMENDED]

612:10-7-4. [AMENDED]

612:10-7-5. [AMENDED]

612:10-7-8. [AMENDED]

Part 9. Actions Requiring Review and Approval

612:10-7-87. [AMENDED]

612:10-7-88. [AMENDED]

Part 11. Physical and Mental Restoration Services

612:10-7-104. [AMENDED]

612:10-7-117. [AMENDED]

Part 13. Supportive Services

612:10-7-131. [AMENDED]

Part 15. Training

612:10-7-157. [AMENDED]

612:10-7-162. [AMENDED]

Part 17. Supported Employment Services

612:10-7-179. [AMENDED]

612:10-7-180. [AMENDED]

612:10-7-185. [AMENDED]

Part 19. Special Services for Individuals Who Are Blind, Deaf, or Have Other Severe Disabilities

612:10-7-199. [AMENDED]

Part 21. Purchase of Equipment, Occupational Licenses and Certificates

612:10-7-216. [AMENDED]

612:10-7-221. [NEW]

Subchapter 11. Independent Living Rehabilitation Services for Older Individuals Who Are Blind

Part 1. Scope of Services

612:10-11-4. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 21, 2006

[OAR Docket #06-778; filed 4-28-06]

# Gubernatorial Approvals

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**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

*[OAR Docket #06-786]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Practice and Procedure

Part 8. Settlement of Tax Liability

710:1-5-86. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 24, 2006

*[OAR Docket #06-786; filed 5-2-06]*

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**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 20. ALCOHOL, MIXED  
BEVERAGES AND LOW-POINT BEER**

*[OAR Docket #06-787]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Mixed Beverages

710:20-5-6. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 24, 2006

*[OAR Docket #06-787; filed 5-2-06]*

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**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 22. BOATS AND MOTORS**

*[OAR Docket #06-788]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

710:22-1-17. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 24, 2006

*[OAR Docket #06-788; filed 5-2-06]*

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**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 25. COIN OPERATED VENDING  
DEVICES**

*[OAR Docket #06-789]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

710:25-1-7. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 24, 2006

*[OAR Docket #06-789; filed 5-2-06]*

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**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 40. FRANCHISE TAX**

*[OAR Docket #06-790]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

710:40-1-17. [NEW]

**GUBERNATORIAL APPROVAL:**

April 24, 2006

*[OAR Docket #06-790; filed 5-2-06]*

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**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 95. MISCELLANEOUS AREAS  
OF REGULATORY AND ADMINISTRATIVE  
AUTHORITY**

*[OAR Docket #06-791]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Waste Tire Recycling

710:95-5-2. [AMENDED]

710:95-5-13. [AMENDED]

710:95-5-14. [AMENDED]

710:95-5-20. [AMENDED]

710:95-5-21. [AMENDED]

710:95-5-22. [NEW]

Subchapter 13. Out-of-State Attorney Registration  
[REVOKED]

710:95-13-1. [REVOKED]

**GUBERNATORIAL APPROVAL:**

April 24, 2006

*[OAR Docket #06-791; filed 5-2-06]*

**TITLE 715. TEACHERS' RETIREMENT SYSTEM  
CHAPTER 10. GENERAL OPERATIONS**

*[OAR Docket #06-853]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. Membership Provisions

715:10-1-7. [AMENDED]

Subchapter 3. Service Eligibility

715:10-3-4. [AMENDED]

Subchapter 9. Survivor Benefits

715:10-9-7. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 25, 2006

*[OAR Docket #06-853; filed 5-8-06]*

**TITLE 730. DEPARTMENT OF TRANSPORTATION  
CHAPTER 40. RAILROADS**

*[OAR Docket #06-785]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Railroad Modernization Program [NEW]

730:40-5-1.[NEW]

730:40-5-2. [NEW]

730:40-5-3. [NEW]

730:40-5-4. [NEW]

**GUBERNATORIAL APPROVAL:**

April 20, 2006

*[OAR Docket #06-785; filed 5-2-06]*

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

*[OAR Docket #06-751]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Licensure of Veterinarians [AMENDED]

Subchapter 5. Rules of Professional Conduct [AMENDED]

Subchapter 7. Certification Of Veterinary Technicians [AMENDED]

Subchapter 10. Complementary and Alternative Therapy [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 20, 2006

*[OAR Docket #06-751; filed 4-26-06]*

**TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS  
CHAPTER 25. RECORDKEEPING AND SUPERVISION REQUIREMENTS**

*[OAR Docket #06-752]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

775:25-1-3. Dispensing and Labeling Requirements [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 20, 2006

*[OAR Docket #06-752; filed 4-26-06]*

**TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS  
CHAPTER 26. WHOLESALE/DISTRIBUTOR OF VETERINARY PRESCRIPTION DRUGS**

*[OAR Docket #06-753]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rule

**RULES:**

775:26-1-1. Wholesaler/Distributor of Veterinary Prescription Drugs [NEW]

**GUBERNATORIAL APPROVAL:**

April 20, 2006

*[OAR Docket #06-753; filed 4-26-06]*



# 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 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #06-846]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 9. Additional Standards for Secondary Schools  
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate  
210:35-9-31. [AMENDED]

### AUTHORITY:

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

### DATES:

#### Adoption:

February 23, 2006

#### Approved by Governor:

April 17, 2006

#### Effective:

June 12, 2006

#### Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The proposed rule amendments will clarify language in 70 O. S. § 11-111 regarding the college preparatory curriculum requirements for students pre-enrolling in the ninth grade for the 2006-2007 school year.

### ANALYSIS:

The rule amendment clarifies that all students including those students enrolling in the college preparatory curriculum must take  $\frac{1}{2}$  unit of government,  $\frac{1}{2}$  unit of Oklahoma History and 2 units of art in order to be eligible for a high school diploma in 2010.

### CONTACT PERSON:

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253 (D), WITH A LATER EFFECTIVE DATE OF JUNE 12, 2006:**

## SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

### PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

#### 210:35-9-31. Program of studies and graduation requirements

Every student at every high school shall have the opportunity to acquire all the competencies to matriculate at a comprehensive graduate institution of the Oklahoma State System of Higher Education without the necessity of enrolling at the university in secondary-level courses. Each student will have the opportunity to attain proficiency in the Priority Academic Student Skills.

(1) Effective with the school year 2000-2001 through 2001-2002 a high school student must demonstrate competency in at least 21 units of credit or sets of competencies in Grades 9-12 which must include the state-mandated curriculum (Priority Academic Student Skills) and meet all other state and local mandates to be eligible for graduation.

- (A) Language Arts: 4 units or sets of competencies
- (B) Science: 2 units or sets of competencies
- (C) Mathematics: 3 units or sets of competencies
- (D) Social Studies: 2 units or sets of competencies (must include American History and Oklahoma History)
- (E) The Arts: 2 units or sets of competencies (Visual Art and General Music)
- (F) Total minimum Core Curriculum: 13 units or sets of competencies
- (G) Total minimum Elective courses: 8 units or sets of competencies
- (H) Total minimum graduation requirements: 21 units or sets of competencies

(2) Beginning with students graduating from high school in the school year 2002-2003, graduation requirements specified in subsection (1) of this section are superseded by requirements specified in this subsection. Units of credit required for high school graduation with a Standard Diploma (effective 2002-2003 and thereafter) are:

## Emergency Adoptions

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(A) Language Arts: 4 units or sets of competencies, to consist of 1 unit or set of competencies of grammar and composition, and 3 units or sets of competencies which may include, but are not limited to, the following courses: American Literature, English Literature, World Literature, Advanced English Courses, or other English courses with content and/or rigor equal to or above grammar and composition;

(B) Mathematics: 3 units or sets of competencies, to consist of 1 unit or set of competencies of Algebra I or Algebra I taught in a contextual methodology, and 2 units or sets of competencies which may include, but are not limited to, the following courses: Algebra II, Geometry or Geometry taught in a contextual methodology, Trigonometry, Math Analysis or Precalculus, Calculus, Statistics and/or Probability, Computer Science, or other mathematics courses with content and/or rigor equal to or above Algebra I. Provided credit may be granted for Applied Mathematics I and II and Computer Science whether taught at the comprehensive high school or at a career and technology center;

(C) Science: 3 units or sets of competencies, to consist of 1 unit or set of competencies of Biology I or Biology I taught in a contextual methodology, and 2 units or sets of competencies in the areas of life, physical, or earth science or technology which may include, but are not limited to, the following courses: Chemistry I, Physics, Biology II, Chemistry II, Physical Science, Earth Science, Botany, Zoology, Physiology, Astronomy, Applied Physics, Principles of Technology, qualified agricultural education courses, or other science courses with content and/or rigor equal to or above Biology I. Provided, credit may be granted for Applied Biology/Chemistry, Physics, and Principles of Technology whether taught at the comprehensive high school or at a career and technology center;

(D) Social Studies: 3 units or sets of competencies, to consist of 1 unit or set of competencies of United States History, 1/2 to 1 unit or set of competencies of United States Government, 1/2 unit or set of competencies of Oklahoma History, and 1/2 to 1 unit or set of competencies which may include, but are not limited to, the following courses: World History, Geography, Economics, Anthropology, or other social studies courses with content and/or rigor equal to or above United States History, United States Government, and Oklahoma History; and

(E) Arts: 2 units or sets of competencies which may include, but are not limited to, courses in Visual Arts and General Music.

(F) Total minimum Core Curriculum: 15 units or sets of competencies

(G) Total minimum Elective courses: 8 units or sets of competencies

(H) Total minimum graduation requirements: 23 units or sets of competencies

(3) No student shall receive credit for high school graduation more than once for completion of the same unit or set of competencies to satisfy the core curriculum requirements.

(4) "Qualified agricultural courses" means courses that have been determined by the State Board of Education to offer the sets of competencies in the Priority Academic Student Skills (PASS) for one or more science content areas and which correspond to academic science courses. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.

(5) A "unit" means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.

(6) As a condition of receiving accreditation from the State Board of Education, students in grades nine through twelve shall enroll in a minimum of six periods, or the equivalent in block scheduling, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes.

(7) Each high school's academic program shall be designed to prepare all students for employment and/or postsecondary education. The secondary academic program shall be designed to provide the teaching and learning of the skills and knowledge in the Priority Academic Student Skills. Beginning with 1999-2000 school year all high schools accredited by the State Department of Education shall offer the core curriculum required for the Standard Diploma during a student's high school career. To meet graduation requirements, local options may include courses taken by advanced placement, concurrent enrollment, correspondence courses or courses bearing different titles.

(8) The secondary academic programs may also provide the traditional units of credit to be offered in Grades 9-12 with each secondary school offering and teaching at least 38 units or their equivalent each school year. Four (4) of these units may be offered on a two-year alternating plan with 34 units or their equivalent to be taught in the current school year. In schools with other than a four-year organization, these units shall be offered and taught in conjunction with the affiliated schools containing those grade levels. Career and technology center courses in which secondary students are enrolled may count toward the 38 required units of credit or their equivalent.

(9) District boards of education can make exceptions to state high school graduation requirements for students who move to this state from another state after their junior year of high school.

(A) After a student from another state enrolls in an accredited Oklahoma high school the school board can make an exception to the high school graduation requirements of Section 11-103.6 of Title 70 of the Oklahoma Statutes. Individual exceptions can only be made when there are differing graduation

requirements between the two states and completing Oklahoma graduation requirements will extend the student's date of graduation beyond the graduation date for the student's class.

(B) The district must report all exceptions made to state graduation requirements for these senior students to the State Department of Education each school year. All exceptions made at each district high school will be forwarded to the State Department of Education on or before July 1 of each year. Districts may report the information on the Annual Statistical Report. This reporting provision does not include students who have individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA) and who satisfy graduation requirements through the individualized education program.

(10) In order for a course offered by a supplemental educational organization to be counted for purposes of student academic credit and towards graduation requirements the local board of education must verify that the course meets all requirements in 70 O.S. § 11-103.6.

(11) Upon verification the local school board of education's request for course approval shall be submitted to the State Board of Education for final approval.

(12) Beginning with the 2006-2007 school year, eighth grade students entering the ninth grade must meet the standards for graduation as currently required above or as required in 70 O.S. § 11-111 which specifies the college preparatory curriculum. Students pursuing the college preparatory curriculum that includes 3 social studies courses must successfully complete 1 unit of United States History, 1/2 unit of Oklahoma History and 1/2 to 1 unit of United States Government. The remaining 1/2 to 1 unit may be selected from the following: History, Government, Geography, Economics, Civics, or Non-Western Culture. Students must also have 2 arts as required by existing curriculum requirements in 70 O.S. § 11-103.6 for the college preparatory curriculum.

*[OAR Docket #06-846; filed 5-8-06]*

**TITLE 450. DEPARTMENT OF MENTAL  
HEALTH AND SUBSTANCE ABUSE  
SERVICES  
CHAPTER 60. STANDARDS AND CRITERIA  
FOR CERTIFIED EATING DISORDER  
TREATMENT PROGRAMS**

*[OAR Docket #06-881]*

**RULEMAKING ACTION:**

Emergency adoption

**RULES:**

- Subchapter 1. General Provisions [NEW]
- 450:60-1-1. [NEW]
- 450:60-1-2. [NEW]
- 450:60-1-3. [NEW]

- 450:60-1-4. [NEW]
- 450:60-1-5. [NEW]
- Subchapter 3. Required Services [NEW]
- 450:60-3-1. [NEW]
- 450:60-3-2. [NEW]
- 450:60-3-3. [NEW]
- 450:60-3-4. [NEW]
- 450:60-3-5. [NEW]
- 450:60-3-6. [NEW]
- 450:60-3-7. [NEW]
- 450:60-3-8. [NEW]
- 450:60-3-9. [NEW]
- 450:60-3-10. [NEW]
- 450:60-3-11. [NEW]
- 450:60-3-12. [NEW]
- 450:60-3-13. [NEW]
- 450:60-3-14. [NEW]
- 450:60-3-15. [NEW]
- 450:60-3-16. [NEW]
- Subchapter 5. Optional Services [NEW]
- 450:60-5-1. [NEW]
- 450:60-5-2. [NEW]
- 450:60-5-3. [NEW]
- Subchapter 7. Facility Clinical Records [NEW]
- 450:60-7-1. [NEW]
- 450:60-7-2. [NEW]
- 450:60-7-3. [NEW]
- 450:60-7-4. [NEW]
- 450:60-7-5. [NEW]
- 450:60-7-6. [NEW]
- 450:60-7-7. [NEW]
- 450:60-7-8. [NEW]
- 450:60-7-9. [NEW]
- 450:60-7-10. [NEW]
- Subchapter 9. Consumer Records and Confidentiality [NEW]
- 450:60-9-1. [NEW]
- Subchapter 11. Consumer Rights [NEW]
- 450:60-11-1. [NEW]
- 450:60-11-2. [NEW]
- 450:60-11-3. [NEW]
- Subchapter 13. Organizational Management [NEW]
- 450:60-13-1. [NEW]
- 450:60-13-2. [NEW]
- Subchapter 15. Performance Improvement and Quality Management [NEW]
- 450:60-15-1. [NEW]
- 450:60-15-2. [NEW]
- Subchapter 17. Human Resources [NEW]
- 450:60-17-1. [NEW]
- 450:60-17-2. [NEW]
- 450:60-17-3. [NEW]
- Subchapter 19. Staff Development and Training [NEW]
- 450:60-19-1. [NEW]
- 450:60-19-2. [NEW]
- 450:60-19-3. [NEW]
- 450:60-19-4. [NEW]
- Subchapter 21. Governing Authority [NEW]
- 450:60-21-1. [NEW]
- Subchapter 23. Facility Environment [NEW]
- 450:60-23-1. [NEW]
- Subchapter 25. Special Populations [NEW]
- 450:60-25-1. [NEW]
- 450:60-25-2. [NEW]

**AUTHORITY:**

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. § 3-320

**DATES:**

**Adoption:**

March 10, 2006

**Approved by Governor:**

April 25, 2006

**Effective:**

Immediately upon Governor's approval

# Emergency Adoptions

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## **Expiration:**

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature

## **SUPERSEDED EMERGENCY ACTIONS:**

N/A

## **INCORPORATIONS BY REFERENCE:**

N/A

## **FINDING OF EMERGENCY:**

Section 3-320 of O.S. 43A became effective on November 1, 2005 and requires the Board to promulgate rules and standards for certification of eating disorder treatment programs. Eating disorders treatment programs positively impact the health and wellness of persons served and the general public.

## **ANALYSIS:**

In accordance with the Administrative Procedures Act the proposed rules implement 43A O.S. § 3-320, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify eating disorder treatment programs.

## **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. GENERAL PROVISIONS**

### **450:60-1-1. Purpose**

(a) This chapter sets forth standards for certification of eating disorders treatment programs and implements 43A O.S. § 3-320, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify eating disorder treatment programs.

(b) The rules regarding the certification process including but not necessarily limited to application, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450 Chapter 1, Subchapters 5 and 9.

### **450:60-1-2. Definitions**

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Certified Eating Disorder Treatment" or "CEDT" mean programs certified by ODMHSAS to provide treatment to individuals diagnosed with an eating disorder.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers

within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment and other credentials.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers who are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumer or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Dietitian" means an individual trained and licensed in the development, monitoring, and maintenance of food and nutrition.

"Eating disorder" means anorexia nervosa, bulimia nervosa, or any other severe disturbances in eating behavior specified in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

"Emergency examination" means the examination by a licensed behavioral health practitioner of a person in treatment at the CEDT program to determine whether or not an emergency mental health condition (including, but not limited to, suicidality, homicidality, self-harm, delusions, hallucinations, or acute intoxication) exists requiring immediate treatment; further, the licensed behavioral health practitioner provides or arranges services up to and including hospitalization.

"Emergency medical services" means assessment and diagnosis of a person receiving services at the CEDT program by a qualified medical professional to determine the presence of an emergent medical condition that threatens life, limb, or functioning, or causes uncontrolled pain; further, the qualified medical professional provides or arranges care to stabilize the emergency medical condition.

"Emergency psychiatric services" means services provided by a licensed behavioral health practitioner of a person in treatment at the CEDT program to assess, diagnose, and treat mental health conditions that threaten the life or basic functioning of that person.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or "OAC" means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. §

256(A)(1)(a) and maintained in the Office of Administrative Rules.

**"Performance Improvement" or "PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

**"Progress notes"** mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

**"Psychotherapist"** means an individual trained in assessing, evaluating, and treating psychological or social problems which the consumer experiences. A psychotherapist uses a variety of treatment modalities, including individual, group, and family therapies.

**"Psychotherapy services"** means the professional activity of a psychotherapist to assess, diagnose, and treat the mental disorder(s) and psychological, social, and environmental problems of individuals and families.

**"Resident"** means an eating disorder consumer admitted to a residential facility for eating disorder treatment.

**"Residential facility"** means the facility that houses CEDT program consumers during their course of treatment which provides 24 hour on-site nursing supervision and care.

**"Volunteer"** means any person who is not on the program's payroll, but provides direct services and fulfills a defined role within the program and includes interns and practicum students.

### **450:60-1-3. Meaning of verbs in rules**

The attention of the facility is drawn to the distinction between the use of the words "shall," "should," and "may" in this chapter:

- (1) "Shall" is the term used to indicate a mandatory statement, the only acceptable method under the present standards.
- (2) "Should" is the term used to reflect the most preferable procedure, yet allowing for the use of effective alternatives.
- (3) "May" is the term used to reflect an acceptable method that is recognized but not necessarily preferred.

### **450:60-1-4. Annual review of standards and criteria**

This chapter shall be reviewed annually by the ODMH-SAS.

### **450:60-1-5. Applicability**

The standards for services as subsequently set forth in this chapter are applicable to Certified Eating Disorder Treatment programs as stated in each subchapter.

## **SUBCHAPTER 3. REQUIRED SERVICES**

### **450:60-3-1. Required core services**

(a) The services in this subchapter are core services, and are required of each CEDT.

(b) Each CEDT shall provide the following services:

- (1) Screening, intake, and assessment services;
- (2) Referral services;
- (3) Emergency psychiatric services;
- (4) Emergency and routine medical services;
- (5) Physician services;
- (6) Nursing services;
- (7) Psychotherapy services; and
- (8) Dietary services.

### **450:60-3-2. Availability of services**

The core services shall be available to individuals on a daily basis, either as part of routine or emergency care.

### **450:60-3-3. Screening, intake, and assessment services**

(a) CEDT policy and procedure shall require a comprehensive assessment of each consumer's service needs be completed in a timely manner.

(b) Screening and intake services shall include a complete assessment of each consumer to determine clinical needs. This shall include but not be limited to an assessment of the following areas and needs:

- (1) Behavioral, including substance use, abuse, and dependence;
- (2) Emotional;
- (3) Physical;
- (4) Social and recreational;
- (5) Vocational;
- (6) Spiritual; and
- (7) Cultural.

(c) The consumer and family as appropriate shall be an active participant(s) in the intake and assessment process.

(d) The CEDT shall have policy and procedures specific to each program service that dictate timeframes by when assessments must be completed and documented. In the event the consumer is not admitted and the assessment is not included in the clinical record, the policy shall specify how screening and assessment information is maintained and stored.

### **450:60-3-4. Referral services**

Written policy and procedures governing the referral process shall specify the following:

- (1) The information to be obtained on all applicants or referrals for admission;
- (2) The procedures for accepting referrals from outside agencies or organizations;
- (3) The procedure to be followed when an applicant or referral is found to be ineligible for admission;
- (4) Methods of collection of information from family members, significant others or other providers of clinical care or social services;
- (5) Methods for providing or obtaining a physical examination or continued medical care where indicated; and

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- (6) Referral to other resources when the consumer has treatment or other service needs the facility cannot meet.

### **450:60-3-5. Emergency services**

- (a) CEDT's shall provide, on a twenty-four (24) hour basis, for psychiatric emergencies.
- (b) This service shall include the following:
- (1) Assessment and evaluation, including emergency examinations;
  - (2) Availability of and arrangement of transportation to acute-care psychiatric referral;
  - (3) Face-to-face assessment; and
  - (4) Intervention and resolution.

### **450:60-3-6. Emergency examinations**

The CEDT shall provide psychiatric emergency examinations 24 hours per day, seven days a week.

- (1) Referral to an acute-care hospital by the CEDT shall occur only after all other less restrictive options have been discussed with the resident and resident's family (when possible) and upon written authorization from the resident.
- (2) The CEDT shall notify referral hospital(s) prior to referring non-emergent residents.
- (3) If the CEDT is referring the consumer to a state-operated inpatient facility, the resident must meet the criteria in OAC 450:30-9-3 and the CEDT must comply with OAC 450:30-9-4.

### **450:60-3-7. Emergency examinations, staffing**

Staff providing emergency examinations shall be an LMHP as defined in 43A O.S. § 1-103 and meet the CEDT's privileging requirements for the provision of emergency services.

### **450:60-3-8. Emergency medical services**

- (a) CEDT's shall provide, on a twenty-four (24) hour basis, for medical emergencies.
- (b) This service shall include the following:
- (1) Arrangements for availability of transportation appropriate to the resident's medical condition to a licensed hospital's emergency room;
  - (2) Arrangements for availability of evaluation and treatment by a licensed physician at a licensed hospital's emergency room.

### **450:60-3-9. Routine medical services**

The CEDT shall arrange to make available to consumers at a minimum the following general and specialty care services:

- (1) General/internal medicine;
- (2) Cardiology;
- (3) Gastroenterology;
- (4) Laboratory services.

### **450:60-3-10. Physician services**

- (a) Because of the medical and psychiatric complexity and fragility of eating-disorder consumers, CEDT's shall provide routine, ongoing physician services.
- (b) A physician will be assigned to each consumer's care and be responsible as the attending physician.
- (c) At a minimum, the physician will conduct rounds on each resident once per week. Rounds will include:
- (1) Evaluation of the resident's medical and psychiatric condition;
  - (2) Review of response to medications and other interventions;
  - (3) Prescription or discontinuation of medication;
  - (4) Ordering of any other needed medical or psychiatric care.

### **450:60-3-11. Physician requirements**

- (a) Physicians shall be licensed to practice medicine in the State of Oklahoma.
- (b) Physicians shall be privileged by the CEDT to perform as attending physician.

### **450:60-3-12. Nurse practitioners**

Nurses licensed as nurse practitioners with prescriptive authority and who practice under the supervision of a licensed physician may perform the duties of the physician as allowed by State Law and CEDT policy.

### **450:60-3-13. Nursing services**

- (a) CEDT's shall provide 24-hour on-site nursing supervision and care of consumers.
- (b) At a minimum, one (1) licensed registered nurse shall be present at all times per 15 occupied beds. For 16 to 30 occupied beds, a licensed practical nurse shall be on-site, working under the supervision of the licensed registered nurse.
- (c) In addition to the requirements above, CEDT shall provide nursing staff, including mental health technicians or nursing aides, sufficient to meet the needs of residents in a safe, consistent, quality manner.
- (d) Nursing staff shall, consistent with the scope of their licenses and CEDT policy, provide:
- (1) Supervision of residents.
  - (2) Administration of medication according to the physician's orders.
  - (3) Medical treatments according to the resident's immediate needs and/or the physician's orders.

### **450:60-3-14. Psychotherapist credentialing**

- (a) All psychotherapists will be credentialed to provide psychotherapy according to the CEDT's policies.
- (b) At least one psychotherapist practicing at the CEDT shall meet at least one of the following credentialing criteria, with licensure defined as possessing a valid and current license issued by the State of Oklahoma:
- (1) Licensed clinical psychologist;
  - (2) Licensed clinical social worker;

- (3) Licensed professional counselor;
- (4) Licensed marital and family therapist;
- (5) Licensed behavioral practitioner

- (c) All psychotherapists shall, at a minimum:
  - (1) Possess a master's degree from an accredited college or university in psychology, social work, counseling, or related degree; and
  - (2) Be license-eligible according to State Law and working toward licensure; and
  - (3) If not yet licensed, practice under the supervision of a licensed psychotherapist.

#### **450:60-3-15. Psychotherapy service provision**

At a minimum, psychotherapy services shall be provided as follows:

- (1) Individual psychotherapy - 1 hour per week.
- (2) Process group psychotherapy - 5 hours per week.
- (3) Other psychotherapy groups (examples include body image, cognitive-behavioral strategies, anger management, gender issues, family dynamics, grief issues, sexuality, spirituality, etc.) - 12 hours per week.
- (4) Family contact/therapy - depending on the resident's clinical needs and family availability, at least 2 hours of family therapy/contact should be provided on a monthly basis, either face-to-face or by phone.
- (5) Therapeutic meal (eating with the consumers and processing issues as they arise) - 5 meals per week.

#### **450:60-3-16. Dietitian credentialing and service provision**

A dietitian must be credentialed as a Registered Dietitian/Licensed Dietitian, and shall provide, at a minimum:

- (1) Individual meetings with each resident - 1 hour per week per resident.
- (2) Food and nutrition educational groups - 2 hours per week.
- (3) Direct observation of therapeutic meals - 3 meals per week.
- (4) Development of individualized meal plans (including snacks and nutritional supplements) for each resident.
- (5) Ensuring the accurate execution of meal plans by 1) direct supervision of the dietary staff or 2) consultation with the dietary staff supervisor.

## **SUBCHAPTER 5. OPTIONAL SERVICES**

#### **450:60-5-1. Applicability**

The services in this subchapter are optional services. However, if the services in this subchapter are provided, all rules and requirements of this subchapter shall apply to the affected CEDT's certification.

#### **450:60-5-2. Independent living services**

(a) Programs that elect to provide independent living services for consumers clinically ready for outpatient care shall provide housing for such persons.

(b) At a minimum, the facility shall provide or arrange at least monthly contact for each consumer with a physician, psychotherapist, and dietitian.

(c) The facility shall provide at least one therapeutic meal per week that is supervised by a psychotherapist.

(d) A community living program shall have written policies and procedures specifying how, and by whom, the following services shall be performed:

(1) Medical treatment for residents on both emergency and routine bases;

(2) Mental health and substance abuse services on both emergency and routine bases;

(3) Daily living, social and occupational evaluation and progress planning;

(4) Daily living and social skills training;

(5) Occupational and vocational training;

(6) Assistance to residents in locating appropriate alternative living arrangements as clinically indicated or requested by resident or as part of program completion or graduation;

(7) A mechanism for orientation and education of new residents, which shall include, at least:

(A) Emergency procedures including fire, health and safety procedures;

(B) Resident rights and responsibilities; and

(C) Program expectations and rules.

(8) Assistance to residents in accessing community resources.

(e) There shall be documentation indicating that each resident has received orientation and education on emergency procedures, resident rights and responsibilities, and program expectations and rules.

(f) To ensure a safe and sanitary environment for residents, the following shall apply for all CEDT owned and/or managed housing facilities:

(1) The apartment or house and furnishings shall be in good repair, and free of unpleasant odors, and insect and rodent infestations.

(2) The apartment or house shall contain safe heating and air conditioning systems, which are in proper working conditions. Each apartment or house shall have an annual fire and safety inspection by the State or local Fire Marshal's office.

(3) Apartments or houses shall be inspected by CEDT staff on a regular basis as specified in agency Policy and Procedures to ensure that fire, health or safety hazards do not exist.

(4) The program shall develop and maintain emergency policy and procedures which shall include but are not limited to:

(A) Fire response and evaluations;

(B) Response to other disasters;

(C) Relocation if housing unit(s) become unlivable; and

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- (D) Personal accident or illness.

## **450:60-5-3. Outpatient services**

(a) Programs that provide outpatient services shall offer a range of services to consumers based on their needs regarding emotional, social and behavioral problems. These outpatient counseling services shall be provided or arranged for, and shall include, but not be limited to the following:

- (1) Individual psychotherapy;
- (2) Group psychotherapy/support groups;
- (3) Marital or family counseling;
- (4) Psychological/psychometric evaluations or testing;
- (5) Psychiatric assessments;
- (6) Dietary consultation.

(b) Outpatient psychotherapy services shall be provided by a licensed practitioner in the appropriate discipline.

## **SUBCHAPTER 7. FACILITY CLINICAL RECORDS**

### **450:60-7-1. Clinical record keeping system**

Each CEDT shall maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records stored under confidential conditions and with planned retention and disposition.

### **450:60-7-2. Applicability**

The requirements of this subchapter are applicable to a CEDT's clinical services, core and optional.

### **450:60-7-3. Basic requirements**

The CEDT's policies and procedures shall:

- (1) Define the content of consumer records in accordance with 450:60-7-4 through 60-7-9.
- (2) Define storage, retention and destruction requirements for consumer records.
- (3) Require consumer records be contained within equipment which is maintained under locked, secure measures.
- (4) Require legible entries in consumer records, signed with first name or initial, last name, credentials, and dated by the person making the entry.
- (5) Require the consumer's unique identifier be typed or written on each page in the consumer record.
- (6) Require a signed consent for treatment before a consumer is admitted on a voluntary basis.
- (7) Require a signed consent for follow-up before any contact after discharge is made.

### **450:60-7-4. Record access for clinical staff**

The CEDT shall assure consumer records are readily accessible to the program staff directly caring for the consumer.

Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.

### **450:60-7-5. Clinical record content, intake assessment**

(a) All facilities shall assess each individual to determine appropriateness of admission.

(b) The CEDT shall document the first contact per episode between the potential consumer and the CEDT to determine appropriateness of admission.

(c) Consumer intake assessment information shall contain but not be limited to the following:

- (1) Date, to include month, day and year of the interview or intake, including re-admissions for CEDT services;
- (2) Source of information;
- (3) Consumer's first name, middle initial, and last name;
- (4) Gender;
- (5) Birth date;
- (6) Home address;
- (7) Telephone number;
- (8) Referral source;
- (9) Reason for referral;
- (10) Significant other to be notified in case of emergency;
- (11) Presenting problem and disposition;
- (12) Health and drug history information, with drug history information to include the following for both current and past medications:
  - (A) Name of medication,
  - (B) Strength and dosage of medication,
  - (C) Length of time consumer was on the medication, if known,
  - (D) Benefit(s) of medication, and
  - (E) Side effects;
- (13) Psychosocial information, which shall include:
  - (A) Personal history, including:
    - (i) Family - social,
    - (ii) Educational,
    - (iii) Cultural - moral beliefs,
    - (iv) Occupational - military,
    - (v) Sexual,
    - (vi) Marital,
    - (vii) Domestic violence or sexual assault,
    - (viii) Recreation and leisure,
    - (ix) Financial,
    - (x) Clinical treatment history including medical and psychiatric treatment,
    - (xi) Legal or criminal record,
    - (xii) Substance use, abuse, and dependence.
  - (B) Present life situation;
  - (C) Interviewer's interpretation of findings;
  - (D) What consumer wants in terms of service;
  - (E) Disposition;
  - (F) Mental status information, including questions regarding:

- (i) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.,
- (ii) Affective process, such as mood, affect, manner and attitude, etc., and
- (iii) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc.;

(G) Level of Functioning;

(H) Signature of interviewer and professional credentials, if any.

(14) Additional information as required by the facility.

(d) The CEDT shall have policy and procedures that dictate timeframes by when intake assessment must be completed for each program service to which a client is admitted.

(e) An intake assessment update, to include date, identifying information, source of information, present problems, present life situation, current level of functioning, and what the consumer wants in terms of service, is acceptable only on re-admissions within one (1) year of previous admission.

#### **450:60-7-6. Service Plan**

(a) The service plan shall provide evaluation, formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or identification of needs, challenges and new problems.

(b) An initial treatment plan shall be completed after completion of intake assessment or after the first treatment session on all consumers.

(c) The CEDT shall have policy and procedures that dictate timeframes by when comprehensive service plans must be completed for each program service to which a consumer is admitted.

(d) Comprehensive service plan contents shall:

- (1) Describe assets and liabilities;
- (2) Reflect consideration of clinical needs;
- (3) Specify services necessary to meet the needs;
- (4) Include referrals for needed services;
- (5) Contain specific goals;
- (6) Contain measurable time framed objectives;
- (7) Specify frequency of treatment;
- (8) Designate person(s) responsible for providing treatment;
- (9) Delineate specific discharge criteria;
- (10) Include substantiated diagnosis in terminology of the current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and
- (11) Describe the consumer's involvement in, and consumer's response to the service plan as evidenced by a statement dated and signed by the consumer verifying his or her involvement in the service planning process and his or her agreement with the plan, proposed interventions, and target dates for completion.

(e) Service plans shall be dated and signed by all members of the treatment team who participate in the planning or in providing the services.

(f) Service plan updates shall contain:

(1) Change in goals and objectives based upon consumer's progress or identification of new problems;

(2) Change in primary clinician assignment;

(3) Change in frequency or types of services provided; and

(4) A statement documenting review, including an explanation if no changes are made in the plan.

(g) The CEDT shall have policy and procedures that dictate timeframes by when service plan updates must be completed for each program service to which a consumer is admitted.

#### **450:60-7-7. Medication record**

(a) A medication record shall be maintained on all consumers who receive medications or prescriptions through the outpatient clinic services and shall be a concise and accurate record of the medications the consumer is receiving or prescribed.

(b) The consumer record shall contain a medication record with the following information on all medications ordered or prescribed by physician staff:

(1) The record of medication administered and prescribed shall include all of the following:

(A) Name of medication,

(B) Dosage,

(C) Frequency of administration or prescribed change,

(D) Route of administration, and

(E) Staff member who administered each dose, or prescribing physician; and

(2) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities during intake, updated when required by virtue of new information, and kept in a highly visible location in or on the record.

#### **450:60-7-8. Progress notes**

(a) Progress notes shall chronologically describe the consumer's progress in treatment and document the consumer's response to services related to the treatment.

(b) Progress notes shall address the following:

(1) Person(s) to whom services were rendered;

(2) Activities and services provided as they relate to the goals and objective of the service plan, including ongoing reference to the service plan;

(3) Documentation of the progress or lack of progress made in treatment as it relates to the service plan;

(4) Documentation of the implementation of the individualized service plan, including consumer activities and services and all treatment rendered;

(5) The consumer's current status;

(6) Documentation of the consumer's response to treatment services, changes in behavior and mood, and outcome of treatment or services;

(7) Plans for continuing therapy or for discharge, whichever is appropriate; and

(8) Family's response to services provided when applicable.

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(c) Progress notes shall be documented according to the following time frames:

- (1) Outpatient staff must document each visit or transaction including missed appointments;
- (2) Residential nursing staff must document each shift; and
- (3) Residential physicians, psychotherapists, and dietitians must document each unit of service provided.

### **450:60-7-9. Other records content**

(a) The consumer record shall contain copies of all consultation reports concerning the consumer.

(b) When psychometric or psychological testing is done, the consumer record shall contain a copy of a written report describing the test results and implications or recommendations for treatment.

(c) The consumer record shall contain any additional information relating to the consumer, which has been secured from sources outside the program.

### **450:60-7-10. Discharge summary**

(a) A discharge summary shall document the consumer's progress made in treatment; response to services rendered; and recommendation for any referrals, if deemed necessary.

(b) A discharge summary shall be entered in each consumer's record within fifteen (15) days of release, discharge, or transfer from residential treatment or upon discharge from facility services.

(c) The discharge summary shall minimally include, but is not limited to:

- (1) Presenting problem at intake;
- (2) Medication summary when applicable;
- (3) Treatment provided and treatment outcome and results;
- (4) Psychiatric and physical diagnosis or the final assessment;
- (5) Discharge plan: Written recommendations, specific referrals for implementing aftercare services, including medications. Aftercare plans shall be developed with the knowledge and cooperation of the consumer, when possible;
- (6) In the event of death of a consumer: A summary statement including this information shall be documented in the record; and
- (7) Signature of staff member, professional credentials, if any, and date.

## **SUBCHAPTER 9. CONSUMER RECORDS AND CONFIDENTIALITY**

### **450:60-9-1. Confidentiality of mental health and drug or alcohol abuse treatment information**

(a) The CEDT shall comply with confidentiality requirements as set forth in 43A O.S. Sec. 1-109, and federal law.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of clinical and treatment information in compliance with state and federal law and which contain at a minimum:

(1) an acknowledgment that all clinical and treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) an acknowledgment that the identity of a consumer who has received or is receiving clinical and treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(3) a procedure to limit access to clinical and treatment information to only those persons or agencies actively engaged in the treatment of the consumer and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's clinical and treatment information;

(5) an acknowledgement that certain state and federal law exceptions to disclosure of clinical and treatment information without the written consent of the consumer or the consumer's legally authorized representative.

## **SUBCHAPTER 11. CONSUMER RIGHTS**

### **450:60-11-1. Consumer rights**

The CEDT shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights.

### **450:60-11-2. Consumer's grievance policy**

The CEDT shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights.

### **450:60-11-3. ODMHSAS Consumer Advocacy Division**

The ODMHSAS Office of Consumer Advocacy, in any investigation or monitoring regarding consumer rights shall have access to consumers, facility records and facility staff as set forth in OAC 450:15-7-3.

## **SUBCHAPTER 13. ORGANIZATIONAL MANAGEMENT**

### **450:60-13-1. Organizational and facility description**

(a) The CEDT shall have a written organizational description which is reviewed annually and minimally includes:

- (1) The overall target population for whom services will be provided;
- (2) The overall mission statement; and

- (3) The annual facility goals and objectives.
- (b) The CEDT's governing authority shall review and approve the mission statement and annual goals and objectives and document their approval.
- (c) The CEDT shall make the organizational description, mission statement and annual goals available to staff.
- (d) The CEDT shall make the organizational description, mission statement and annual goals available to the general public upon request.
- (e) Each CEDT shall have in writing, by program component or service, the following:
  - (1) Philosophy and description of services;
  - (2) Identity of the professional staff that provides these services;
  - (3) Admission and exclusionary criteria that identify the type of consumers for whom the services are primarily intended; and
  - (4) Goals and objectives.
- (f) The CEDT shall have written procedures and plans for attaining the organization's goals and objectives. These procedures and plans shall define specific tasks, set target dates and designate staff responsible for carrying out the procedures and plans.
- (g) Compliance with OAC 450:60-13-1 shall be determined by a review of the facility's target population definition; facility policy and procedures; mission statement; written plan for professional services; other stated required documentation; and any other supporting documentation.

**450:60-13-2. Information analysis and planning**

- (a) The CEDT shall have a defined and written plan for conducting an organizational needs assessment which specifies the methods and data to be collected, to include, but not be limited to information from:
  - (1) Consumers;
  - (2) Governing Authority;
  - (3) Staff;
  - (4) Stakeholders;
  - (5) Outcomes management processes; and
  - (6) Quality record review.
- (b) The CEDT shall have a defined ongoing system to collect data and information on a quarterly basis to manage the organization.
- (c) Information collected shall be analyzed to improve consumer services and organizational performance.
- (d) The CEDT shall prepare an end of year management report, which shall include but not be limited to:
  - (1) an analysis of the needs assessment process, and
  - (2) performance improvement program findings.
- (e) The management report shall be communicated and made available to, among others:
  - (1) the governing authority,
  - (2) facility staff, and
  - (3) ODMHSAS if and when requested.

**450:60-15-1. Performance improvement program**

- (a) The CEDT shall have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care.
- (b) The Performance improvement program shall also address the fiscal management of the organization.
- (c) The facility shall have an annual written plan for performance improvement activities. The plan shall include but not be limited to:
  - (1) Outcomes management specific to each program component which minimally measures:
    - (A) efficiency,
    - (B) effectiveness, and
    - (C) consumer satisfaction.
  - (2) A quarterly quality consumer record review to evaluate and ensure, among others:
    - (A) the quality of services delivered;
    - (B) the appropriateness of services;
    - (C) patterns of service utilization;
    - (D) consumers are provided an orientation to services, and actively involved in making informed choices regarding the services they receive.;
    - (E) assessments are thorough, timely and complete;
    - (F) treatment goals and objectives are based on, at a minimum:
      - (i) assessment findings, and
      - (ii) consumer input;
    - (G) services provided are related to the treatment plan goals and objectives;
    - (H) services are documented as prescribed by policy; and
    - (I) the treatment plan is reviewed and updated as prescribed by policy.
  - (3) Clinical privileging; and
  - (4) Review of critical and unusual incidents and consumer grievances and complaints.
- (d) The CEDT shall monitor the implementation of the performance improvement plan on an ongoing basis and make adjustments as needed.
- (e) Performance improvement findings shall be communicated and made available to, among others:
  - (1) the governing authority,
  - (2) facility staff, and
  - (3) ODMHSAS if and when requested.

**450:60-15-2. Incident reporting**

- (a) The facility shall have written policies and procedures requiring documentation and reporting of critical incidents.
- (b) The documentation for critical incidents shall contain, minimally:
  - (1) the facility, name and signature of the person(s) reporting the incident;
  - (2) the name(s) of the consumer(s), staff member(s) or property involved;
  - (3) the time, date and physical location of the critical incident ;

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(4) the time and date the incident was reported and name of the staff person within the facility to whom it was reported;

(5) a description of the incident;

(6) resolution or action taken, date action taken, and signature of appropriate staff; and

(7) severity of each injury, if applicable. Severity shall be indicated as follows:

(A) No off-site medical care required or first aid care administered on-site;

(B) Medical care by a physician or nurse or follow-up attention required; or

(C) Hospitalization or immediate off-site medical attention was required;

(c) Critical incidents shall be reported to ODMHSAS Provider Certification Division within specific timeframes, as follows:

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four business (24) hours of the incident.

(2) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four business (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four business (24) hours of the incident.

### **SUBCHAPTER 17. HUMAN RESOURCES**

#### **450:60-17-1. Personnel policies and procedures**

(a) The facility shall have written personnel policies and procedures approved by the governing authority.

(b) All employees shall have access to personnel policies and procedures, as well as other Rules and Regulations governing the conditions of their employment.

(c) The facility shall develop, adopt, and maintain policies and procedures at each provider location to promote the objectives of the center and provide for qualified personnel during all hours of operation to support the functions of the facility and the provision of quality care.

#### **450:60-17-2. Job descriptions**

There shall be job descriptions for all positions setting forth minimum qualifications and duties of each position.

#### **450:60-17-3. Utilization of volunteers**

(a) In facilities where volunteers are utilized, specific policies and procedures shall be in place to define the purpose, scope, and training, supervision and operations related to the use of volunteers.

(b) A qualified staff member shall be assigned the role of, or responsibility as, the volunteer coordinator.

(c) Volunteer policies and procedures shall be reviewed by an appropriate level of authority upon revision.

(d) There shall be documentation to verify orientation of each volunteer which shall enable him or her to have knowledge of program goals and familiarity with routine procedures.

(e) The volunteer orientation shall include explanations, at a minimum, of the following:

(1) The importance of maintaining confidentiality and protecting consumer's rights, as well as the legal ramifications of State and Federal regulations concerning confidentiality;

(2) The facility's policies and procedures;

(3) Any other necessary information to ensure that volunteer staff members are knowledgeable enough to carry out the responsibilities of their position; and

(4) Documentation of volunteer's understanding of policies, goals and job.

### **SUBCHAPTER 19. STAFF DEVELOPMENT AND TRAINING**

#### **450:60-19-1. Staff qualifications**

All staff who provide clinical services shall have documented qualifications or training specific to the clinical services they provide within the CEDT.

#### **450:60-19-2. Staff development**

(a) The CEDT shall have a written plan for the professional growth and development of all administrative, professional and support staff.

(b) This plan shall include, but not be limited to:

(1) orientation procedures;

(2) inservice training and education programs;

(3) availability of professional reference materials; and

(4) mechanisms for insuring outside continuing educational opportunities for staff members.

(c) The results of performance improvement activities, accrediting and audit findings and recommendations shall be addressed by and documented in the staff development and clinical privileging processes.

(d) Staff education and inservice training programs shall be evaluated by the CEDT at least annually.

#### **450:60-19-3. Annually required inservice training for all employees**

Inservice presentations shall be conducted each calendar year and are required for all employees on the following topics:

(1) Fire and safety;

(2) AIDS and HIV precautions and infection control;

(3) Consumer's rights and the constraints of the Mental Health Consumer's Bill of Rights;

(4) Confidentiality;

(5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115; and

(6) Facility policy and procedures.

**450:60-19-4. First Aid and CPR training**

The CEDT shall have staff during all hours of operation at each program site who maintains current certification in basic first aid and Cardiopulmonary Resuscitation (CPR).

**SUBCHAPTER 21. GOVERNING AUTHORITY**

**450:60-21-1. Documents of authority**

(a) There shall be a duly constituted authority and governance structure for assuring legal responsibility and for requiring accountability for performance and operation of the facility (including all components and satellites).

(b) The governing authority shall have written documents of its source of authority, which shall be available to the ODMH-SAS upon request.

(c) In accordance with governing body bylaws, rules and regulations, the chief executive officer is responsible to the governing body for the overall day-to-day operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of the staff.

- (1) The source of authority document shall state:
  - (A) The eligibility criteria for governing body membership;
  - (B) The number and types of membership;
  - (C) The method of selecting members;
  - (D) The number of members necessary for a quorum;
  - (E) Attendance requirements for governing body membership;
  - (F) The duration of appointment or election for governing body members and officers.
  - (G) The powers and duties of the governing body and its officers and committees or the authority and responsibilities of any person legally designated to function as the governing body.
- (2) There shall be an organizational chart setting forth the operational components of the facility and their relationship to one another.

**SUBCHAPTER 23. FACILITY ENVIRONMENT**

**450:60-23-1. Facility environment**

(a) The CEDT shall obtain an annual fire and safety inspection from the State Fire Marshall or local authorities which documents approval for continued occupancy.

(b) CEDT staff shall know the exact location, contents and use of first aid supply kits and fire fighting equipment. First aid supplies and fire fighting equipment shall be maintained in appropriately designated areas within the facility.

(c) There shall be posted written plans and diagrams noting emergency evacuation routes in case of fire, and shelter locations in case of severe weather.

(d) Facility grounds shall be maintained in a manner to provide a safe environment for consumers, personnel, and visitors.

(e) The director of the CEDT or designee shall appoint a safety officer.

(f) The facility shall have an emergency preparedness program designed to provide for the effective utilization of available resources so that consumer care can be continued during a disaster. The emergency preparedness program is evaluated annually and is updated as needed.

(g) Policies for the use and control of personal electrical equipment shall be developed and implemented.

(h) There shall be an emergency power system to provide lighting throughout the facility.

(i) The CEDT director shall ensure there is a written plan to cope with internal and external disasters. External disasters include, but are not limited to, tornados, explosions, and chemical spills.

(j) The environment of the residential setting shall be planned, developed, and maintained to respond to the range of needs of consumers served. The environmental quality and type, and the rationales for the development of environment shall be defined by written policy and procedures. Attention to the needs of special populations shall be reflected in these written policy and procedures.

(1) The plan for environment shall include the following, as indicated by the clinical status of consumers served:

- (A) Use of outdoor areas.
- (B) Safety, security, and sanitation needs.
- (C) Areas to accommodate a range of social activities.
- (D) Areas offering privacy to the individual to be alone or talk with staff, family, or others, and
- (E) Facilities shall be appropriately furnished and supplied with materials and equipment suited to the age and physical status of consumers served.

(2) Dining and sleeping areas shall be comfortable and conducive to relaxation.

(3) Consumers shall be allowed to wear their own appropriate clothing.

(4) Consumers shall be allowed to display personal belongings and decorate their living and sleeping areas as appropriate to clinical status of consumers.

(5) Consumers shall be encouraged to assume responsibility for maintaining their living areas, as appropriate to their clinical status.

**SUBCHAPTER 25. SPECIAL POPULATIONS**

**450:60-25-1. Americans with disabilities act of 1990**

(a) Under Titles 11 and 111 of the ADA, the CEDTs shall comply with the "Accessibility Guidelines for Buildings and Facilities (ADAAG) for alterations and new construction." United States government facilities are exempt for the ADA as they shall comply with the "Uniform Federal Accessibility Standards (UFAS)", effective August 7, 1984. Also available for use in assuring quality design and accessibility is the American National Standards Institute (ANSI) A117.1

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"American National Standard for Accessible and Usable Buildings and Facilities."

(b) State and local standards for accessibility and usability may be more stringent than ADA, UFAs, or ANSI A 117.1. The CEDT shall assume responsibility for verification of all applicable requirements and comply with the most stringent standards.

(c) The CEDT shall have written policy and procedures providing or arranging for services for persons who fall under the protection of the Americans With Disabilities Act of 1990 and provide documentation of compliance with applicable Federal, state, and local requirements. A recommended reference is the "Americans With Disabilities Handbook" published in U.S. Equal Employment Opportunities Commission and the U.S. Department of Justice.

## **450:60-25-2. Human Immunodeficiency Virus (HIV), and Acquired Immunodeficiency Syndrome (AIDS)**

(a) The facility shall have a policy of non-discrimination against persons with HIV infection or AIDS.

(b) All facilities shall observe the Universal Precautions For Transmission of Infectious Diseases as set forth in, "Occupational Exposure to Bloodborne Pathogens" published by the (U.S.) Occupations Safety Health Administration [OSHA]; and

(1) There shall be written documentation the aforestated Universal Precautions are the policy of the facility;

(2) Inservice training regarding the Universal Precautions shall be a part of employee orientation and, at least once per year, is included in employee inservice training.

*[OAR Docket #06-881; filed 5-9-06]*

## **TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 65. STANDARDS AND CRITERIA FOR CERTIFIED GAMBLING TREATMENT PROGRAMS**

*[OAR Docket #06-882]*

### **RULEMAKING ACTION:**

Emergency adoption

### **RULES:**

Subchapter 1. General Provisions [NEW]

450:65-1-1. [NEW]

450:65-1-2. [NEW]

Subchapter 3. Gambling Treatment Services and Documentation [NEW]

450:65-3-1. [NEW]

450:65-3-2. [NEW]

450:65-3-3. [NEW]

450:65-3-4. [NEW]

450:65-3-5. [NEW]

450:65-3-6. [NEW]

450:65-3-7. [NEW]

450:65-3-8. [NEW]

Subchapter 5. Gambling Addiction Treatment Programs [NEW]

450:65-5-1. [NEW]

450:65-5-2. [NEW]

450:65-5-3. [NEW]

450:65-5-4. [NEW]

450:65-5-5. [NEW]

Subchapter 7. Facility Infrastructure Requirements [NEW]

450:65-7-1. [NEW]

450:65-7-2. [NEW]

450:65-7-3. [NEW]

### **AUTHORITY:**

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. § 3-322

### **DATES:**

#### **Adoption:**

March 10, 2006

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

April 25, 2006

### **Effective:**

Immediately upon Governor's approval

### **Expiration:**

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

Section 3-322 of O.S. 43A became effective on November 1, 2005 and requires the Board to promulgate rules and standards for certification of gambling treatment programs. Treating problem gambling will positively impact the health and wellness of persons served and the general public.

### **ANALYSIS:**

In accordance with the Administrative Procedures Act the proposed rules implement 43A O.S. § 3-322, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify gambling addiction treatment programs.

### **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. GENERAL PROVISIONS**

### **450:65-1-1. Purpose**

(a) This chapter sets forth the standards and criteria to be used in the certification of Gambling Treatment Programs, and implements 43A O.S. § 3-222 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.

(b) The rules regarding the certification process including but not necessarily limited to application, fees and administrative sanctions are found in the Oklahoma Administrative Code, Title 450, and Chapter 1.

### **450:65-1-2. Definitions**

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

"Admission" means the acceptance of a consumer by a treatment program.

**"Admission criteria"** means those criteria which shall be met for admission of a consumer to gambling treatment.

**"Case management"** means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

**"Clinical supervision"** means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

**"Community education, consultation and outreach"** means services designed to reach the facility's target population, to promote available services, and to give information on mental health, substance use or dependence, and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

**"Comprehensive assessment"** means face-to-face multidimensional interviews conducted by a gambling treatment professional, designed to elicit historical and current information that results in a recommendation regarding the need for treatment. The assessor must have the ability to assess the existence of problem or pathological gambling and co-existence with other disorders including, but not limited to, substance abuse, mental disorders and significant health problems. Information collected through initial and ongoing assessment will provide information for treatment and intervention planning, case management, referral and discharge planning.

**"Consumer"** means an individual, adult or adolescent, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Continuing care"** means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from treatment services are to ongoing recovery.

**"Contract"** means a legal document adopted by the governing authority of an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

**"Counseling"** means a method of using various commonly accepted clinical approaches provided face-to-face by a treatment professional with consumers in individual, group or family settings to promote positive emotional or behavioral change.

**"Crisis intervention"** means an immediately available service to meet the psychological, physiological and safety aspects of problem gambling related crisis, including other mental health issues and substance abuse related crisis. These unscheduled face-to-face interventions are in response to emergencies to resolve acute emotional and physical dysfunction, secure appropriate placement in the least restrictive setting, provide crisis resolution, and stabilize functioning.

**"Diagnosis"** means the determination of a disorder as defined by current DSM criteria.

**"Discharge planning"** means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

**"Discharge summary or final assessment"** means the documentation in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to community services.

**"Documentation"** means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, treatment records, policies, procedures, and announcements.

**"DSM"** means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

**"Family"** means any person who performs the roles and functions of family members in the lives of consumers.

**"Gambling treatment services"** means treatment activities for consumers by a treatment professional that include, but not limited to, the following:

- (A) Comprehensive assessment and diagnostic impression, ongoing;
- (B) Treatment planning and revision, as necessary;
- (C) Individual, group and family counseling;
- (D) Case management;
- (E) Discharge planning.

**"Gambling treatment professional"** means an individual providing direct counseling to consumers who meet the requirements as delineated in OAC 450:65-3-2.

**"Gambling related disorders/problems"** means an individual in which functioning is impaired due to gambling issues.

**"Group counseling"** means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers to promote positive emotional or behavioral change.

**"Individual counseling"** means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a treatment professional with one consumer to promote positive emotional or behavioral change.

**"Integrated Client Information System" or "ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and

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many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Levels of care" means the different options for treatment that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed Alcohol/Drug Abuse Counselor" or "LADC" means an individual licensed to provide substance abuse counseling pursuant to Title 59 O.S., Chapter 43B, Licensed Alcohol and Drug Counselors Act.

"Licensed mental health professional" or "LMHP" means:

(A) a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology;

(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(C) a licensed clinical psychologist;

(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;

(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;

(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;

(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"Linkage" refers to the communication and coordination with clients and other service providers to assure timely and appropriate referrals between the gambling treatment program and other providers.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of problem and pathological gambling, other mental disorders including substance abuse.

"NCGC II" means Nationally Certified Gambling Counselor II; certification level offered by the National Council on Problem Gambling.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

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

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens

"Personnel record" means a chart of file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials and training information.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"Procedures" means the methods by which policies are implemented.

"Program effectiveness - outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

"Progress notes" mean a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual delivering the services.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Recovery environment" means one category to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current recovery environment, current relationships and degree of support for recovery, current housing, employment situation, availability of alternatives and historical information, as it impacts on level of care decision making.

"Screening" means the process by which a consumer is determined appropriate and eligible for admission to a particular program or level of care.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Staff privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

### SUBCHAPTER 3. GAMBLING TREATMENT SERVICES AND DOCUMENTATION

**450:65-3-1. Gambling treatment professional requirements and privileging**

- (a) Each gambling treatment provider shall use clinical privileging to identify gambling treatment professional.
- (b) Each gambling treatment provider shall have written policy and procedure to evaluate the professional qualifications of treatment professionals providing gambling treatment services.
- (c) All core services identified in 450:65-2-1 must be provided by gambling treatment professionals documented as privileged prior to performing gambling treatment services including, but not limited to, the review and verification of:
  - (1) Possession of a valid LMHP or LADC; and
  - (2) Documented completion of 60 hours of the ODMH-SAS recognized core training requirements.
  - (3) Documented completion of 12 hours of problem gambling specific continuing education hours every 12 months.
  - (4) An individual holding a valid NCGC II certification is deemed as having met the core training requirements identified above; and
- (d) All gambling treatment professionals should have evidence of clinical supervision as follows:
  - (1) Hold a valid NCGC II Certification; or
  - (2) Have documentation verifying the provision of gambling treatment services under the clinical supervision of an ODMHSAS approved clinical supervisor.

**450:65-3-2. Treatment Services**

- Facilities providing gambling treatment services shall have a group of services herein designated as core services. Gambling treatment programs may have specific additional services herein designated as optional services. Required services include, but are not necessarily limit to:
- (1) Comprehensive assessment and diagnostic impression, ongoing;
  - (2) Treatment planning and revision, as necessary;
  - (3) Group, individual and family counseling;
  - (4) Case management and;
  - (5) Discharge planning.

**450:65-3-3. Comprehensive assessment and diagnostic services**

- (a) Gambling treatment service provider's policy and procedure shall require that a comprehensive assessment of each consumer's service needs be completed within four (4) sessions of initiation of services.
- (b) The following information shall be collected by the gambling treatment provider and recorded in each consumer's comprehensive assessment, to be completed prior to implementation of the treatment plan. This shall include but not be limited to an assessment of the following areas and needs:
  - (1) Presenting problems;
  - (2) Medical health history and current medical problems including medication use;
  - (3) Mental health history, psychiatric medications and current mental health status;

- (4) Current financial status assessment.
  - (5) Gambling history;
  - (6) History of substance use, including past treatment, and history of other behavioral addictions;
  - (7) Cultural and religious orientation;
  - (8) Social/relationship history;
  - (9) Educational/vocational history;
  - (10) Legal history;
  - (11) Recovery environment;
  - (12) Strength and recovery assets;
  - (13) Diagnostic impression(s);
  - (14) Consumer's expectations in terms of service; and
  - (15) Recommendations for the type and intensity of treatment, including referrals to another treatment provider if necessary.
- (c) The consumer and as appropriate family, shall be an active participant(s) in the intake and assessment process.
  - (d) Assessments shall be performed by staff meeting the requirements for gambling treatment professional.
  - (e) Compliance may be determined by a review of the following:
    - (1) Policy and procedures;
    - (2) Consumer records; and
    - (3) Interviews with staff and consumers.

**450:65-3-4. Treatment planning**

- (a) Treatment planning documents the identification and ranking of consumer's problems, agreed-upon goals, and treatment methods to be utilized.
- (b) The treatment plan shall include, but not be limited to, the following information:
  - (1) Presenting problems or diagnosis;
  - (2) Strengths/assets and weaknesses/liabilities of the consumer;
  - (3) Goals for treatment and measurable time-framed objectives;
  - (4) Type and frequency of services to be provided;
  - (5) Primary person responsible for providing services;
  - (6) Description of consumer's involvement in, and responses to, the treatment plan, and his or her signature and date;
  - (7) Specific date for each planned treatment plan review and update.
- (c) The treatment plan shall be based on the consumer's presenting problems or diagnosis, comprehensive assessment, and the consumer's expectations in terms of service.
- (d) Treatment plans shall be dated and signed by all members of the treatment team who participate in the planning, and should be signed by all members who participate in providing services.
- (e) Treatment plans shall be completed by the fourth (4th) from the date and time of admission.
- (f) The treatment plan shall contain review and update of the treatment plan according to the time frame required by the treatment plan; and for any of the following situations:
  - (1) Change in goals and objectives based upon consumer's documented progress, or identification of any new problem;

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- (2) Change in primary counselor assignment; or
- (3) Change in frequency and types of services provided.

(g) Compliance may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Consumer records; and
- (3) Interviews with staff and consumers.

### **450:65-3-5. Individual, group and family counseling services**

(a) Facilities that provide gambling treatment services shall offer a range of services to consumers based on their needs regarding emotional, social and behavioral problems. Outpatient counseling services shall be provided or arranged for, and shall include, but not be limited to the following:

(1) Individual counseling shall consist of a goal-oriented process in which the client is counseled by and in the presence of a gambling treatment counselor, in accordance with the treatment plan, to relieve symptoms and resolve problems related to gambling disorders or problems.

(2) Group counseling shall consist of activities, directly related to the attainment of objectives as defined in the written treatment plan that the gambling treatment counselor provides to a minimum of two and a maximum of eight clients.

(3) Family counseling shall consist of sessions in which the identified gambler and a minimum of one other person in a committed relationship with the identified gambler, is counseled by a gambling treatment counselor in accordance with the identified client's treatment plan.

(b) Compliance with 450:65-1 may be determined by a review of the following:

- (1) Consumer records;
- (3) Progress notes;
- (4) Interviews with staff; and
- (5) Other facility documentation

### **450:65-3-6. Case management**

(a) Case management services providing advocacy, linkage and referral services shall be made available to all gambling treatment consumers and shall minimally include the following:

- (1) job skills and potential;
- (2) strengths and resources;
- (3) recovery environment;
- (4) medical and physical health status;
- (5) mental health status;
- (6) financial status; and
- (7) legal status.

(b) Compliance may be determined by a review of the following:

- (1) Consumer records;
- (2) Progress notes;
- (3) Interviews with staff; and
- (4) Other facility documentation.

### **450:65-3-7. Discharge Planning**

(a) Discharge planning shall document any consumer's continued need for treatment services, other post-treatment needs and recovery needs.

(b) The Discharge Summary documents in the treatment record the consumer's progress during treatment, goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare. The Discharge Summary is identified as such in the treatment record.

(c) Compliance may be determined by a review of the following:

- (1) Progress notes
- (2) Discharge summaries;
- (3) Consumer records;
- (4) Interviews with staff and consumers; and

### **450:65-3-8. Case records, basic requirement**

(a) All facilities providing services in one or more levels of care shall maintain records that document, but are not limited to the following:

(1) Entries in consumer records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;

(2) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis;

(3) A signed consent for follow-up shall be obtained before any contact after discharge can be made;

(4) A comprehensive assessment;

(5) Case management services;

(6) Treatment planning;

(7) Progress notes documenting the following:

(A) date, start and stop time for each timed treatment session;

(B) signature and credentials of the staff person providing the service;

(C) specific problem(s), goals and objectives addressed/

(D) interventions used to address problem(s) goals and objectives;

(E) progress made toward goals and objectives, or lack of;

(F) consumer response to the session or intervention;

(G) any new problem(s), goals and objectives identified during the session; and

(8) Discharge planning;

(b) In the event the consumer is not admitted and no case record is developed, a policy shall specify how screening and assessment information is maintained and stored.

(c) Compliance may be determined by a review of the following:

- (1) Consumer records; or
- (2) Facility files.

## **SUBCHAPTER 5. GAMBLING ADDICTION TREATMENT PROGRAMS**

**450:65-5-1. Level of Care**

Facilities shall document the provision of gambling addiction treatment services at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the mandates in Subchapter 3 of this Chapter.

**450:65-5-2. Gambling addiction treatment services**

(a) Gambling addiction treatment services shall be an organized non-residential services with scheduled treatment sessions that offer treatment services during the day, evening, and weekends and should not exceed eight (8) hours per week.

(b) The program shall be publicly accessible and accommodate office space, individual and group counseling space, secure records storage, protect consumer confidentiality and provide a safe environment. The gambling addiction treatment program shall maintain written programmatic descriptions and operational methods that address these provisions:

(c) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(d) Compliance may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Licenses;
- (3) Treatment records;
- (4) Interviews with staff and consumers; and
- (5) Other supporting facility records.

**450:65-5-3. Admission criteria**

(a) Admission to a certified gambling addiction treatment program shall be determined by the gambling treatment professional based on the problem gambling issues of the consumer.

(b) Compliance may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Admission protocols;
- (3) Admission assessment instruments;
- (4) Consumer records;
- (5) Interviews with staff and consumers; and
- (6) Other facility documentation.

**450:65-5-4. Discharge criteria**

(a) Discharge from a certified gambling addiction treatment program shall be determined by the following:

- (1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services.
- (2) Lack of engagement in problem gambling behaviors for at least 30 days prior to discharge.
- (3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community service.

(b) Compliance may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Continuing Care Plans;
- (3) Discharge assessments;
- (4) Discharge summaries;
- (5) Progress notes;
- (6) Consumer Records
- (7) Interviews with staff and consumers; and
- (8) Other facility documentation.

**450:65-5-5. Consumer rights**

All certified gambling addiction treatment program shall comply with applicable certified gambling addiction treatment program rules in Title 450, Chapter 15, Consumer Rights.

**SUBCHAPTER 7. FACILITY INFRASTRUCTURE REQUIREMENTS**

**450:65-7-1. Purpose**

The purpose of this subchapter is to set forth rules regulating environmental requirements for a certified gambling addiction treatment program.

**450:65-7-2. Hygiene and sanitation**

Certified gambling addiction treatment programs shall provide:

- (1) Lavatories and toilet facilities in a minimum ratio of one per twenty persons;
- (2) Water and sewerage in the same manner as prescribed for residential facilities; and
- (3) House-keeping services so that a hygienic environment is maintained in the facility.

**450:65-7-3. Standards for food service**

The following shall be applicable to Certified gambling addiction treatment programs which provide an on-premise meal service.

- (1) Storage, preparation and serving of food shall be in compliance with the requirements of the Oklahoma State Department of Health, regulations governing public feeding establishments.
- (2) Dishwashing may be accomplished by either mechanical dishwashers or by approved manual methods. If mechanical dishwashers are used, the final rinse shall be in clear water of 180 degrees Fahrenheit, or in compliance with the Oklahoma State Department of Health regulations. Manual procedures, if used, shall follow a written procedure which outlines the steps followed, temperature of cleaning and rinsing solutions, detergents and chemicals used, etc., and shall be specifically approved by the local or Oklahoma State Department of Health.
- (3) Equipment used in the preparation and handling of food shall bear the seal of the National Sanitation Foundation (NSF), or document compliance with the requirements of NSF.

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(4) Ice used in contact with food or drink shall come from a source approved by the Oklahoma State Department of Health. Transportation, storage, handling, and dispensing shall be in a sanitary manner approved by the Oklahoma State Department.

[OAR Docket #06-882; filed 5-9-06]

## TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #06-835]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULE:

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.s. Fish and Wildlife Service

800:25-7-133.2. Ozark Plateau NWR [NEW]

800:25-7-133.3. Ozark Plateau WMA [NEW]

### AUTHORITY:

Title 29 O.S., Section 3-103; 5-401 and Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation.

### DATES:

#### Adoption:

March 6, 2006

#### Approved by Governor:

April 20, 2006

#### Effective:

Upon Governor Approval

#### Expiration:

Effective through July 14, 2007, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTION:

n/a

### INCORPORATED BY REFERENCE:

n/a

### FINDING OF EMERGENCY:

The Ozark Plateau National Wildlife Refuge (NWR) and Ozark Plateau Wildlife Management Area (WMA) are newly acquired properties for the US Fish and Wildlife Service and the Department. Both Areas will be managed by the Department and in order to provide hunting opportunities this fall, emergency rules are needed so regulations can be printed in the Oklahoma Hunting Guide before it goes to print. Getting the regulations in print will not only provide a written (or website) reference to the rules but also improve safety since the hunting seasons can be looked up before visiting the area.

### ANALYSIS:

The regulations for the NWR and the WMA will be similar to current regulations on existing WMA's in the area. This will keep the rules less confusing to our constituents and should help them have a safe and enjoyable outdoor experience.

### CONTACT PERSON:

Alan Peoples, Chief, Wildlife Division, 405/521-2739 or APA Liaison, Rhonda Hurst, Administrative Assistant, 405/522-6279.

**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. GENERAL HUNTING SEASONS

## PART 19. SEASON ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

### 800:25-7-133.2. Ozark Plateau NWR

The following hunting and trapping seasons apply to the Ozark Plateau NWR:

- (1) Quail: Same as statewide season dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, either-sex.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first 9 days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-133.3. Ozark Plateau WMA

The following hunting and trapping seasons apply to the Ozark Plateau WMA:

- (1) Quail: Same as statewide season dates.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, either-sex.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates.
- (7) Rabbit: Same as statewide season dates.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Same as statewide season dates.

- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first 9 days of deer gun season. In addition, closed during spring turkey season.

- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

*[OAR Docket #06-835; filed 5-5-06]*

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# Permanent Final Adoptions

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

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

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

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

## TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #06-809]*

### RULEMAKING ACTION:

PERMANENT final adoption.

### RULES:

Subchapter 3. Organization and Administration  
87:1-3-14. Benefits Coordinators [AMENDED]

### AUTHORITY:

Oklahoma State Employees Benefits Council; Employees Benefits Act, 74 O.S. §1361 et seq.

### DATES:

#### Comment period:

Beginning January 17, 2006 and ending February 17, 2006.

#### Public hearing:

February 17, 2006

#### Adoption:

February 28, 2006

#### Submitted to Governor:

March 2, 2006

#### Submitted to House:

March 2, 2006

#### Submitted to Senate:

March 2, 2006

#### Gubernatorial approval:

April 17, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

#### Final adoption:

April 28, 2006

#### Effective:

June 11, 2006

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 3. Organization and Administration  
87:1-3-14. Benefits Coordinators [AMENDED]

#### Gubernatorial approval:

August 1, 2005

#### Register publication:

23 OkReg 11

#### Docket number:

05-1213

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

The proposed changes to Chapter 1 memorialize Emergency Rules which became effective August 1, 2005. The rules require materials from authorized payroll deduction vendors to be placed in the annual benefit enrollment materials provided to State employees and dependents. The proposed rules establish a procedure and timeline for the materials to be placed in the benefit enrollment materials beginning with the enrollment period conducted in the fall of 2005. The proposed changes to Chapter 1 add an additional responsibility for Benefit Coordinators to distribute payroll deduction vendor material.

### CONTACT PERSON:

Russell Nash, (405) 232-1190 ext. 103, 200 N. Harvey, Suite 1200, Oklahoma City, OK 73102

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 3. ORGANIZATION AND ADMINISTRATION

### 87:1-3-14. Benefits Coordinators

(a) Each participating employer shall designate at least one person as a Benefits Coordinator to serve as a representative between the Council and the participating employer. Each participating employer shall communicate its Benefits Coordinator designation to the Council in writing.

(b) A Benefits Coordinator shall be responsible for assisting the Council in handling employee enrollment and changes in the flexible benefits plans offered by the Council. A Benefits Coordinator shall be responsible for ensuring that each participant is notified of and has an opportunity to receive flexible benefit plan enrollment materials from the Council, materials from the vendors identified in Chapter 20 of this title, and other notifications from the Council.

(c) A Benefits Coordinator shall keep participant enrollment information confidential.

*[OAR Docket #06-809; filed 5-3-06]*

## TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 10. FLEXIBLE BENEFITS PLAN

*[OAR Docket #06-810]*

### RULEMAKING ACTION:

PERMANENT final adoption.

### RULES:

Subchapter 17. Benefit Plan Election  
87:10-17-3. Employee election of benefit plans [AMENDED]  
Subchapter 19. Benefit Allowance  
87:10-19-1. Flexible benefit allowance [AMENDED]  
Subchapter 25. Dependent Care Reimbursement Account Option  
87:10-25-2. Definitions [AMENDED]

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87:10-25-9. Reimbursement or payment of dependent care expenses [AMENDED]  
87:10-25-10. Forfeiture of unused benefits [AMENDED]  
Subchapter 27. Health Care Reimbursement Account Option  
87:10-27-2. Definitions [AMENDED]  
87:10-27-4. Amount of benefits available [AMENDED]  
87:10-27-9. Reimbursement of health care expenses [AMENDED]  
87:10-27-10. Forfeiture of unused benefits [AMENDED]  
Subchapter 35. Group Health Plan Disclosure of Protected Health Information to the Plan Administrator [NEW]  
87:10-35-1. General provisions

## AUTHORITY:

Oklahoma State Employees Benefits Council; Employees Benefits Act, 74 O.S. §1361 et seq.

## DATES:

### Comment period:

Beginning January 17, 2006 and ending February 17, 2006.

### Public hearing:

February 17, 2006

### Adoption:

February 28, 2006

### Submitted to Governor:

March 2, 2006

### Submitted to House:

March 2, 2006

### Submitted to Senate:

March 2, 2006

### Gubernatorial approval:

April 17, 2006

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

### Final adoption:

April 28, 2006

### Effective:

June 11, 2006

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 17. Benefit Plan Election  
87:10-17-3. Employee election of benefit plans [AMENDED]  
Subchapter 19. Benefit Allowance  
87:10-19-1. Flexible benefit allowance [AMENDED]  
Subchapter 25. Dependent Care Reimbursement Account Option  
87:10-25-2. Definitions [AMENDED]  
87:10-25-9. Reimbursement or payment of dependent care expenses [AMENDED]  
87:10-25-10. Forfeiture of unused benefits [AMENDED]  
Subchapter 27. Health Care Reimbursement Account Option  
87:10-27-2. Definitions [AMENDED]  
87:10-27-4. Amount of benefits available [AMENDED]  
87:10-27-9. Reimbursement of health care expenses [AMENDED]  
87:10-27-10. Forfeiture of unused benefits [AMENDED]  
Subchapter 35. Group Health Plan Disclosure of Protected Health Information to the Plan Administrator [NEW]  
87:10-35-1. General provisions

### Gubernatorial approval:

August 1, 2005

### Register publication:

23 OkReg 12

### Docket number:

05-1214

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

The proposed changes to Chapter 10 memorialize three new provisions previously implemented by Emergency Rule August 1, 2005. The first is the implementation of a 2½ month grace period at the end of the regular Plan Year for incurring reimbursable expenses for Health Care Reimbursement Accounts. The second new provision would implement rules providing for the purchase of a TRICARE Supplement Insurance Plan for certain military retirees. The third new provision implements rules allowing for group health plans to disclose protected health information to the Council in accordance with the standards for privacy of the Health Insurance Portability & Accountability Act (HIPPA).

## CONTACT PERSON:

Russell Nash, (405) 232-1190 ext. 103, 200 N. Harvey, Suite 1200, Oklahoma City, OK 73102

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 17. BENEFIT PLAN ELECTION

### 87:10-17-3. Employee election of benefit plans

(a) Choices of benefit plans shall be made by a new eligible employee within thirty (30) days after date of employment. This thirty (30) day period shall be known as the employee's enrollment period. Each new employee failing to make such a valid election will be deemed to have elected employee-only coverage under the basic State health plan, basic State dental plan, basic State life plan, and basic State disability plan.

(b) Choices of benefit plans shall be made on a Plan Year basis by the eligible employees during the enrollment period as set by the Plan Administrator. The Plan Administrator will establish eligibility requirements for all benefit plan options each year.

(c) Eligible employees are required to elect medical, dental, life and disability plans except as provided in the following paragraphs. Employees who fail to make a valid election during each designated enrollment period will be deemed to have elected the same plans elected during the most recent enrollment period during which a valid election was made. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option health plan and/or HealthChoice Dental.

(d) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan pursuant to the provisions of this section or elect to participate in the basic plan and purchase a TRICARE Supplement plan in lieu of any other medical plans offered for the Plan Year subject to the provision of this section.

(1) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan can elect to participate in the Flexible Benefits Plan and purchase a TRICARE Supplement plan in lieu of any other medical plans offered for the Plan Year only if the following conditions are met prior to the close of each annual enrollment period beginning with the enrollment period for Plan Year 2004:

(A) The employee must provide proof that he or she is retired from a branch of the United States military; and

(B) The employee must provide proof of health coverage through a federal plan; and

(C) The employee must make a proper election either not to participate in the Flexible Benefits Plan or to participate in the Flexible Benefits Plan and purchase a TRICARE Supplement plan in lieu of any other medical plans offered for the Plan Year.

(2) The Council has the authority to determine the type of information that satisfies the requirements of this subsection.

(3) An eligible employee making an election not to participate under paragraph (1) of this subsection must make such an election each Plan Year.

(A) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has never previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan or may make an election not to participate under paragraph (1) of this subsection. If the employee who is eligible to, but has never previously made an election not to participate under paragraph (1) of this subsection, fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection, the employee will be deemed to have elected coverage that was in effect during the previous Plan Year. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option health plan and/or HealthChoice Dental.

(B) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan, or may make an election not to participate under paragraph (1) of this subsection. If an employee who has previously made an election not to participate under paragraph (1) of this subsection fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection during the annual enrollment period, the employee will be deemed to have elected employee-only coverage under the HealthChoice High Option health plan, the HealthChoice dental plan, the basic State life plan, and the basic State disability plan.

(4) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from participating in any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan at any time during the Plan Year for which he or she made the election. Upon re-entry into the state benefits package either through an acceptable midyear event or at the annual Option Period enrollment, benefit options which were declined through the opt-out election by retired military state employees will not automatically be reinstated. The retired military employee

must reapply for and be approved through satisfactory evidence of coverage (EOI) before any amounts of Supplemental Life Insurance will again be issued. Only the Basic Life amount (20,000) will be automatically reinstated upon such re-entry. No Guaranteed Issue levels of Supplemental Life will be available. Furthermore, if no proof is submitted showing previous dental coverage, then the \$250 limit of benefits for HealthChoice Dental will be applied for the first year following reenrollment.

(5) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from electing coverage for his or her dependents under any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan prior to or at any time during the Plan Year for which he or she made the election.

(6) An eligible employee making an election not to participate under paragraph (1) of this section may continue participation in any of the following:

(A) Benefit plans available under the Flexible Benefit Plan other than a health plan, dental plan, life plan, supplemental life plan, dependent life plan, and a disability plan;

(B) Health Care Reimbursement Account Option;

(C) Dependent Care Reimbursement Account Option; and the

(D) Insurance Premium Conversion Option.

(d) Each employee who meets the eligibility requirements but fails to make a proper election under the Flexible Benefits Plan shall be deemed a participant in the Flexible Benefits Plan.

(e) Coverage shall be effective for a new participant beginning on the first day of the month following the participant's first day in an active pay status.

(f) Eligible employees may elect to cover a dependent under the following insurance plans: health insurance, dental insurance, dependent life insurance, or vision insurance. When one eligible dependent is covered, all eligible dependents must be covered for all plans except the dependent life insurance plan. An eligible employee cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.

(g) Primary participants electing coverage for eligible dependents cannot enroll the dependents in a benefit plan or a coverage that differs from the benefit plan or coverage chosen by the primary participant.

(h) An affirmative election of a vision plan is required for each Plan Year.

(i) In order for an eligible employees to choose health plan coverage under a Health Maintenance Organization (HMO) plan, the eligible employee must reside or be employed within the selected HMO's service area.

### SUBCHAPTER 19. BENEFIT ALLOWANCE

## Permanent Final Adoptions

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### 87:10-19-1. Flexible benefit allowance

(a) Each participating employer shall credit to each of its participating employees the specified amount as determined by law, as a flexible benefits allowance. Each participant must use a portion or all of their flexible benefit allowance to purchase at least the basic plan.

(b) An eligible employee making an election not to participate under OAC 87:10-17-3(c)(1) will not be eligible for or credited with any amount of the employee or dependent flexible benefit allowance.

(c) An eligible employee making an election to participate under OAC 87:10-17-3(c)(2) will be eligible for the employee and dependent flexible benefit allowance set by 74 O.S. § 1370(D).

## SUBCHAPTER 25. DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION

### 87:10-25-2. Definitions

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

"**Dependent**" means any individual who is:

(A) A dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under Section 15(c) of the Internal Revenue Code or, is otherwise, a qualifying individual as provided in Section 21(d)(2) of the Internal Revenue Code, or

(B) A dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

"**Dependent care expenses**" means expenses incurred by a participant which are incurred for the care of a dependent of the participant or for related household services, and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.

"**Dependent care reimbursement account**" means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"**Eligible period of coverage**" means that time period in which the participant contributes to the dependent care reimbursement account and that the participant is on an active pay status.

"**Grace Period**" means the period from the end of the Plan Year through March 15<sup>th</sup> of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.

"**Run Out Period**" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

### 87:10-25-9. Reimbursement or payment of dependent care expenses

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the participant from the participant's dependent care reimbursement account for dependent care expenses incurred during the Plan Year for which the participant submits documentation in accordance with OAC 87:10-25-8. No reimbursement or payment of dependent care expenses incurred during a Plan Year shall exceed the balance available in the participant's dependent care reimbursement account.

(b) Participants shall be reimbursed for dependent expenses on a weekly or other reasonable basis during the Plan Year as determined by the Plan Administrator. Reimbursement can also be made for expenses incurred by any participant during the Grace Period. The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than ~~ninety days following the close of the Plan Year~~ the end of the Run Out Period.

(c) Upon demand a participant shall immediately refund any overpayment made by the Plan Administrator on behalf of the participant. Likewise, items charged to a debit card that are unacceptable to the Plan Administrator will require a participant to immediately refund such an overpayment to the Plan Administrator.

(d) If a participant ceases to be a participant or terminates employment, such participant shall be entitled to continue receiving benefits pursuant to the dependent care reimbursement account option to the extent of the amount remaining in the participant's dependent care reimbursement account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.

### 87:10-25-10. Forfeiture of unused benefits

Amounts remaining in a participant's dependent care reimbursement account following final payment of all dependent care expenses incurred during the applicable Plan Year periods described in OAC 87:10-25-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan.

## SUBCHAPTER 27. HEALTH CARE REIMBURSEMENT ACCOUNT OPTION

### 87:10-27-2. Definitions

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

"**Dependent**" means an individual who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

"**Health care reimbursement account**" means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"Medical care expenses" means any expenses incurred by a participant or by a spouse or dependent of such participant for medical care as described in Section 213 of the Internal Revenue Code and subject to the limitations of section 125 and this Flexible Benefits Plan, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense through insurance or otherwise.

"Grace Period" means the period from the end of the Plan Year through March 15<sup>th</sup> of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.

"Run Out Period" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

**87:10-27-4. Amount of benefits available**

(a) Subject to the limitations imposed by federal law to avoid discrimination, the maximum benefit which a participant may receive in any Plan Year for medical care expenses under the health care reimbursement account option shall be subject to a monthly maximum of ~~\$300.00~~ \$350.00 or other amount as determined by the Plan Administrator.

(b) The minimum salary adjustment amount for participation in this option shall be \$10.00 per month.

**87:10-27-9. Reimbursement of health care expenses**

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the participant from the participant's health care reimbursement account for health care expenses incurred during the eligible period of coverage, for which the participant submits documentation, in accordance with OAC 87:10-27-8. No reimbursement of health care expenses incurred during a Plan Year shall exceed the maximum amount defined in the salary adjustment agreement.

(b) Participants shall be reimbursed for medical care expenses on a weekly or other reasonable basis during the Plan Year in accordance with Flexible Benefits Plan Administration Rules. Reimbursement can also be made for expenses incurred by any participant during the Grace Period. The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than ~~ninety (90) days following the close of the Plan Year~~ the end of the Run Out Period.

(c) Upon demand a participant shall immediately refund any overpayment made by the Plan Administrator on behalf of the participant. Likewise, items charged to a debit card that are unacceptable to the Plan Administrator will require a participant to immediately refund such an overpayment to the Plan Administrator.

(d) If a participant ceases to be a participant or terminates employment, the participant shall be entitled to continue receiving benefits pursuant to this health care option to the extent of the amount remaining in the participant's health care reimbursement account for expenses incurred during the eligible period of coverage of the current Plan Year.

(e) If a participant ceases to be a participant or terminates employment, claims incurred after the last day of the month

of termination or the date participation ceased shall not be considered for reimbursement, unless the participant elects to continue participation in this option by elected coverage continuation as provided for in this section.

(f) Any participant may continue this option under the coverage continuation guidelines for COBRA, as provided under OAC 87:10-33-1 on a post tax basis.

**87:10-27-10. Forfeiture of unused benefits**

Following final payment of all health care expenses incurred during the ~~applicable Plan Year~~ periods described in OAC 87:10-27-9(b), amounts remaining in the health care reimbursement account shall be forfeited to pay administrative expenses of the Flexible Benefits Plan.

**SUBCHAPTER 35. GROUP HEALTH PLAN DISCLOSURE OF PROTECTED HEALTH INFORMATION TO THE PLAN ADMINISTRATOR**

**87:10-35-1. General Provisions**

A group health plan may disclose protected health information to the Plan Administrator in its capacity as plan sponsor. The Plan Administrator will use and disclose such information in a manner consistent with the HIPAA requirements of the Standards for Privacy of Individually Identifiable Health Information including the applicable requirements of 45 CFR §164.504(f).

*[OAR Docket #06-810; filed 5-3-06]*

**TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 20. AUTHORIZED PAYROLL DEDUCTION VENDOR MATERIAL**

*[OAR Docket #06-811]*

**RULEMAKING ACTION:**

PERMANENT final adoption.

**RULES:**

- 87:20-1-1. Purpose [NEW]
- 87:20-1-2. Definitions [NEW]
- 87:20-1-3 General Provisions [NEW]

**AUTHORITY:**

Oklahoma State Employees Benefits Council; Employees Benefits Act, 74 O.S. §1361 et seq.

**DATES:**

**Comment period:**

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**Public hearing:**

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**Submitted to Governor:**

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**Submitted to House:**

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## Gubernatorial approval:

April 17, 2006

## Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

## Final adoption:

April 28, 2006

## Effective:

June 11, 2006

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

- 87:20-1-1. Purpose [NEW]
- 87:20-1-2. Definitions [NEW]
- 87:20-1-3 General Provisions [NEW]

## Gubernatorial approval:

August 1, 2005

## Register publication:

23 OkReg 16

## Docket number:

05-1215

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Chapter 20 was added as an Emergency Rule on August 1, 2006 and is designed to implement the requirements of 74 O.S. §1344.1. The proposed rules establish a procedure and timeline for materials from Voluntary Payroll Vendors to be placed in the annual benefit enrollment materials provided to State employees and dependents.

## CONTACT PERSON:

Russell Nash, (405) 232-1190 ext. 103, 200 N. Harvey, Suite 1200, Oklahoma City, OK 73102

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

### **87:20-1-1. Purpose**

The purpose of this Chapter is to describe the rules governing the process by which materials from vendors that have an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes shall be placed in the annual benefit enrollment materials provided to state employees and their dependents. The provisions of this Chapter do not apply to vendors who do not have authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes.

### **87:20-1-2. Definitions**

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

"Council" means the State of Oklahoma Employees Benefits Council

"Plan Year" means the period of time, established by the Council, for which benefits are offered to State employees and their eligible dependents.

"Vendor" means a product vendor that has been approved for an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74

of the Oklahoma Statutes on or before the last calendar day of July prior to each Plan Year.

"Vendor Material" means a one page, front and back, eight and one-half inch by eleven inch document which, at a minimum, identifies the vendor, describes the product being offered, includes the vendor's contact information, and includes the premium or cost of the product. Vendor material must be printed on white paper with a weight equal to 50# off-set or 20# bond copy paper.

### **87:20-1-3. General provisions**

(a) A vendor must deliver its vendor material to the Employees Benefits Council no later than 4:45 p.m., Central Time, on the second Friday in August prior to the beginning of the benefits enrollment period announced by the Council.

(b) Vendor material must be designed, printed, and reproduced by the vendor at the vendor's expense.

(c) The Council will determine the number of copies of vendor material each vendor must supply. The amount will be communicated to vendors each year.

(d) The Council will bind and distribute all timely and properly submitted vendor material at its own expense.

(e) The Council may create forms to standardize and simplify the information required by this section. If a form(s) has been created, a vendor must complete the form(s) to provide proper delivery.

*[OAR Docket #06-811; filed 5-3-06]*

## **TITLE 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICT**

*[OAR Docket #06-770]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Specific District Regulations [AMENDED]

120:10-3-12. [AMENDED]

Subchapter 5. General District Provision and Additional Zoning Regulations

120:10-5-1. [REVOKED]

120:10-5-7. [REVOKED]

Subchapter 15. Signage Guidelines [NEW]

120:10-15-1. [NEW]

120:10-15-2. [NEW]

120:10-15-3. [NEW]

120:10-15-4. [NEW]

120:10-15-5. [NEW]

120:10-15-6. [NEW]

120:10-15-7. [NEW]

120:10-15-8. [NEW]

120:10-15-9. [NEW]

120:10-15-10. [NEW]

120:10-15-11. [NEW]

120:10-15-12. [NEW]

120:10-15-13. [NEW]

120:10-15-14. [NEW]

120:10-15-15. [NEW]  
Appendix C. State Capitol Complex Subdistrict [NEW]  
Appendix D. Signage Table [NEW]

**AUTHORITY:**

Capitol-Medical Center Improvement and Zoning Commission, 73 O.S., Section 83.4

**DATES:**

**Comment Period:**

August 15, 2005 to September 22, 2005

**Public Hearing:**

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**Submitted to Senate:**

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Failure of the Legislature to disapprove the rules resulted in approval on March 31, 2006

**Final adoption:**

March 31, 2006

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June 11, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**ANALYSIS:**

Rules establish the State Capitol Complex Subdistrict; provide restrictions for the subdistrict, which include information and provisions related to burials and scattering of ashes; and, approval of monuments, memorials and statuary, within the district. Subchapter 15 provides information and establishes criteria and procedures to ensure oversight of signage within all zoning districts in the Capitol-Medical Center Improvement and Zoning District.

**CONTACT PERSON:**

Gerry Smedley, Administrative Rules Liaison, (405) 522-8519, Department of Central Services, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73105; or, Denise Martin, Administrative Officer, Capitol-Medical Center Improvement and Zoning Commission, (405) 521-3678, 2401 N. Lincoln Blvd., Suite 112, Oklahoma City, OK 73105.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

**SUBCHAPTER 3. SPECIFIC DISTRICT REGULATIONS**

**120:10-3-12. Public District (P)**

**(a) Uses permitted.**

- (1) It is the intent of this Section that property and buildings in the Public District shall be used only for the purposes designated in the Master Land Use Plan as officially adopted by the Capitol-Medical Center Improvement and Zoning Commission.
- (2) Property and buildings shall only be used for the following purposes:

(A) Any park or recreation use permitted under the rules and regulations promulgated for State Capitol Park Number One (Title 74, Oklahoma Statutes

1811.4) by the Oklahoma Department of Tourism and Recreation.

(B) Any Public Administration Use as defined in 120:10-1-3.

(b) **Height regulations.** No building shall exceed the height limitation set for in 120:10-5-3.

(c) **Intensity of use.** Buildings and structures shall not exceed 1.0 Floor Area Ratio (F.A.R.) or .25 Ground Coverage Ratio (G.C.R.) as defined in 120:10-1-3.

(d) **State Capitol Complex Subdistrict.** For purposes of these regulations, there is hereby created a State Capitol Complex Subdistrict. The principal use of land is reserved for state government and state government uses. The State Capitol Complex Subdistrict is described as follows: Beginning at the southeast corner of the intersection of NE 28th Street and North Lincoln Boulevard; thence east along the south line of NE 28th Street to west line of Lindsay Avenue; thence south on Lindsay Avenue to the south line of NE 24th Street; thence east along NE 24th Street to the west line of Laird Avenue to the south line of NE 23rd Street; thence west to the east boundary of Block 3, State Capitol Addition; thence south along said east block line to the point of intersection with the northern boundary line of Block 12, State Capitol Amended Addition; thence west along said line to the east line of Lindsay Avenue; thence south along Lindsay Avenue to the north line of NE 19th Street; thence west along NE 19th Street to the east line of the North Lincoln Boulevard median, also designated as State Capitol Park; thence south along North Lincoln Boulevard to the point of intersection with NE 14th Street; thence west to the east edge of North Lincoln Boulevard median, also designated as State Capitol Park; thence north to the intersection of the north boundary line of Block 10, Classen's North Highland Parked Addition; thence west along said boundary line to the east line of Walnut Avenue; thence north along Walnut Avenue to the north line of NE 18th Street; thence west on NE 18th Street to the east edge of the I-235 Expressway; thence north along said I-235 Expressway to the point of intersection with the southeast corner of NE 23rd Street; thence east along the south line of NE 23rd Street to the west edge of the southwest NE 23rd Street/North Lincoln Boulevard Loop; thence in a north and easterly direction around the northwest NE 23rd Street/North Lincoln Boulevard Loop to the east line of North Lincoln Boulevard; thence north along Lincoln Boulevard to the south line of NE 27th Street; thence east along NE 27th Street to the center line of North Lincoln Boulevard; thence north to the point of beginning.

(e) **State Capitol Complex Subdistrict Restrictions.** Unless specifically provided for in this Section, the following restrictions shall apply to this Subdistrict:

(1) **Burials and Scattering of Ashes.** Burials or interment of human or other remains is prohibited in the State Capitol Complex Subdistrict. The scattering of human or other ashes from cremation is prohibited in the State Capitol Complex Subdistrict.

(2) **Monuments, memorials and statuary.** All plans for temporary or permanent monuments, memorials and statuary shall be reviewed and approved by the Commission. Requests will be reviewed in terms of cultural,

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historical and/or architectural significance; impact on the visibility, character and/or integrity of the State Capitol Building; impact on the function of established or future uses in the State Capitol Complex Subdistrict; and provisions for open space as established in the Master Plan.

## SUBCHAPTER 5. GENERAL DISTRICT PROVISION AND ADDITIONAL ZONING REGULATIONS

### 120:10-5-1. Definitions [REVOKED]

The definitions of types of signs for the purpose of this Chapter shall be as follows. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

**"Banner sign"** means any non rigid sign in which the characters, letters, illustrations or ornamentations are applied to cloth, paper or fabric of any kind.

**"Billboard"** means any sign where the matter displayed would be used for purposes other than that of advertising to the public the legal or exact firm name or the name of the business carried on therein or thereat, or advertising any service or product or products actually and actively being offered for sale therein or thereon.

**"Construction sign"** means a temporary sign not greater than fifty (50) square feet in area displayed for the purpose of announcing contemplated improvements or firms making improvements on the property or premises or the property or premises adjacent to that on which the sign is placed. One sign per street frontage shall be permitted.

**"Flat sign"** means any sign erected parallel to the face or on the outside wall of any building and supported throughout its entire length by such wall or walls.

**"Illuminated sign"** means any sign which is artificially lighted by electric lights or luminous tubes whether the source of illumination is part of the sign or not.

**"Illuminated direct"** means illumination which comes from within or is otherwise part of the sign proper.

**"Illuminated indirect"** means illumination which is performed by spotlights, or other lighted devices and which is not part of the sign proper.

**"Pole sign"** means any sign erected on a pole or poles, and which is wholly or partly independent of any building for support.

**"Premises advertising sign"** means any flat, projecting or pole sign for advertising the legal or exact firm name of the business carried on therein or thereat, or advertising any service or product or products actually and actively being offered for sale therein.

**"Professional name plate"** means a sign not greater than two (2) square feet in area giving the name and occupation of an individual engaged in a recognized profession.

**"Projecting sign"** means any sign erected on a fence or outside wall of a building which projects out at any angle therefrom.

**"Real estate sign"** means a temporary sign not greater than twenty (20) square feet in area displayed for the purpose of offering property or premises for sale or lease.

**"Roof sign"** means any sign erected across or over the roof of any building.

**"Snipe sign"** means any small billboard nailed or attached in any way to an object or a tree.

### 120:10-5-7. Advertising signs [REVOKED]

(a) **Applicability.** No advertising sign shall be located in any zoning district other than as specified for HC, Health Center, except in accordance with the provisions of this Section. No portable signs shall be located in any zoning district.

(b) **Use of signs.**

(1) No billboard, snipe sign or roof sign shall be permitted in any zoning district except the I-2, Light Industrial District. Premises advertising signs are hereby permitted in all "C" and "I" districts. Real estate signs and professional name plates are hereby permitted in all "R" and "C" and "I" district.

(2) No projecting or flat sign shall project or extend greater than ten (10) feet above or away from any building to which it is attached.

(3) Banner sign may be erected or displayed only upon the expressed written approval of the Commission and under terms established for such display to insure the protection of public safety from erection of said signs and to prevent interference with traffic lights and control devices, and to protect adjacent uses of land. All banner signs shall be temporary in nature. Application for permission to erect said signs together with plans thereof shall be made to the Commission not less than thirty (30) days prior to the date when erection is planned. The written authorization for the erection of a banner sign shall be for a length of time specified by the Commission. Said sign shall be removed by the owner on or before the date of expiration of the permit.

(4) Construction and real estate signs shall be removed immediately upon sale or lease of the premises, or upon completion of the improvement.

(5) Illuminated signs shall be designed so as not to interfere with the operation of traffic lights or other traffic control devices, and shall not create objectionable glare in any residential district or public building or area, as determined by the Director of the Commission.

(6) Plans for all premises advertising signs, roof signs, snipe signs and billboards shall be submitted to the Commission for approval. The Commission shall determine that the design and location of said sign will be in harmony with and will not detract from the general character of development in the Zoning District and in the area in which said sign is proposed to be located before a building permit for erection shall be authorized.

## SUBCHAPTER 15. SIGNAGE GUIDELINES

**120:10-15-1. Purpose**

In order to maintain aesthetic quality within the district, regulations and policies for green space, public right-of-ways, vistas and landscaping have been established. A standard for signage is desirable and necessary to preserve architecturally significant building features, topography and the landscape, and if properly used, will create harmony between building, landscape and signage. Signage is a secondary use and its objective is to direct and identify. These rules establish guidelines and criteria to properly control signage and are applicable in all zoning districts except where otherwise provided.

**120:10-15-2. Applicability**

Signage guidelines in these rules establish a coordinated, environmental graphic system providing for business identification and information communication that is simple, sophisticated and serves to decrease the amount of visual clutter. Unless specifically approved, no sign shall be constructed, erected, installed or reinstalled unless it conforms to the criteria and guidelines of this Subchapter and all other applicable regulations for the Capitol-Medical Center Improvement and Zoning District. Any sign legally existing on the date of the formal adoption of this Subchapter that does not conform to the provisions of the Subchapter or the zoning district regulations shall be considered a legal, non-conforming use or structure and may continue in such status until it is abandoned or removed by the owner. When applicable, signage must be in compliance with the Americans with Disabilities Act.

**120:10-15-3. Definitions**

For the purpose of this Subchapter, words used in present tense shall include the future tense; words in the singular number include the plural and words in the plural include the singular, except where the natural construction of the writing indicates otherwise. The word "shall" is mandatory and not directory. In addition, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Advertising sign or structure" means any metal, wood, plastic, plaster, stone, or other sign placed for outdoor advertising purposes on the ground or any wall, post, building, or structure.

"Banner sign" means a non-rigid sign on which characters, letters, illustrations or ornamentations are applied to a flexible substrate.

"Canopy sign" means a sign affixed to the visible surface(s) of an attached or freestanding canopy.

"Commission" means the Capitol-Medical Center Improvement and Zoning Commission.

"Construction sign" means a temporary sign not greater than thirty six (36) square feet in area displayed for the purpose of announcing contemplated improvements or firms making improvements on the property or premises or the property or premises adjacent to that on which the sign is placed. One sign per street frontage shall be permitted, but no more than two signs per site.

"Directional sign" means any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

"Freestanding sign" means a sign principally supported by a structure affixed to the ground and not supported by building, including signs supported by one or more columns, poles, masonry base, or braces placed in or upon the ground.

"Illuminated sign" means a sign characterized by the use of artificial light. An internally illuminated sign projects light through its surface(s). An externally illuminated sign reflects light off of its surfaces.

"Informational sign" means a sign that informs or gives notice of something required or of worthwhile attention. Informational signs include, but are not limited to, warning signs, emergency vehicle entrance, hazardous materials, and pedestrian/school crossing.

"Outdoor Advertising sign" means any sign displaying subject matter for purposes other than advertising any service and/or products being offered for sale on the premises where the sign is located.

"Parapet sign" means a sign affixed to the visible surface of the building facade above the line of the structural roof or on a parapet wall.

"Placard/Professional name plate" means a wall mounted flat plate slab or disk not greater than 2 square feet in area or 9 inches in diameter that contains the name and/or logo, address, and occupation of the individual or firm engaged in a recognized profession.

"Pole sign" means any sign erected on a pole or poles, which is entirely or partially independent of any building for support.

"Portable sign" means any mobile outdoor sign used as a form of temporary advertisement.

"Premises sign" means any sign that identifies the legal or exact firm name of the business on the premises or advertises any service or product being offered for sale.

"Real estate sign" means a temporary non-illuminated sign not greater than 20 square feet in area, displayed for the purpose of offering property or premises for sale or lease.

"Roof sign" means any sign erected across or over the roof of any building.

"Sign face area" means the area comprising the message portion of the sign, not including the support structure, only the face or faces which may be seen from one direction at a time.

"Specialty signage" means on or off premises signage, or a system of signage located in a yard area, street median, public or private park with the primary purpose of identifying a development, including residential developments, or providing identification, information, or direction. This definition does not include directional sign or informational sign as defined in this guideline.

"Temporary sign" means a sign of a transitory or temporary nature intended to display either commercial or noncommercial messages.

"Wall sign" means any sign mounted flush against the facade of the building or on the outside wall of any building that is supported throughout its entire length by the wall or

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walls. Wall signs shall not project more than one foot from the surface of the wall.

### **120:10-15-4. Principal Signage**

(a) **Size.** All signs must be proportionate to site size and/or the size of the structure and shall not exceed the height limitations of the zoning district in which the sign is located or the height limitations designated by OAC 120:10-5-3. All signs shall be in compliance with the Signage Table (Appendix D) of this Chapter.

#### (b) **Location.**

(1) All signage must be in compliance with the setback requirements for the zoning district in which it is located. No signs, other than official traffic signs and parking control signs, will be located within the right-of-way of any public street without an approved permit from the City of Oklahoma City.

(2) No part of the sign, including the footing, shall be located closer than 5 feet from the side and rear property lines. No part of the sign including the footing shall be located closer than 1 foot from the front property line.

(3) No sign will be erected at the intersection of any street in a location that will obstruct free and clear vision or, at any location that by its position, shape, or color interferes with or obstructs the view of or may be confused with any authorized traffic sign, signal or device.

(4) In no case shall any sign invade the "Sight lines at intersections" established in OAC 120:10-5-4(3).

(c) **Aesthetic quality.** Signage is an accessory use, its only function being to advertise, direct or identify. All signs should be designed to compliment the structure and landscape and give the appearance of an additional architectural feature or element. Materials must be similar or complementary to those used in the main building. Signage must be appropriate to the existing architectural vocabulary and meet the approval of the Commission.

### **120:10-15-5. Materials**

(a) Signage material must be compatible with building materials in texture and color. The use of the same materials as the primary structure is usually acceptable and appropriate.

(b) No plastic or vinyl signs are permitted in the Health Center District (HC) or the Capitol Complex Subdistrict on a permanent basis, unless exclusively approved by the Commission.

### **120:10-15-6. Illumination**

(a) To properly integrate signage into the existing environment and to effectively create enhancement after dark and not a daytime effect, all illuminated signs will be illuminated from a concealed source, preferably a ground mounted source.

(b) Illuminated signs shall be designed so as not to interfere with the operation of traffic lights or other traffic control devices, and shall not create objectionable glare in any residential district or public building or area.

(c) All internally illuminated signs shall be approved by the Commission prior to construction and/or installation.

### **120:10-15-7. Secondary Signage**

(a) All directional and informational signage as defined in this Subchapter shall be designed with consideration of visitors, patients, students and others and clearly identify pedestrian and vehicular circulation patterns, building, parking and bus stop locations.

(b) Directional and informational signage for developments shall be uniform in terms of character. All plans must be submitted for prior review and must include, but not be limited to, quantity, location, type, size, lighting, landscaping, and materials of all proposed signage

### **120:10-15-8. Specialty Signage**

#### (a) **Ground mounted signage.**

(1) For residential districts, the maximum width of all ground mounted signs shall be 5 feet for each 25 feet of street frontage, and 1 foot for each additional 25 feet of street frontage up to a maximum of 50 feet. No sign shall exceed 6 feet in height.

(2) For non-residential developments, the maximum height for all ground mounted signs shall be 5 feet for each 25 feet of street frontage, and 1 foot for each additional 25 feet of street frontage up to a maximum of 150 feet. The overall height of any ground-mounted sign shall not exceed 8 feet. Any variance from this requirement shall be approved in advance by the Commission.

#### (b) **Pole mounted signage.**

(1) All pole mounted directional and informational signs must be installed at a height visible to vehicular traffic, but must not obstruct vehicular movement or pedestrian routes.

(2) All pole mounted signs must be installed in concrete or be bolted, anchored or secured to a concrete, cement, or other equally effective bonding material or surface.

(3) With the exception of historical markers and neighborhood identification signs, pole mounted signage is prohibited in all residential zoning districts.

(4) All median pole mounted signs shall be installed in the center of the median. The center is the centerline of the street or the centerline of the median, as measured from edge to edge.

(5) The maximum width of any median sign shall be no greater than 15 percent of the total width of the median or island in which it is located. The maximum overall height of any pole-mounted sign shall not exceed 12 feet.

### **120:10-15-9. Temporary Signage**

(a) The term temporary signage shall include signage advertising short term or special events. These temporary signs shall be subject to the same standards as permanent signage including but not limited to size, height, set back, and location. All short term or special event signage shall be removed no later than 10 days after the conclusion of the advertised event.

(b) Temporary signage can be installed or displayed only upon the express written approval of the Commission and in accordance with terms established for such display in order to

insure the protection of public safety, prevent interference with traffic lights and control devices and protect adjacent uses of land. Applications and plans for permission to install temporary signs shall be made to the Commission not less than 30 days prior to the date installation is planned. The written authorization for temporary signs shall be for a length of time specified by the Commission and the sign shall be removed by the owner on or before the expiration date of the permit.

(c) All banner signs, real estate signs and construction signs, as defined in this subchapter, are temporary in nature.

(d) All real estate signs shall be removed upon the sale of the property and all construction signs shall be removed shall be removed within 10 days after the substantial completion of the improvement.

(e) One construction sign per street frontage is permitted. Advertising on construction trailers counts as one construction sign.

### **120:10-15-10. Prohibited Signage**

(a) Outdoors advertising signs, pole signs, and roof signs are permitted only in the I-2, Light Industrial District.

(b) Portable signs are prohibited in all zoning districts.

(c) Other than official traffic signs and lighted pedestrian warning signs, flashing and blinking signs are prohibited.

(d) No unauthorized sign shall be attached to any utility pole, light standard, bus shelter or kiosk, street tree or any other public facility located in the public right-of-way.

### **120:10-15-11. Limitation Per Site**

One ground mounted principal sign per street frontage and one building mounted principal sign per street frontage or, a combination of the two, shall be permitted. The number of directional/information signs shall be determined based upon the need.

### **120:10-15-12. Maintenance Provision**

(a) Signage shall be constructed of materials that can be easily maintained and that do not weather quickly. All approved signs must be properly maintained. Whenever a sign becomes dilapidated or falls into a state of disrepair or ruin, whole or in part, all portions of the sign shall be removed from the premises.

(b) Whenever a sign is determined to be insecure, pose a danger, be deemed unsafe, be dilapidated or is in any way

maintained in violation of the provisions of this subchapter or the zoning district regulations, the Commission will send written notification of such findings to the owner. The owner shall have 10 days from the date of the written notice to bring the sign into conformance or remove the sign. If the owner does not comply within 10 days, the Commission will issue a citation for non-compliance in accordance with the procedures in Title 73, §83.13.

### **120:10-15-13. Landscaping Requirement**

(a) To soften the impact of signage, landscaping will be required for certain ground mounted signs. The Commission will review and approve all landscaping for signage.

(b) Landscaping shall be provided by the use of grasses, ground cover, trees, shrubs or other live landscape materials.

(c) An appropriate irrigation or watering system is required for landscape plantings.

(d) All plant material shall be horticulturally appropriate and compatible with the Oklahoma environment. Any plantings that die due to weather, neglect or damage shall be replaced and comply with the approved plan

### **120:10-15-14. Legal Non-conforming signs**

Any sign legally existing on the effective date of this Subchapter that does not conform to use, location, height or size with the regulations of the zone in which the sign is located, will be considered a legal nonconforming use or structure and may continue in such status until it is either abandoned or removed by the owner. If the sign is damaged to the degree that it requires removal or becomes dilapidated, it shall be replaced with a sign that complies with the provisions of this subchapter.

### **120:10-15-15. Building Permit Required**

Plans for all premises signs and temporary signs, with the exception of real estate signs, shall be submitted to the Commission for approval, prior to erection. The Commission shall reserve the absolute right to determine the appropriateness of signage prior to the issuance of a building permit. Determination for approval of signage shall be based on design, location, general character and the ability of the signage to integrate into the existing environment.



**APPENDIX D. SIGNAGE TABLE [NEW]**

<b>SIGNAGE TABLE</b>		
<b>TYPE SIGN</b>	<b>MAXIMUM SIGN AREA</b>	<b>MAXIMUM SIGN HEIGHT</b>
Wall <u>Or</u> Parapet	Not to exceed 25 percent of the wall area	No portion of the sign shall extend above the highest portion of the building or roof on which it is attached.
Canopy <u>Or</u> Awning	Not to exceed 20 percent of the background area	No portion of the sign shall extend above the highest portion of the canopy or awning on which it is attached.
Placard <u>Or</u> Professional Nameplate	2 Square Feet or 9 inches in diameter	
Premises' Primary Identification Sign (Lots 25 feet or less in width)	30 square feet	6 feet
Premises' Primary Identification Sign (Lots 50 to 75 feet in width)	50 square feet	8 feet or up to 10 feet with base or other architectural supports.
Premises' Primary Identification Sign (Lots 75 feet or greater in width)	70 square feet	8 feet or up to 10 feet with base or other architectural supports.
Construction Signs	36 square feet.	9 feet or up to 11 feet with post or other architectural supports.
Banner Sign (Ground Mounted)	Not to exceed 3 feet in height and 10 feet in length	3 feet; post or supports shall extend no more than 6 inches beyond the top of the banner.
Banner Sign (Building Mounted)	Not to exceed 2 feet in height and 10 feet in length.	

[OAR Docket #06-770; filed 4-26-06]

# Permanent Final Adoptions

## TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #06-841]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
165:15-1-1. Purpose [AMENDED]  
165:15-1-2. Definitions [AMENDED]  
Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance  
Part 5. Liquid Measuring Devices  
165:15-3-16. Inspection for compliance [AMENDED]  
Part 7. Storage Tanks and Ancillary Equipment  
165:15-3-20. Water in storage tanks [AMENDED]  
165:15-3-21. Containment of petroleum products [AMENDED]  
165:15-3-22. Equipment installation [AMENDED]  
165:15-3-24.1. Airport inspections [AMENDED]  
165:15-3-24.3. Farm inspections [AMENDED]  
Part 9. Large Volume Meters  
165:15-3-25. Testing and inspection of large volume meters [AMENDED]  
Subchapter 9. Description of Motor Fuel  
165:15-9-1. General representation; lettering [AMENDED]  
165:15-9-3. Alcohol, ethanol, or ethyl alcohol [AMENDED]  
Subchapter 15. Liquid Measuring Devices  
Part 3. Calibration and Tolerances  
165:15-15-8. Duty to zero equipment [AMENDED]  
165:15-15-9. Tolerances [AMENDED]  
Part 7. Money Values and Volumes Dispensed  
165:15-15-28. Position of equipment and money value divisions [AMENDED]  
165:15-15-35. Money value display and computation [AMENDED]  
Appendix A. Tolerances for Retail and Wholesale Devices [NEW]

### AUTHORITY:

Oklahoma Corporation Commission; Article IX, Section 18, 19 Oklahoma Constitution and 17 O.S. §301 *et seq.*; 27A O.S. § 1-1-201 *et seq.* and § 1-3-101 *et seq.*; 42 U.S.C. § 6991

### DATES:

#### Comment Period:

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#### Public Hearing:

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#### Submitted to the House:

March 3, 2006

#### Submitted to Senate:

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#### Gubernatorial approval:

April 17, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006.

#### Final Adoption:

April 28, 2006

#### Effective Date:

July 1, 2006

### SUPERSEDED EMERGENCY ACTIONS:

None

### INCORPORATIONS BY REFERENCE:

None

### ANALYSIS:

OAC 165:15-1-1 is amended to include the term regulated substances and examples of such regulated substances.

OAC 165:15-1-2 amends the definition of alcohol; adds the definition of ancillary equipment; adds the definition of bulk plant; deletes the definition of equipment; deletes the definition of ethanol; amends the definition of security seal to include locking devices.

OAC 165:15-3-16 is amended to explain the calibration for high volume dispensers.

OAC 165:15-3-20 is amended to provide for shut down storage tanks that have 2 or more inches of water within.

OAC 165:15-3-21 is amended to assure spill and overflow protection is operating and functional, provides for vapor monitoring wells, provides for approval of monitoring well site assessment, requires monitoring or inventory records be kept on site, and requires 60 day rectifier readings.

OAC 165:15-3-22 is amended to require new underground piping be installed in accordance with 25 and 26 (suction can be single-wall) and requires fill pipes be properly marked, and renumbered.

OAC 165:15-3-24.1 is amended to remove the requirement of fuel specialist review of an airport's long term plans, and renumbered.

OAC 165:15-3-24.3 is amended by deleting reference to Chapter 26 and renumbering.

OAC 165:15-3-25 is amended to set forth measuring protocol for large volume meters.

OAC 165:15-9-1 is amended by specifying text size of signage as  $\frac{1}{4}$  to  $\frac{1}{2}$  inch, easily readable at a 5 foot distance.

OAC 165:15-9-3 is amended by requiring alcohol sold at all airports as a fuel component, to be labeled as such.

OAC 165:15-15-8 is amended by requiring recalibration of fuel measuring devices.

OAC 165:15-15-9 is amended to establish tank shut down for out of tolerance measurements.

OAC 165:15-15-28 is amended to increase the required money value display measurement on older analog pumps up to a per gallon price of \$2.99.

OAC 165:15-15-35 is amended to require that cash discounts be paid in-store.

Appendix A is amended to reflect high volume dispenser tolerances.

### CONTACT PERSON:

Jeff Southwick (405) 522-4457

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 165:15-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive regulatory program governing the sale and use of regulated substances such as gasoline, kerosene, aviation fuel, and diesel fuel, and specify standards governing the measuring devices and facilities used to sell, dispense, or deliver these products to the public. This Chapter is intended to protect the customer by regulating the integrity and quantity of the product sold; protect the public from fire and explosion and the environment from pollution; assist the tank owner or operator by explaining the reason for this Chapter and its practical purpose; and show the owner how to maintain a petroleum storage tank system to avoid damages or deterioration of the system, economic loss to the owner, and damages to others.

### 165:15-1-2. Definitions

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

**"Aboveground storage tank"** or **"AST"** means any stationary tank not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, antifreeze, motor oil, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol.

**"Aboveground storage tank system"** means an above-ground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

**"Airport"** means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

**"Alcohol" or "ethanol" or "ethyl alcohol"** means denatured ethyl alcohol with the chemical formula of  $C_2H_5OH$  used as a component in gasoline. The use of any other type of alcohol for motor fuel purposes must be specifically defined by the Commission upon application and order.

**"Analog type"** means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

**"Ancillary equipment"** means any device including, but not limited to devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

**"Approval seal"** means a label or tag pasted on the face of a device indicating its official approval, showing day, month, and year.

**"Aviation gasoline"** means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

**"Bulk plant"** means a petroleum storage tank facility where antifreeze, gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

**"Calibrate" or "Calibration"** means the comparison of the indicated volume to the volume actually delivered by a retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

**"Cathodic protection"** means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell.

**"Change in service"** means discontinuing the use of a storage tank system for purposes regulated by the Commission.

**"Coin operated devices," "token operated devices" or "money operated devices"** means devices that release products upon the insertion of coins, tokens, or monies, and are designed to make deliveries of product corresponding to specific money values at a definite unit price.

**"Commission"** means the Corporation Commission of Oklahoma.

**"Computing type"** means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

**"Diesel fuel"** means a hydrocarbon fuel suitable for use in a diesel engine.

**"Digital type"** means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

**"Director"** means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

**"Division"** means the Petroleum Storage Tank Division of the Corporation Commission.

**"Dry hose type"** means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.

~~**"Equipment"** means all the pumps, meters, hoses, tanks, et cetera, used to dispense petroleum products.~~

~~**"Ethanol" or "ethyl alcohol"** means denatured ethyl alcohol with the chemical formula of  $C_2H_5OH$  used as a component in gasoline. The use of any other type of alcohol for motor fuel purposes must be specifically authorized by the Commission upon application and order.~~

**"Face of the pump"** means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values digitally. It is the side of the pump where the unit price, volume dispensed, and dollar amount of the sale appear.

**"Fuel"** means any petroleum product, oxygenate, or blend of products that is suitable for use in an internal combustion or diesel engine.

**"Fuel Specialist"** means any field inspector employed by the Fuel Inspection and Compliance Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

**"Gasohol"** means an unleaded motor fuel containing 9 parts gasoline to 1 part denatured ethyl alcohol (ethanol) by volume. The mixture must be suitable for use in a spark ignition, internal combustion engine.

**"Gasoline"** means a volatile unleaded hydrocarbon fuel that is suitable for use in a spark ignition, internal combustion engine. It may be one of any grade specified in Subchapters 5 and 9 of this Chapter.

**"Gravity type"** means a type of device designed for discharge by gravity.

**"Gum"** means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

**"Index of an indicator"** means that particular portion of an indicator that is directly used in making a reading.

**"Indicating element"** means that component located on the face of the pump that signifies the amount relative to a quantity measured by a measuring device.

**"Isooctane"** means a pure hydrocarbon 2,2,4-trimethylpentane used as a reference fuel that has an octane rating of one hundred.

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**"Kerosene"** means a refined hydrocarbon fuel intended for use in heating and illumination.

**"Liquid measuring device"** or **"liquid fuel device"** means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

**"MtBE"** means methyl tertiary butyl ether for use as a component in gasoline.

**"Manufacturer"** means any person engaged in the manufacture of gasoline, motor fuel, kerosene, aviation gasoline, diesel fuel, burning oil, or oxygenate offered for sale or use in the State of Oklahoma, whether such products are manufactured by the method of processing crude petroleum or natural gas or collecting natural or drip gasoline or the blending or mixing of any two or more products obtained from these processing methods. Blending or mixing, as used in this Chapter, does not include the multi-blend pumps at service stations.

**"Measuring device"** or **"meter"** means all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

**"Motor fuel"** means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

**"Motor fuel transport tank"** means a tank of one or more compartments mounted on a truck body, or the trailer section of a tractor trailer vehicle used to deliver a motor fuel from a source of supply to a retail outlet, farm, or commercial stationary storage tank.

**"NACE"** means the National Association of Corrosion Engineers.

**"N-heptane"** means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.

**"Octane"**, **"octane number"**, or **"octane rating"** means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

**"Owner or operator"** means the person responsible for and in control of a facility's day-to-day operations, whether the person actually possesses a title to the facility or controls it as a lessee or by any other agreement. The term also includes a past operator at the time of a release or a violation of state statutes or Commission rules.

**"Oxygenate"** means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

**"Person"** means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, joint venture, commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.

**"Petroleum products"** means antifreeze, motor oil, gasoline, kerosene, ethanol, diesel and biodiesel fuel and aviation gasoline.

**"Primary indicating elements"** or **"recording elements"** means those principal visual indicating elements and recording elements that may be used by the operator in the normal commercial use of a device and which are readily visible to the public.

**"Private airport"** means an airport used only by its owner and regulated as a fleet and commercial facility.

**"Private airstrip"** means a personal residential takeoff and landing facility attached to the airstrip owner's home, analogous to a garage and driveway used only by the owner.

**"(R+M)/2"** means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

**"Radio Frequency Interference"** or **"RFI"** means a type of electrical disturbance which, when introduced into electronic circuits, may cause deviations from the normally expected performance.

**"Release"** means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment.

**"Retail device"** means a measuring device or mechanism designed for single deliveries of motor fuels to individual land, air, and water vehicles.

**"Retail level"** means all places of business where gasoline, motor fuel, kerosene, diesel fuel, or aviation gasoline is dispensed or delivered directly into the tank of the consuming vehicle or receptacle, and may include bulk agents, consignment agents, distributors, or jobbers.

**"SIR"** means Statistical Inventory Reconciliation.

**"Security Seal"** or **"seal"** or **"lock/locking mechanism"** means a lead and wire seal, lock or locking device, or similar device, attached to a device petroleum storage tank system for protection against access, removal, or adjustment.

**"Storage Tank Advisory Council"** means an appointed committee pursuant to 17 O.S. § 340 et seq., which has the authority to recommend rules and make written comments and recommendations to the Commission, and to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction.

**"TAME"** means tertiary amyl methyl ether for use as a component in gasoline.

**"Tolerance"** means a value fixing the limit of allowable error or departure from the highest performance or value.

**"Transport"** means a tank of one or more compartments mounted on a truck body, or the trailer section of a tractor trailer vehicle used to deliver a motor fuel from a source to a retail outlet, farm, or commercial stationary storage tank.

**"Transport calibration"** or **"truck calibration"** means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

**"Underground storage tank"** or **"UST"** means a regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.

**"Underground storage tank system"** means an underground storage tank and any connected aboveground or underground piping, dispensers and ancillary equipment.

"Unleaded gasoline" means a refined gasoline to which no lead has been intentionally added during the refining or blending process.

"Vehicle tank measure" means a tank of one or more compartments mounted on a truck body, or the trailer section of a tractor trailer vehicle used to deliver a motor fuel from a source of supply to a retail outlet, farm, or commercial stationary storage tank.

"Visible type" means a type of device in which the measurement takes place in visible glass measuring chambers.

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

### SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

#### PART 5. LIQUID MEASURING DEVICES

##### 165:15-3-16. Inspection for compliance

(a) Retail liquid measuring devices subject to the rules of this Chapter are calibrated with a five (5) gallon test measure by the Fuel Specialist from time to time or as often as deemed necessary. High volume dispensers (those that are used to pump at a rate of at least twenty (20) gallons per minute) used to fill large tanks must be calibrated using a fifty (50) or one hundred (100) gallon prover.

(b) All wholesale liquid measuring devices subject to the rules of this Chapter must be calibrated by the Fuel Specialist no more than 10 million gallons of use, or more often if the Fuel Specialist deems it necessary.

(c) Before a new facility is open for business and before new dispensers are put into service at a pre-existing facility, the owner or operator must have the dispensers calibrated and be able to show written proof when requested by the Fuel Specialist.

(d) These tests may be ordered or directed by the Commission at any time.

(e) When a liquid measuring device is found not to be in compliance with this Chapter, the owner or operator will be advised of the problem and the device placed out of service.

(f) A Fuel Specialist has the responsibility to place or to direct that a lock or seal be placed on a measuring device. The lock or seal must remain in place until the defective measuring device is repaired or replaced and complies with Commission standards.

(g) The owner or operator of a locked measuring device may obtain permission to remove the lock or seal after repair by:

(1) Verbal permission from the Fuel Specialist who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the seal or lock ~~or~~; or

(2) Written or verbal permission from the Petroleum Storage Tank Division Director or the Director's designee; or

(3) Order of the Commission.

(h) For a fleet or commercial facility where fuel is dispensed for internal use by the company or its agents, there is no requirement that a Commission Fuel Specialist check the calibration of that facility's dispensers. However, a Fuel Specialist may do so time permitting as a courtesy for an owner or operator.

#### PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

##### 165:15-3-20. Water in storage tanks

(a) **Inspection.** All underground storage tanks must be checked for water by the Fuel Specialist from time to time.

(b) **Area surrounding fill pipe.** The area surrounding the fill pipe to the storage tank must not contain any water. When water is present, the owner or operator is responsible for promptly removing the water. Upon the second notice of violation of this subsection, the owner or operator must make whatever system modifications are necessary to prevent water from entering the spill containment and may be subject to citation or formal enforcement action.

(c) **Fill pipe.** All fill pipes to storage tanks must have watertight caps that must be securely fastened at all times, except when servicing the tank(s).

(d) **Water removal; repairs.** When a Fuel Specialist checks a motor fuel storage tank at a retail outlet and finds water in it, it is the responsibility of the owner or operator of the retail outlet to completely remove the water and make necessary repairs to prevent any water intrusion to the storage tank. If two (2) inches or more of water is present the tank ~~is~~ will be shut down. The owner or operator is required to find the source of the water including, but not limited to, digging up and replacing the product lines and/or the storage tanks as necessary. This must be done as quickly as possible. The Fuel Specialist may be notified orally, but written confirmation must be submitted to notify when the water is removed and when the necessary repairs have been completed.

(e) **Water from dispensing nozzle.** When a Fuel Specialist checks a retail outlet for water and finds water coming through the dispensing nozzle, it is the responsibility of the Fuel Specialist to immediately take the affected dispensing unit or units out of operation. The owner or operator is required to find the source of the water, including but not limited to, digging up and replacing the product lines and/or the storage tanks as necessary. The product dispensing units are to remain out of operation until the problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

##### 165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health and safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards met to prevent releases to the greatest extent possible.

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(1) **Spill and overflow protection.** Fuel Specialists must ensure that appropriate spill and overflow protection devices are in place and operational.

(2) **Leak detection on tanks.** Fuel specialists must check the condition of an owner or operator's selected method(s) of leak detection at a location. The requirements of each method listed below are offered as a general outline; a complete list of leak detection requirements is in OAC 165:25 and 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively.

(A) **Vapor monitoring wells.** ~~Vapor monitoring wells may not be used for leak detection on tanks on or after three years from the effective date of this Section.~~ If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) ~~Installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.~~ A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any single vapor monitoring well reading above 4,000 ~~parts per million (ppm) units/ppm~~ for gasoline and 1,500 ~~units/ppm~~ for diesel fuel should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 ~~units/ppm~~ should have been reported. If this has not been reported, the Fuel Specialist ~~should~~ shall report it.

(B) **Groundwater monitoring wells.** The Fuel Specialist must ensure, if groundwater monitoring wells are an owner or operator's method of leak detection, that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) ~~Installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.~~ A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any indication of product discovered should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her

employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist ~~should~~ shall report it.

(C) **Tank system tightness testing with monthly inventory control.** ~~Monthly inventory reconciliation with tightness testing.~~ The Fuel Specialist must check to see that a tank tightness test was performed correctly at least once during the year. The Fuel Specialist must confirm the results of a tightness test with monthly inventory records if the tank contained an unusually small amount of product at the time of the test. Requirements for inventory reconciliation are the same as for (D)(i) and (ii) below. When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed.

(i) **Tank tightness testing.** Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. The test must be performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(ii) **Inventory control.**

(I) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis.

(II) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(III) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(IV) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(V) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(VI) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(VII) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

- (VIII) Use of OCC Monthly Inventory Reconciliation Form or an electric equivalent is required.
- (D) **Statistical Inventory Reconciliation (SIR).**
- (i) Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.
  - (ii) The tank must be equipped with a drop tube and measured for water at least monthly.
  - (iii) Records must be submitted to a certified SIR vendor for monthly evaluation.
  - (iv) Results of monthly SIR analysis must be on premises no later than the last day of the following month.
- (E) **Automatic tank gauging (ATG).**
- (i) The ATG must be in operating condition. It must perform a monthly test capable of detecting a 0.1 or 0.2 gallons per hour (gph) leak rate; and if the system detects a 0.2 gph leak rate, monthly inventory reconciliation must be ~~done~~ completed in conjunction with it.
  - (ii) If the Fuel Specialist has concerns about the operation of the system, they may require notice and be present when an authorized person is printing relevant reports from the ATG.
- (F) **Manual tank gauging.** If manual tank gauging is the selected form of release detection Fuel Specialists must ~~determine check to make sure, if manual tank gauging is the selected form of leak detection,~~ that the test duration is appropriate, and that tank tightness testing is performed in conjunction with manual tank gauging in accordance with OAC 165:25 or 165:26. Manual tank gauging is only accepted as a method of leak detection on tanks with a capacity of up to 2,000 gallons, ~~except on farm tanks as detailed in OAC 165:25.~~
- (G) **Interstitial monitoring.** Sampling or testing The tank must be double walled, and a release must not be able to go undetected for more than 30 days be capable of detecting a release monthly in accordance with the manufacturers instructions.
- (H) **Other methods.** If a method of leak detection other than those listed in this Chapter is used, it must be approved by the Commission and checked by the Fuel Specialist.
- (3) **Leak detection on pressurized lines.** The Fuel Specialist must check for leak detection on pressurized piping. A complete list of requirements is in OAC 165:25 and 165:26. All pressurized piping must have electronic/automatic or mechanical line leak detectors, ~~or a sump sensor, float or similar mechanical device located at each sump,~~ capable of detecting a three 3 gallons per hour leak. New installations installations and facilities replacing a piping system after the effective date of this Section must have double-walled piping, ~~with either a~~

~~sensor, float or similar mechanical device installed at each sump, or line leak detectors and at least one sensor at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.~~ An annual line tightness test is required unless the alternative criteria listed in (C) below are met.

(A) **Electronic/automatic and mechanical line leak detectors; sump sensors, floats and similar mechanical devices.**

(i) Automatic electronic or mechanical line leak detectors must be installed on all pressurized lines, ~~or a Double-walled piping system systems~~ must have dispenser and tank sumps with a sensor, float or similar mechanical device ~~at each sump.~~ Line leak detectors must have one sensor, float or similar mechanical device must be installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(ii) The line leak detectors, floats and other devices must be tested annually according to manufacturer's specifications.

(B) **Annual line tightness testing.** An annual line tightness test, either hydrostatic or electronic, must be ~~done~~ performed unless the requirements of (C) below are met.

(C) **Alternative to line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test or a sensor at each sump may be used in lieu of an annual line tightness test only if:

- (i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and
- (ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and
- (iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(D) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

- (i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.
- (ii) Wells must be correctly installed, and the OCC approved monitoring well site assessment installation information or a well schematic must be made available to the Fuel Specialist ~~if the owner or operator has the information.~~
- (iii) Wells must be properly monitored and the results recorded every 30 days.
- (iv) Any single vapor monitoring well reading above 4,000 parts per million (ppm) for gasoline,

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and 1,500 ppm for diesel or a tankpit containing both diesel and gasoline, should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing the results. If this has not been reported, the Fuel Specialist should report it.

(E) **Groundwater monitoring wells.**

(i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and installation information or a well schematic must be made available to the Fuel Specialist if the owner or operator has the information.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(iv) Any indication of product discovered should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist should report it.

(F) **Interstitial monitoring.**

(i) All double-walled piping must be sloped to allow a leak to flow to the sump at the tank or dispensers.

(ii) Containment sumps connected to product piping must be equipped with automatic leak detection at least one sump sensor at the lowest end of the piping gradient.

(iii) A leak detection device Sump sensors must detect any liquid or leaking petroleum product in accordance with the manufacturer's specifications.

(G) **Statistical Inventory Reconciliation (SIR).**

(i) ~~Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.~~

(ii) ~~The tank must be equipped with a drop tube and measured for water at least monthly.~~

(iii) ~~Records must be submitted to a certified SIR vendor for monthly evaluation.~~

(4) **Suction piping.** A line tightness test must be performed every 3 years according to manufacturer's specifications unless one of the line leak detection methods listed above is used, or unless it is safe suction piping that meets the specifications of (5) below.

(5) **Safe suction piping.** No annual line tightness test and no leak detection method is required if piping meets these specifications: below-grade piping must operate under vacuum, be sloped to allow product to drain back into the tank, and have only one check valve installed on each line directly below the pump. Compliance with these standards must be readily determined by the Fuel Specialist.

(6) **Cathodic protection.** The Fuel Specialist must ensure that cathodic protection is installed and in proper working order for all metal tanks and piping that routinely contain regulated substances or product and are in contact with the ground. ~~that cathodic protection is installed and in proper working order.~~ Cathodic protection can be an impressed current or galvanic system with these requirements:

(A) A site map and anode information should be made available to the Fuel Specialist ~~if the owner or operator has the information,~~ and all tanks and lines must be protected.

(B) Continuity tests must be conducted, and the soil-to-structure potential must be at least -0.85 volts.

(C) Rectifier and cathodic protection tests must be ~~done~~ performed by a qualified cathodic protection tester once every three years.

(D) Rectifier readings on impressed current systems must be recorded at least every 60 days and kept on site for review.

### 165:15-3-22. Equipment installation

Fuel Specialists must ensure that tanks and ancillary equipment are installed properly and conform to Commission standards. These standards apply to all facilities. Requirements are listed in detail in OAC 165:25 and 165:26.

(1) **Unattended self-service stations.**

(A) Operating instructions must be conspicuously posted.

(B) There must be a properly placed emergency shutoff device and conspicuously posted emergency instructions. A telephone or other approved means of communication to notify the fire department ~~must be on site.~~

(2) **Emergency pressure release venting.** Aboveground storage tanks must have some form of construction or device that will relieve excessive internal pressure caused by exposure to fires, and have some form of emergency pressure venting. This applies to all compartments and interstitial spaces of tanks, and any enclosed spaces around tanks that can contain liquid.

(3) **Release vent construction.** An aboveground tank must have some form of pressure-relieving construction to appropriately control and direct a tank rupture. The tank owner or operator must present, upon request, evidence certifying the construction if the owner has the information.

(4) **Venting and venting specifications.** The Fuel Specialist will ensure that vent piping size, height, width, placement and construction meet approved standards, vent vapors upward and do not present collision or fire hazards.

(5) **Piping requirements.** The Fuel Specialist must ensure piping is appropriately constructed and protected from physical damage and corrosion where appropriate. Appropriate valves must be in place in piping to prevent leaks and fires. Aboveground storage tank piping and associated parts such as flanges and bolts must be constructed to resist fire to the appropriate extent.

(A) All new aboveground or underground piping installed after the effective date of this Section must be double walled with sumps and a sensor, float or similar mechanical device at each dispenser sump; or installed in accordance with either Chapter 25 or Chapter 26 requirements.

(B) Pressurized ~~Piping~~ piping must have automatic line leak detectors with one sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(6) **Equipment and materials.** All pipes, valves, couplings, faucets, flexible connectors, fittings and other pressure-containing parts must meet material specifications and pressure and temperature limitations, adhering to Commission standards. Underground equipment must be cathodically protected where appropriate and aboveground equipment must resist fire to the approved extent. Impact/shear valves and breakaway valves must be in place to prevent leaks and stop their flow in an emergency.

(7) **Electrical equipment.** All electrical equipment must meet the requirements NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions. All electrical wiring and equipment must be suitable for the locations in which it is installed, and required emergency switches must be provided and appropriately placed.

(8) **Vault requirements.** Vaults are superior installation systems that are not required, but can be used above or below grade and must meet standards listed in ~~OAC 165:26-24-2~~ OAC 165:26-2-71. The Fuel Specialist will ensure that those standards are met.

(9) **Fill pipes.** Fill pipes must be properly installed and labeled, and overfill sump lids must be color-coded or properly labeled with permanent markings.

(10) **Collision barriers.** Aboveground storage tanks and all dispensers exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. Secondary containment may serve as a collision barrier.

(11) **Fencing requirements.** All aboveground tanks must be enclosed by an-appropriate security fence.

(12) **Spill Prevention Control and Countermeasure Plan.** Owners or operators of aboveground storage tanks must have an ~~approved~~ Spill Prevention Control and Countermeasure Plan (SPCC Plan) completed in strict accordance with the requirements of Environmental Protection Agency 40 CFR 112, and that is updated every five years, and signed by a registered professional engineer. Each facility location must have its own plan. ~~Owners of underground storage tanks at sites with a total aggregate capacity of at least 42,000 gallons must also have a properly updated and signed SPCC Plan on site.~~

(13) **Corrosion protection.** Any portion of a tank or its piping system that routinely contain regulated substances or product and in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with

recognized standards of design listed in ~~OAC 165:26-8-18~~ OAC 165: 26-3-80, 3-81, and 3-82. A tank sitting on a concrete pad will be considered in contact with the soil unless it is insulated from the concrete by some dielectric material.

(14) **Storage tank spacing and buffer distances.**

(A) Aboveground storage tanks must be appropriately spaced; the Fuel Specialist will determine whether the spacing is in accordance with OAC 165:26, ~~or whether variance from those standards does not pose a serious hazard to people or property.~~

(B) Minimum distances from aboveground storage tanks must also be maintained between tanks and the nearest important building on the same property, fuel dispensers, public ways, and property lines. ~~These distance requirements can have mitigating factors which will be evaluated by the Fuel Specialist.~~

(15) **Secondary containment requirements for aboveground storage tanks.** Double-walled tanks do not require additional containment if conditions listed in ~~OAC 165:25 and 165:26-2-31~~ are satisfied.

#### 165:15-3-24.1. Airport inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to airport petroleum storage tank systems. ~~The Fuel Specialist must ensure that if an airport has a long range development plan, it follows that plan, and that no aspect of a facility's petroleum storage tank system poses an immediate safety threat.~~

(1) **Requirements for dispensers and attached parts.**

(A) The Fuel Specialist will ensure that aircraft hoses are well maintained, and that fueling hydrants, cabinets and pits are an appropriate distance from any terminal building, hangar, service building or enclosed passenger concourse (other than loading bridges).

(B) The Fuel Specialist must ensure that the valve that controls the flow of fuel to an aircraft is equipped with a deadman control. The fuel control device must be arranged to accommodate operational requirements and be either a hydrant pit valve or on the hose nozzle for overwing servicing. Deadman controls also have specific requirements that the Fuel Specialist will ensure are met.

(C) Conductive hose at airports must be used to prevent electrostatic charge but not to accomplish required bonding between the aircraft and the fueling equipment.

(D) Each overwing servicing nozzle must have a cable with a plug or clip for bonding to the aircraft.

(E) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.

(2) **Emergency controls.** The Fuel Specialist will ensure that each fuel system has a means for quickly and completely shutting off the flow of fuel in an emergency. This requirement is in addition to the deadman fuel control requirement. The emergency fuel shutoff system must

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include shutoff stations located outside probable spill areas and near the route normally used to leave the spill area or to reach the fire extinguishers provided for the area's protection.

(3) **Miscellaneous safety requirements.** Safety requirements include required signs and appropriately located fire extinguishers.

### 165:15-3-24.3. Farm inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to farm petroleum storage tank systems.

(1) **Leak detection.** Because the primary purpose of the Commission's regulation of farm tanks over 1,100 gallons is to prevent leaks, the farmer must select some form of leak detection. Any leak detection method referenced in OAC 165:25 and ~~165:26~~ respectively may be used. Fuel Specialists will check manual tank gauging records to ensure the monthly standards are not exceeded. If the standards are exceeded, there is most likely a leak in the tank which should have been reported to a Commission hydrologist at 405-521-6575 within 24 hours of the owner or any of his or her employees knowing the gauging results.

(2) **Cathodic protection.** The Fuel Specialist must ensure, for any metal tanks or piping, that cathodic protection is installed and in proper working order.

(3) **Electrical requirements.** Fuel Specialists will ensure that all electrical equipment meets the requirements of NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions, or other approved local code, and is suitable for the locations in which it is installed.

## PART 9. LARGE VOLUME METERS

### 165:15-3-25. Testing and inspection of large volume meters

(a) All large meters at refinery terminals and pipeline terminals used to deliver a petroleum product for sale to another party must be calibrated for accuracy every six (6) months or every ten (10) million gallons, whichever comes first. The tolerances in ~~165:15-15-9~~ Appendix A apply.

(b) The owner, operator or lessor must have a certified source calibrate all meters.

(c) A certified source must ~~do~~ complete all calibrations when maintenance or recalibration is required. If calibration is ~~done~~ performed more than twice a year, the next calibration ~~due~~ is due six (6) months from last calibration.

(d) The owner, operator or lessor of meters is responsible for notifying the Fuel Inspection and Compliance Department in advance of the calibration so a Fuel Specialist can witness it, and for mailing a copy of test results to the Fuel Inspection and Compliance Department within ten (10) working days of completion of the test.

## SUBCHAPTER 9. DESCRIPTION OF MOTOR FUEL

### 165:15-9-1. General representation; lettering

Whenever the description of any motor fuel subject to the rules of this Chapter is displayed on any receptacle, pump, or other delivery device used in its sale to the public, the type, grade, and quality of the motor fuel must be equal to or greater than the representation on the measuring device. The sign must be in  $\frac{1}{4}$  to  $\frac{1}{2}$  inch text letters that are easily legible for at least 5 feet.

### 165:15-9-3. Alcohol, ethanol or ethyl ~~Ethyl alcohol~~

Motor fuel sold at ~~regional or smaller~~ airports for fueling aircraft must be labeled with the percent of alcohol in the fuel, if any. At all other retail facilities the retailer may post on the dispenser or elsewhere on the premises any information regarding the fuel's additives which the retailer ~~is~~ deems appropriate to inform customers.

## SUBCHAPTER 15. LIQUID MEASURING DEVICES

### PART 3. CALIBRATION AND TOLERANCES

#### 165:15-15-8. Duty to zero equipment

Tolerances are primarily accuracy criteria for use by the regulatory official. However, when a liquid measuring device is being adjusted for accuracy, either initially or following repair after official rejection, the effect should be to adjust as closely as practicable to zero error. Equipment owners or operators ~~should~~ shall not take advantage of tolerances by deliberately adjusting their equipment to have a value or to give a performance at or close to the tolerance limit, nor should the repairman or serviceman bring measuring devices merely within tolerance range when it is possible to adjust closer to zero error. If the majority of meter tolerances measured by the fuel specialist are below zero, the fuel specialist shall require those affected meters be recalibrated as close to zero as possible.

#### 165:15-15-9. Tolerances

(a) The official tolerances prescribed by the Commission for commercial equipment are the limits of inaccuracy officially permissible within the State of Oklahoma. Tolerances are established, to fix the range of inaccuracy within which equipment will be officially approved for commercial use. Tolerances using a five (5) gallon test measure are  $\pm 3$  cubic inches when applied to new or newly reconditioned or adjusted equipment. Tolerances using a five (5) gallon test measure on all measuring devices must not exceed  $\pm 6$  cubic inches. More than -19 cubic inches in accuracy will result in immediate tank shut down.

(b) Tolerances for new or newly reconditioned equipment apply as follows:

- (1) To any equipment about to be put into commercial use for the first time.
- (2) To equipment that has been placed in commercial service within the preceding 30 days and is being officially tested for the first time.
- (3) To equipment that has been returned to commercial service following official rejection for failure to conform to performance requirements and is being officially tested for the first time within 30 days after corrective service.
- (4) To equipment that is being officially tested for the first time within 30 days after major reconditioning or overhaul.

(c) Tolerances for retail and wholesale liquid measuring devices are as set forth in the charts in Appendix A to this Chapter.

**PART 7. MONEY VALUES AND VOLUMES  
DISPENSED**

**165:15-15-28. Position of equipment and money value divisions**

- (a) A measuring device equipped with a primary indicating element, as described in 165:15-15-31 and used in direct sales to the public, must be positioned so that its indications may be accurately read and the measuring operation may be observed from some reasonable "customer" position.
- (b) The money value and dispensed liquid volume readings on the primary indicating elements must be the ones used for determining the money and volume amounts in any sale to the public. The value of the graduated intervals representing money values on a computing type liquid measuring device with analog indications must be not more than one (1) cent at all unit prices up to and including ~~\$2.00~~ \$2.99.
- (c) On a computing type liquid measuring device with digital indications, the money values, mathematical agreement, and the total price computation must be based on quantities

not exceeding 0.001 gallon intervals for devices indicating in inch-pound units and 0.002 liters for devices indicating in metric units.

**165:15-15-35. Money value display and computation**

- (a) **On a retail device.** Money value computations (on a retail device) must be of the full computing type in which the money value at a single unit price, or at each of a series of unit prices, is computed for every delivery within either the range of measurement of the liquid measuring device or the range of the computing elements, whichever is less. Any analog money value indication must not differ from the mathematically computed money value (Quantity X Unit Price = Sales Price), for any delivered quantity, by an amount greater than one-half the value of the money value division. Value graduations must be supplied and accurately positioned. The value of each graduated interval must be 1 cent.
- (b) **"Cash" discount.** When a discount for "cash" is offered, the discount must be paid inside the store, the discount is to be calculated, and the customer informed of the discounted amount. The cash discount price must not be posted on a marquee or remote billboards unless it is explicitly called a "cash price".
- (c) **Retail dispensing devices used in contract sales.** Those retail motor fuel dispensing devices used in contracted sales, which are normally unattended and accessed and actuated by keys, cards and/or other coding mechanisms and which are not accessible to the general public, are not required to display unit prices nor to make money value computations for every delivery.
- (d) **Airport dispensing devices.** Those retail motor fuel dispensing devices installed at airports for use in fueling aircraft are not required to display unit prices nor to make money value computations for every delivery.
- (e) **Advertised price.** The price per gallon charged at the dispenser must be the same price advertised on the facility's marquee and remote billboards.

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**APPENDIX A. TOLERANCES FOR RETAIL AND WHOLESALE DEVICES [REVOKED]**

**APPENDIX A. TOLERANCES FOR RETAIL AND WHOLESALE DEVICES [NEW]**

Tolerances for Retail Devices

Indication	Maintenance Tolerance	Tolerance for new or newly reconditioned equipment	Tolerance requires shut-down of system	Maintenance Tolerance
U.S. Gallons	Cubic Inches	Cubic Inches	Cubic Inches	Hundredth of Gallon
5	6	3	19	0.03
100	65	35	91	
Metric Unit Liters	Cubic Centimeters	Cubic Centimeters		
19	116	58		
20	120	60		

Tolerances for Wholesale Devices

Indication	Maintenance Tolerance		Tolerance for new or newly reconditioned equipment	
	Cubic Inches	Percent	Cubic Inches	Percent
50	50	.44	25	.22
Over 50	Add ½ cubic inch per indicated gallon		Add ¼ cubic inch per indicated gallon	
1000	525	.24	262.5	.12
	2.2727	gallons	1.1360	gallons

[OAR Docket #06-841; filed 5-5-06]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 27. INDEMNITY FUND**

[OAR Docket #06-836]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 165:27-1-2. Definitions [AMENDED]
- 165:27-1-4. Authority [AMENDED]
- Subchapter 5. Qualifications for Reimbursement
- 165:27-5-2. Application for reimbursement [AMENDED]
- 165:27-5-3. Application for supplemental reimbursement [AMENDED]
- Subchapter 7. Reimbursement
- 165:27-7-2. Reimbursement [AMENDED]
- 165:27-7-2.1. Limitation on reimbursement [REVOKED]
- 165:27-7-6. Conditions for reimbursement [AMENDED]
- 165:27-7-7. Exclusions for reimbursement [AMENDED]
- 165:27-7-11. Purchase Order procedures [AMENDED]
- Subchapter 9. Administrative Provisions
- 165:27-9-1. Hearing, orders, and appeals [AMENDED]
- 165:27-9-3. Notices [AMENDED]

**AUTHORITY:**

Oklahoma Corporation Commission; Article IX, Section 18, 19 Oklahoma Constitution and 17 O.S., § 350 *et seq.*

**DATES:**

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December 21, 2005 through February 23, 2006

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April 20, 2006

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Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2006.

**Final Adoption:**

May 2, 2006

**Effective Date:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

OAC 165:27-1-2 is amended by deleting the definition of active case; adding a definition of adjacent owner; revising the definition of administrative application; deleting the definition of backfill; deleting the definition of closed case; revising the definition of suspicion of release.

OAC 165:27-1-4 is amended as it pertains to authority changing the statutory name of the Indemnity Fund to align with recently enacted law.

OAC 165:27-5-2 is amended by deleting the requirement of a non-collusion affidavit from the contractor.

OAC 165:27-5-3 is amended to allow the Commission to seek any other information germane to an application for reimbursement from the Indemnity Fund.

OAC 165:27-7-2 is amended to conform to new law, referencing a 1% co-pay, increasing reimbursement caps, and establishing the method for processing deductibles prior to law enactment.

OAC 165:27-7-2.1 limitations on reimbursement is revoked.

OAC 165:27-7-6 is amended by substituting may for shall regarding competitive bids, and specifying application to the fund within two years of case closure letter issuance.

OAC 165:27-7-7 is amended to add tanks operated by a class I railroad are ineligible to access the Indemnity Fund, and costs of an emergency response must be approved by PSTD to be reimbursable.

OAC 165:27-7-11 is amended to provide that denial of purchase order may be adjudicated before an Administrative Law Judge.

OAC 165:27-9-1 is amended to identify where PSTD applications and hearings will take place.

OAC 165:27-9-3 is amended to reflect a changed phone number.

**CONTACT PERSON:**

Jeff Southwick (405) 522-4457

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**165:27-1-2. Definitions**

In addition to the terms defined in 17 O.S. Sections 303, 352, and in OAC 165:25-1-11 and 165:26-1-2, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Active case"** means a ~~Confirmed Release Notice has been issued by OCC Regulatory to the regulatory contact for the specified location.~~

**"Administrative Application"** means an Application for eligibility and reimbursement made to the ~~PSTD Indemnity Fund Commission~~ by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

**"Agent"** means a person authorized by another to act on their behalf, either out of employment or contract.

**"Assignment of Benefits"** means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

**"Assignment of Rights"** (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

**"Associated costs"** means expenses that are not integral to the corrective action and not subject to reimbursement.

~~"Backfill" is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping.~~

**"Chemicals of Concern (COC)"** means chemicals that may pose a threat to human health and the environment.

**"Claim or Claims"** means a properly submitted request for reimbursement from the Fund for an SOR or eligible case when the deductible is paid.

~~"Closed case" means a Confirmed Release for which PSTD has issued a Closure Letter advising that no further actions are necessary.~~

**"Commission or OCC"** means the Oklahoma Corporation Commission.

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**"Contamination"** means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

**"Disbursement"** includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

**"Dispenser"** means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system. The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.

**"Eligible Person"** means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

**"Eligible Release"** means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

**"Fund"** means the Petroleum Storage Tank Indemnity Fund.

**"Impacted Party"** means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

**"Investigation"** means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

**"Licensed Remediation Consultant"** means an individual who has a current license issued by the PSTD.

**"Pay-for-Performance (PFP)"** - A process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

**"Person"** means any and all persons, including any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. It also includes a consortium, a joint venture, a commercial entity, and the United States Government.

**"Petroleum storage tank system"** means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

**"PSTD"** means Petroleum Storage Tank Division, or Division.

**"Reimbursement"** means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

**"Remedial Action Plan"** means a plan implementing the required and approved remediation.

**"Remediation"** means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

**"Site assessment"** means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

**"Site characterization"** means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by OAC 165:29 for such a report.

**"Suspicion of Release" ("SOR")** means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. ~~The PSTD eligibility process is not required for Fund reimbursement on a Suspicion of Release (SOR), however,~~ a modified eligibility process for a SOR will be required.

**"Work Plan"** means a. proposed scope of work to implement corrective action. This shall be submitted through a purchase order request and/or remediation plan.

### 165:27-1-4. Authority

17 O.S. 1991, §§ 350 et seq. establishes the Oklahoma Petroleum Storage Tank Release Indemnity Program. Section 353 (A) provides that the Commission shall administer the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund.

## SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

### 165:27-5-2. Application for reimbursement

~~An application for PSTD Eligibility on a confirmed release shall be made to the Administrator of the Indemnity Fund Program on applicable forms and include:~~

- (1) A properly completed "Indemnity Fund Application" form with all requested information provided.
- (2) A sworn Non-Collusion Affidavit from the Applicant.

- ~~(3) A sworn Non-Collusion Affidavit from the Contractor.~~
- (43) A sworn Non-Collusion Affidavit from the Licensed Consultant.
- (54) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.
- ~~(65) Non-Ownership/Participation Affidavit.~~
- (76) Assignment of Benefits.
- ~~(87) Damage Statement (I.A.).~~
- (98) Other Financial Mechanisms (I.A.).
- (109) Information deemed by PSTD staff to substantiate a claim as an impacted party or adjacent property owner.
- (110) Any other information requested by the PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety, and welfare, the Director of the PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.

**165:27-5-3. Application for supplemental reimbursement**

In order to be considered complete, a request for supplemental reimbursement shall contain:

- (1) Supplemental Indemnity Fund reimbursement request.
- (2) A certified affidavit that incurred costs are true and correct, with invoice numbers, dates of invoices and amounts of invoices being submitted.
- (3) Itemized original invoices, if requested by PSTD.
- (4) ~~Other~~ Any other information as may be required by the Fund.

**SUBCHAPTER 7. REIMBURSEMENT**

**165:27-7-2. Reimbursement**

- (a) Among other requirements an applicant for reimbursement is required to show:
  - (1) Allowable costs were incurred on or after December 23, 1988.
  - (2) The PSTD has determined that the release or suspension of release may pose a threat to human health or the environment.
  - (3) The eligible person, to the extent possible, has fully cooperated with PSTD in responding to the release.
- (b) The Petroleum Storage Tank Division shall reimburse from the Indemnity Fund an eligible person for allowable costs in excess of 1% co-pay not to exceed Five Thousand Dollars (\$5,000.00) but not more than:
  - (1) One million five hundred thousand dollars (~~\$1,000,000.00~~ 1,500,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, and

- (A) ~~One Two~~ Million Dollars (~~\$1,000,000.00~~ 2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or
- (B) ~~Two Three~~ million dollars (~~\$2,000,000.00~~ 3,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems or,
- (2) Five hundred thousand dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and
  - (A) ~~One Two~~ million dollars (~~\$1,000,000.00~~ 2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,
  - (B) ~~Two Three~~ million dollars (~~\$2,000,000.00~~ 3,000,000.00) for owners with more than one hundred storage tank systems.

(c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(d) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the \$5,000.00 deductible has been prepaid or a payment arrangement concerning the deductible has been agreed to by PSTD and significant compliance with the payment agreement is achieved.

(e) All corrective action costs incurred shall be subject to reimbursement in accordance with the unit cost pricing sheet established by the Unit Cost Committee and any adaptations, amendments or changes thereto.

**165:27-7-2.1. Limitations on Reimbursement [REVOKED]**

~~PSTD shall reimburse from the Indemnity Fund allowable costs in excess of the deductible as set forth in 17 OS § 356.~~

- ~~(1) One million dollars (\$1,000,000.00) per occurrence providing the storage tank system is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the last year of operation or part thereof on a new installation that has not been operational for a full year.~~
  - ~~(A) One Million Dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or~~
  - ~~(B) Two million dollars (\$2,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems, or~~
- ~~(2) Five hundred thousand dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the last year of operation or part thereof on a new installation that has not been operational for a full year.~~

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- ~~(A) One million dollars (\$1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or~~  
~~(B) Two million dollars (\$2,000,000.00) for owners with more than one hundred storage tank systems.~~  
~~(C) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were actually incurred, reasonable, integral and necessary.~~

### 165:27-7-6. Conditions for reimbursement

- (a) Action taken as a result of an eligible release other than in an emergency ~~shall~~ may be made by competitive bid of at least two (2) bidders. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and best bidder. Professional engineering, geological, land surveying and other professional services or services provided by a PSTD Licensed Remediation Consultant required for investigation and the preparation of work plan and/or purchase orders, proposed corrective action plans and oversight of remediation will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.
- (b) When current costing systems cannot accommodate specific situations, contracts awarded should be to the lowest and best bidder. The Indemnity Fund Program requires proof of such competitive bidding.
- (c) The owner/applicant and Licensed Remediation Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These include but are not limited to:
- (1) Corrective action plans.
  - (2) Remedial action plans.
  - (3) Contracts and contract negotiations.
  - (4) Accounts.
  - (5) Invoices.
  - (6) Sales tickets.
  - (7) Subcontractor invoices.
  - (8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.
- (d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.
- (e) Reimbursement shall be made by the Fund only for costs that the PSTD determines were actually incurred, were reasonable, and are integral and necessary towards the cleanup of the site.
- (f) An Applicant with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a 10% interest.
- (g) An Applicant shall provide application information that will enable the Fund to determine which reimbursement method to use.

- (1) One time payment. Applicants will qualify for a one time payment if they have:
  - (A) Received notification of case closure by PSTD.
  - (B) Been determined eligible to access the Fund.
- (2) Initial, supplemental and final payments. Applicants may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they:
  - (A) Make application ~~prior to receiving notification of case closure by the PSTD~~ within two years from the date of closure letter from PSTD.
  - (B) Been determined to be eligible to access the Fund.
- (3) An application for eligibility and all claims for reimbursement to the Fund must be made within two (2) years of the ~~effective date of case closure~~ letter issued by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

### 165:27-7-7. Exclusions from reimbursement

- (a) Tanks and/or systems owned or operated by state and federal governments are not eligible for reimbursement from the Fund.
- (b) Tanks or systems are not eligible if owned or operated by a Class I Railroad.
- (c) No reimbursement shall be made to any person who has received, or is eligible, for reimbursement from any other state or federal agency or third party payor for the corrective action taken.
- (d) No reimbursement shall be made for loss of time.
- (e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.
- (f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.
- (g) No reimbursement shall be made for attorney's or legal fees.
- (h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items.
- (i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.
- (j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation unless costs of an emergency response are approved by the PSTD.
- (k) No reimbursement shall be made for non-regulated petroleum storage tank system releases or of non-regulated substances.

### 165:27-7-11. Purchase order procedures

- (a) Purchase order proposals are designed for pre-approval of work that is to be performed. Purchase orders will not be issued on work that has been completed without pre-approval.

- (1) All purchase orders must use the appropriate standardized form for a particular scope of work.
- (2) All purchase order proposals must be signed by the Licensed Remediation Consultant or tank owner and submitted as original documents using the PSTD designated forms and format.
- (3) All purchase order proposals submitted to and received by PSTD will be reviewed and responded to within 30 days.
- (4) If the purchase order proposal is approved as submitted, technical and accounting staff will sign the proposal and send an approved copy to the Licensed Remediation Consultant or tank owner with the assigned purchase order number and a list of the required documents that will support the completed scope of work as described in the purchase order proposal at the agreed upon price.
- (5) If the purchase order proposal is not approved as submitted the PSTD Technical staff will contact the Licensed Remediation Consultant or tank owner concerning the necessary changes required or will schedule a meeting if needed.

(A) The Licensed Remediation Consultant or tank owner will then make the agreed revisions and submit the final signed and dated purchase order to the PSTD.

(B) When PSTD Technical staff recommends revisions to the purchase order proposal, the Licensed Remediation Consultant or tank owner will have 30 days from notification of revisions to respond and submit a final purchase order proposal. If the consultant or tank owner does not respond within 30 days, the purchase proposal as originally submitted is void.

(C) Unless agreed upon by both PSTD and the Licensed Remediation Consultant, in writing, any purchase orders that have not been completed and submitted for payment within 120 days after the scope of work completion date are null and void.

- (6) In the event the Licensed Remediation Consultant or tank owner and PSTD cannot agree upon reasonable terms, the purchase order proposal shall be void and the following shall apply:

(A) Work will then proceed on a Work Plan basis with documentation, as provided for in 17 O.S. § 356(D), required for reimbursement; and

(B) Multiple submissions of purchase orders for the same or similar scopes of work will only be considered at the discretion of the PSTD.

- (7) The PSTD will review only one revision of a purchase order proposal.

(b) Change orders must be submitted prior to performing work not included in the scope of work set forth in the approved purchase order, which will require pre-notification to and pre-approval by the Technical staff, unless the total additional costs are less than 5% of the approved purchase order. Documentation will be required to explain additional work completed and to justify additional costs. All requests for reimbursement of costs not incurred in the approved purchase order will be reviewed at the discretion of the Fund.

- (c) Reimbursement format and requirements for purchase orders include the following:

(1) All scope(s) of work described in the approved purchase order must be completed in full before reimbursement is requested, unless other payment terms are pre-approved by the PSTD and set forth with specificity in the purchase order.

(2) All purchase orders being submitted for reimbursement will contain:

(A) A copy of the approved purchase order.

(B) Required documentation.

(d) Reimbursement claims on purchase orders will be paid within 30 days of receipt by the PSTD, ~~provided a verification that the scope of work is complete and in accordance with standards, rules and requirements, and subject to applicable eligibility criteria.~~

(e) The Licensed Remediation Consultant, tank owner-operator, or both may make application for an Administrative Application for hearing judicial determination of to determine terms and conditions for of purchase order approval.

## **SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS**

### **165:27-9-1. Hearing, orders, and appeals**

(a) Hearings and appeals to enforce the provisions of this Chapter shall be conducted in accordance with the Commission's Rules of Practice (OAC 165:5) shall be before an Administrative Law Judge on the PSTD Docket.

(b) The Commission shall issue such orders as it deems necessary to enforce the provisions of this Chapter to protect human health and the environment within the State of Oklahoma.

### **165:27-9-3. Notices**

Any notices and documents required to be submitted to the Fund or PSTD shall be delivered or mailed to:

(1) Mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(2) Mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(3) Delivery address: Petroleum Storage Tank Indemnity Fund, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room 238, Oklahoma City, Oklahoma 73105 (405) 521-4683.

(4) Delivery address: Petroleum Storage Tank Division, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room 238, Oklahoma City, Oklahoma 73105 (405) 521-~~7683~~ 4683.

*[OAR Docket #06-836; filed 5-5-06]*

# Permanent Final Adoptions

## TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #06-840]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
165:35-1-2. Definitions [AMENDED]  
Subchapter 34. Competitive Procurement [NEW]  
165:35-34-1. Purpose of this Subchapter [NEW]  
165:35-34-2. Confidential Information [NEW]  
165:35-34-3. RFP Competitive Procurement Process [NEW]  
Subchapter 35. Prudence Reviews [NEW]  
165:35-35-1. Prudence Reviews [NEW]  
Subchapter 37. Integrated Resource Planning [NEW]  
165:35-37-1. Purpose of this Subchapter [NEW]  
165:35-37-2. Confidential Information [NEW]  
165:35-37-3. Public Meetings [NEW]  
165:35-37-4. Integrated Resource Plan Reviews [NEW]  
Subchapter 38. Recoverable Costs [NEW]  
165:35-38-1. Purpose of Subchapter [NEW]  
165:35-38-2. Application and Scope of Subchapter [NEW]  
165:35-38-3. Transmission Upgrades [NEW]  
165:35-38-4. Capital Expenditures to Meet Environmental Requirements [NEW]  
165:35-38-5. Self-build or Purchase Options [NEW]

### AUTHORITY:

Oklahoma Corporation Commission; Article IX, Section 18, Oklahoma Constitution and 17 Okla. Stat. §§ 152 and 286

### DATES:

#### Comment Period:

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#### Public Hearing:

January 12, 2006

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January 20, 2006

#### Submitted to Senate:

January 20, 2006

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Failure of the Legislature to disapprove the rules resulted in approval on March 31, 2006

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July 1, 2006

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06-268

### SUPERSEDED EMERGENCY ACTIONS:

Subchapter 1. General Provisions  
165:35-1-2. Definitions [AMENDED]  
Subchapter 34. Competitive Procurement [NEW]  
165:35-34-1. Purpose of this Subchapter [NEW]  
165:35-34-2. Confidential Information [NEW]  
165:35-34-3. RFP Competitive Procurement Process [NEW]  
Subchapter 35. Prudence Reviews [NEW]  
165:35-35-1. Prudence Reviews [NEW]  
Subchapter 37. Integrated Resource Planning [NEW]  
165:35-37-1. Purpose of this Subchapter [NEW]  
165:35-37-2. Confidential Information [NEW]  
165:35-37-3. Public Meetings [NEW]  
165:35-37-4. Integrated Resource Plan Reviews [NEW]

Subchapter 38. Recoverable Costs [NEW]

165:35-38-1. Purpose of Subchapter [NEW]

165:35-38-2. Application and Scope of Subchapter [NEW]

165:35-38-3. Transmission Upgrades [NEW]

165:35-38-4. Capital Expenditures to Meet Environmental Requirements [NEW]

165:35-38-5. Self-build or Purchase Options [NEW]

### INCORPORATIONS BY REFERENCE:

None

### ANALYSIS:

The adopted rules create a process allowing retail electric utilities to restrain costs by seeking competitive bids for fuels used to generate electricity and by comparing the cost of generating electricity themselves with the cost of purchasing electric service from various wholesalers through competitive bidding. The adopted rules also provide for the Commission to review utility self-generation, fuel purchasing, and power purchasing decisions for prudence.

The adopted rules also require retail electric utilities to engage in long-term integrated resource planning, allowing for input from ratepayers. The adopted rules also provide for a mechanism for electric utilities to obtain prior approval of construction of new generation facilities and of facilities necessary to meet environmental regulations. The adopted rules also provide for a presumption of rate base recoverability for transmission upgrades required by a regional transmission organization and federal regulators.

### CONTACT PERSON:

Andrew Tevington, (405) 522-0482

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 165:35-1-2. Definitions

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

"**Affiliate**" means any person, entity, business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under ~~common~~ the control with the of an entity in question that is regulated by this Commission. Control includes, but is not limited to, the direct or indirect possession, directly or indirectly and whether acting alone or in conjunction with others, of authority to direct a direction of the management or policies of a person or entity, whether such authority is the result of acting alone or in conjunction with others. Control may be exercised through management, ownership of voting securities or other right to vote, by contract, or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"**ANSI**" means the American National Standards Institute.

"**Capacity**" means the quantity of electric power produced by a generating facility at a point in time, as measured in kilowatts or megawatts.

"**Commission**" means the Oklahoma Corporation Commission and the Commission's staff operating under its direction.

"**Company submeter**" means ~~KWK~~ kWh measuring device provided by the utility located on line beyond the point of delivery of electrical service providing service to another

consumer. Usage from these meters ~~are~~ is deducted from the meter at point of delivery.

**"Competitive bidder"** means any entity that submits a competitive bid in response to a request.

**"Competitive bidding process"** means a process to solicit offers to provide fuel supplies, electric generation service, fuel transportation services, and other goods or services related to a utility's provision of electric service to end users.

**"Complaint"** means an expression of dissatisfaction regarding the utility's billings, service procedures, or employee conduct which requests or requires some remedial or corrective action be taken by the utility. Complaints may be made by the consumer or other interested party. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

**"Consumer"** means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision of the United States, or the State of Oklahoma receiving electric service of any nature from a utility.

**"Corporate support services" or "Shared Services"** are human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a ~~an~~ electric utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

**"Customer submeter"** means a ~~KWH~~ kWh measuring device provided by the customer and located on line beyond the point of delivery of electrical service.

**"Demand-side program"** means any program or measure conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to energy efficiency measures, load management, interruptible load, and on-site generation.

**"Disconnection"** means electric service has been discontinued by consumer request or by the utility.

**"Economy energy"** means electric energy that is purchased during the course of a day to take advantage of the opportunity to purchase power from unexpected surpluses on or available to the grid more cheaply than producing it oneself or purchasing power under existing contracts.

**"Electric consuming facility"** means anything that utilizes electric energy from a central station source.

**"Electric energy"** means the quantity of electric power that is generated over a specific interval of time, measured in kilowatt-hours or megawatt-hours.

**"Electric plant"** means facilities and equipment owned or operated by a utility, including but not limited to generating stations, substations, transformers, towers, poles, conductors, transportation equipment, conduits, meters, motors, real estate, buildings, and dams.

**"Electric service"** means the supply of electricity, including generation, transmission, distribution and ancillary services (e.g. spinning and supplemental reserves) for ultimate consumption.

**"Electricity"** means electric power and energy produced, transmitted, distributed, or furnished by a utility.

**"End-use measure"** means an energy efficiency measure or an energy management measure.

**"FERC"** means the Federal Energy Regulatory Commission.

**"Fuel procurement plan"** means a plan that (1) establishes the parameters of a fuel supply portfolio for a utility and (2) strikes an appropriate balance between fuel costs and the related risks to which ratepayers are exposed (e.g., fuel cost increases and supply disruptions) over the term of the resource plan.

**"Fuel supplies"** means the coal, oil, natural gas and other fuels that generation facilities consume to produce electricity and the transportation and transmission services used to deliver those fuels.

**"Generation facility"** means a machine or machines capable of producing capacity, energy or other electricity products.

**"Generation service"** means the production of energy, capacity and other electricity products to meet customer demands for electricity.

**"Generation supplier"** means an entity capable of providing generation service.

**"Independent power producer"** means any generation supplier that is not a utility or an affiliate thereof.

**"Integrated resource plan"** means a utility's plan as further defined and established in Commission rules found at OAC 165:35-37 to ensure that sufficient supply- and demand-side resources are available to meet its obligation to serve and to achieve public policy objectives, including those prescribed by law, rule, or Commission order.

**"Interested party"** means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers, or any other party involved in, or affected by, the provision of electric generation service.

**"kW"** means kilowatts, and **"kWh"** means kilowatt-hours.

**"Legal holiday(s)"** means those days declared to be legal holidays by the Chief Executive of the State of Oklahoma.

**"Long-term"** means one year or longer.

**"Meter"** means any device or devices used to measure or register electric power and energy.

**"Meter shop"** means a shop used for the inspection, testing, and repair of meters.

**"Municipality"** means an incorporated city or town in the State of Oklahoma.

**"MW"** means megawatts, and **"MWh"** means megawatt-hours.

**"Planned interruption"** means electric service that has been suspended by the utility.

**"Planning period"** means the ten (10) year period that begins on the date that the utility files its plan with the Commission.

**"Premises"** means any piece of land or real estate, any building or other structure or portion thereof, or any facility where electric service is furnished to a consumer.

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**"Prudence review"** means a comprehensive review that examines as fair, just, and reasonable, a utility's practices, policies, and decisions regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

**"Purchased-power procurement plan"** means a plan that establishes the parameters of a purchased-power portfolio for a utility that meets the utility's planning objectives and strikes an appropriate balance between power supply costs and the related risks to which ratepayers are exposed (e.g., purchased-power cost increases and power supply disruptions) over the term of the resource plan.

**"Records"** means documentation maintained by the utility either in electronic or paper form.

**"Residence"** means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities, and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

**"Resources"** means supply-side generating facilities including life extension and repowering projects for such facilities (and the output thereof), and demand-side program and end use measures.

**"RFP"** means "request for proposal," the document that publicly opens a competitive bidding process by describing the utility's needs and seeking bids to fulfill those needs.

**"Risk management plan"** means a systematic method utilized by a utility to, among other things:

(A) Identify risks inherent in procuring and obtaining a supply portfolio;

(B) Establish the means by which the utility plans to address and balance or hedge the identified risks related to cost, price volatility and reliability; and

(C) Address the fuel, purchased-power and utility supply costs implicit in the utility's supply portfolio, and also demand-side programs as a potential hedge against risk.

**"RUS"** means the Rural Utilities Service.

**"Special contract"** means a written agreement between a utility and a consumer providing for furnishing electric service on terms different from those prescribed in approved tariffs.

**"Stakeholder"** means an interested party, as defined above.

**"Subdivision"** means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising for disposition.

**"Subsidize"** means to furnish financial support by the utility to the affiliate.

**"Tariff"** shall include includes every rate schedule, or provision thereof, and all terms, conditions, rules, and regulations for furnishing electric service.

**"Unplanned or emergency interruption"** means service has been suspended due to circumstances beyond the control of the utility.

**"Utility"** means any person, firm, partnership, or corporation furnishing electric service to the public in Oklahoma and subject to the regulatory jurisdiction of the Commission.

### **SUBCHAPTER 34. COMPETITIVE PROCUREMENT**

#### **165:35-34-1. Purpose of this Subchapter**

(a) This Subchapter establishes a fair, just, and reasonable process that best serves the public interest of all electricity consumers and that will complement and improve the state's economic growth by, among other things, making the most efficient use of Oklahoma's coal, natural gas, and power generation and transmission assets and furthers the policy of the Commission that a competitive procurement process is among the most effective means to achieve these objectives. All utilities shall employ a competitive bidding process when purchasing long-term electric generation or long-term fuel supply for self-generation of electricity. The competitive bidding process shall be open to Commission scrutiny, as are other regulated utility practices. The provisions of this Subchapter must be followed unless the utility obtains a waiver pursuant to 165:35-34-3(e).

(b) It is the intent of the Commission to create an open, transparent, fair and nondiscriminatory competitive bidding process for the utility to meet its needs. It should not be construed that this Subchapter absolves or relieves any utility or competitive bidder from any duty prescribed by the laws of the State of Oklahoma or the United States including, but not limited to, the federal Public Utility Regulatory Policies Act (Public Law 95-617) and any other state or federal law regarding contractual rights and obligations, antitrust enforcement or liability, or laws against improper restraint of trade or "takings" of property.

(c) This Subchapter also establishes reasonable standards of conduct for transactions between utilities and their affiliates and standards for transactions between utilities and competitive bidders conducting business within the State of Oklahoma.

#### **165:35-34-2. Confidential Information**

(a) A person or entity may file a motion with the Commission for an order to protect confidential information pursuant to 51 O.S., Section 24A.22.

(b) A bid, which is determined to be a successful bid, pursuant to the competitive bidding process of this Subchapter, must be publicly disclosed and shall not be subject to the confidentiality provisions of this Subchapter unless otherwise ordered by the Commission. The soliciting utility will provide the non-winning bidders the rationale used for the selection of the winning bid.

(c) Pending a determination by the Commission regarding any protective order, the person or entity seeking the protective order, the Commission, the Attorney General and the Independent Evaluator may, at their option, review the information claimed to be confidential at a mutually agreed upon location.

**165:35-34-3. RFP Competitive Bidding Procurement Process**

- (a) Competitive Bidding Structure and Process Guidelines
  - (1) The soliciting utility shall prepare the initial draft of the request for proposal ("RFP") documents, including but not limited to RFP procedures, and a pro forma power purchase agreement that, to the maximum extent practicable, utilizes industry standard contractual terms and contains all expected material terms and conditions and a solicitation schedule (collectively, the "RFP Document").
  - (2) In addition to the information required by (1) of this Section, the RFP and RFP Document, at a minimum, shall identify clearly:
    - (A) Term;
    - (B) Amount of megawatts, if applicable, and types of products being solicited;
    - (C) All price and non-price evaluation factors to be considered;
    - (D) Respective weight for each price and non-price evaluation factor; and
    - (E) Utility's preliminary analysis of transmission availability and the utility's plan for evaluation of transmission availability for each proposal received, including, but not limited to:
      - (i) Description of the role of transmission analysis to be conducted by the utility in the bid evaluation process. This analysis should use publicly available tools provided by the controlling entity, such as the Southwest Power Pool Scenario Analyzer, and
      - (ii) Role of the transmission analysis to be conducted by the controlling entity, currently the Southwest Power Pool, in the bid evaluation process.
  - (3) The draft of the RFP Document, supporting documentation, and bid evaluation procedures shall be provided to the Commission, Attorney General, and Independent Evaluator for review prior to the planned issue date of the RFP. After receiving input from all interested parties, which may include the Commission, Attorney General, and Independent Evaluator, and holding a technical conference regarding the bidding process, the soliciting utility shall post the draft RFP Document and comments of the Commission, Attorney General, and Independent Evaluator, on the soliciting utility's website or electronic bulletin board, or by some other publicly accessible method and solicit comments from interested parties concerning the draft RFP Document. The soliciting utility will post the final RFP Document on its website or electronic bulletin board, or by other publicly accessible method. RFPs shall include the Southwest Power Pool's time requirements to conduct transmission analyses, i.e. the aggregate study.
- (b) Independent Evaluator
  - (1) The Commission shall retain and compensate an Independent Evaluator to monitor the RFP and competitive bidding process. The Commission shall establish the minimum qualifications and requirements for an Independent

Evaluator and ensure the Independent Evaluator is financially and substantively independent from any soliciting electric utility or affiliate thereof, complaining entity, and any potential bidder.

(2) The Independent Evaluator will report to the Commission and the Attorney General.

(3) If the Independent Evaluator's conclusion is different from the conclusion of the soliciting utility about the winning bidder(s), the Independent Evaluator and utility may attempt to resolve such differences. In the event the Independent Evaluator and utility cannot resolve their differences, the soliciting utility will determine which bid(s) is successful. The Independent Evaluator shall submit its independent evaluation to the Commission.

(4) As part of its contract with the Independent Evaluator, the Commission shall require the Independent Evaluator, to enter into an agreement to keep all information confidential that pertains to the disclosure and use of any models, analytical tools, data, or other materials of a confidential or proprietary nature provided or made available by the soliciting utility in conjunction with the competitive bidding process.

(c) Affiliate Bidders' Requirements

(1) Each soliciting utility affiliate that intends to bid shall disclose publicly, in writing, the names and titles of the members of the affiliate's "Bid Team." Each soliciting utility shall disclose publicly, in writing, the names and titles of the members of its "Evaluation Team." A Bid Team develops the affiliate's bid and, to assure fairness, is not involved, directly or indirectly, in the evaluation or selection of bids. An Evaluation Team evaluates bids, selects the successful bidder and, to assure fairness, is not involved, directly or indirectly, in the development of the affiliate's bid.

(2) Each soliciting utility and bidding affiliate shall assure that the Bid Team and the Evaluation Team and any member of either do not engage in any communications, either directly or indirectly, regarding the RFP or the competitive bidding process. For bidder and Commission assurance, the soliciting utility and bidding affiliate shall execute an acknowledgement that the utility and affiliate have not and will not in the future so communicate, other than to submit and receive the bid at the appropriate time. The Bid Team and Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(3) The Evaluation Team shall report to the Independent Evaluator, any contact or communications by any bidder, including the Bid Team, and advise the bidder any future contact must be directed to the Independent Evaluator. Bidders and the Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(d) Evaluation of Responses to the RFP

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(1) The evaluation of the responses to the RFP will proceed as follows:

(A) The soliciting utility will evaluate all timely submitted bids to determine the lowest reasonable cost for long-term reliable power or reliable long-term fuel sought that minimizes ratepayer cost, including but not limited to charges for or costs relating to long-term fuel supply, long-term fuel transport, long-term fuel storage, long-term fuel processing, or increased cost of capital, consistent with the principles and procedures contained in this Subchapter and in the utility's resource plan and associated procurement plans.

(B) The Commission, Attorney General, and Independent Evaluator will be included in the evaluation of all bids submitted to the soliciting utility.

(2) All bids shall be evaluated on the basis of the bidder's final best offer. No bidder shall be permitted to unilaterally submit a refreshed bid unless all bidders are given a meaningful opportunity to submit a refreshed bid as a result of some material, documented change. The Independent Evaluator shall be charged with evaluating any such changes and ensuring that the changes are substantive and not an attempt to influence the final selection process in favor of a particular bidder.

(3) Should any bid be unclear to such extent that the lack of clarity could impact the outcome of the bidding, the soliciting utility, Commission, Attorney General, or Independent Evaluator may request further information from any bidder regarding its bid, provided, any such communication between or among the soliciting utility, Commission, Attorney General, or Independent Evaluator and bidder should be conducted through an open process in which the utility, Independent Evaluator, Commission and Attorney General are given adequate notice and an opportunity to attend.

(4) The Commission, Attorney General and Independent Evaluator, as well as the soliciting utility, may rely on the Southwest Power Pool to conduct all necessary transmission analyses concerning bids received. Southwest Power Pool analyses provided to the Commission, Attorney General, or Independent Evaluator shall be equivalent in quality and content to that provided to the soliciting utility. No bidder, including any bidder that is an affiliate (including the Bid Team) of the soliciting utility, shall communicate with the Southwest Power Pool Transmission group during the course of the competitive bidding process regarding any aspect of the RFP or process.

(5) In conducting the evaluation of the responses, the soliciting utility shall not:

(A) Waive or otherwise modify any evaluation factor or evaluation weight for any bidder;

(B) Add any adjustments on the basis of expected effects on the utility's cost of capital if not already contained in the RFP;

(C) Impose any penalty on the price of purchased power; or

(D) Include any discount for utility self-generation on the basis of reliability as part of the utility's resource mix.

(6) The variable cost of the utility producing power through self-generation will serve as the benchmark for comparing bids. Only bids below the benchmark will be eligible for acceptance.

(e) Prior to a utility taking long-term procurement action other than that contemplated by these rules, a utility shall seek a waiver of all or any part of these competitive bidding rules by filing a cause with the Commission.

(f) The utility shall promptly file its decision with the Commission and mail copies of such filing to all bidders, the Independent Evaluator, and the Attorney General identifying the successful bidder, which filing shall include a copy of the successful bid.

(1) Any unsuccessful bidder, the Independent Evaluator, or the Attorney General shall have fifteen (15) days following filing of the successful bid decision with the Commission to file with the Commission a complaint challenging the decision as not meeting the criteria for decision specified in this subchapter or waiver previously obtained pursuant to 165:35-34-3(e) and the RFP document and bid evaluation procedures developed pursuant to 165:35-34-3(a).

(2) In the event of the filing of such a complaint, after notice to all bidders and hearing, the Commission shall determine whether the utility's decision reveals either a clear departure from the criteria stated in these rules or previously obtained waiver, the RFP Document and bid evaluation procedures for decision or is erroneous, in which event the utility shall be required immediately to rebid, in accordance with this Subchapter, the items which were the subject of such determination.

(g) Upon determination of the successful bidder, the utility and successful bidder shall promptly proceed to finalize contracts necessary to implement the bid.

(1) The contract shall contain appropriate guarantees, as set by the Commission, regarding the reliability of services.

(2) At the request of either party and upon notice and hearing, the Commission shall have authority to determine any disputes between the parties as to terms incidental to the bid. All matters to be determined by the Commission under this provision shall be heard on an expedited basis and a decision rendered thereon within thirty (30) days from filing.

### **SUBCHAPTER 35. PRUDENCE REVIEWS**

#### **165:35-35-1. Prudence Reviews**

(a) The Commission shall conduct prudence reviews on all generation and fuel procurement processes and costs. The first prudence review will be selected by March 31, 2006. Utilities serving four hundred thousand (400,000) ratepayers or more shall be reviewed at least once every two (2) years. Utilities

servicing fewer than four hundred thousand (400,000) ratepayers shall be reviewed at least once every three (3) years.

(b) All fuel and generation expenses, including purchased-power-related expenses, shall be reviewed by the Commission in adjudicatory proceedings to determine that such expenses were prudently incurred. The utility shall bear the burden of proof as to prudence. Additional prudence reviews shall be conducted when the Commission determines that circumstances warrant such review.

(c) The Commission may impose any corrective action or penalty allowed explicitly or implicitly by law, including refund, as the result of a prudence review.

(d) Nothing in this Subchapter shall diminish the authority of the Commission to review for prudence or other reasons any utility contract, decision or other action for the provision of electric power capacity or energy.

### **SUBCHAPTER 37. INTEGRATED RESOURCE PLANNING**

#### **165:35-37-1. Purpose of this Subchapter**

(a) The purpose of this Subchapter is to establish fair, just, and reasonable rules and procedures for Commission review of the resource plans of utilities. The utility resource plans establish additional bases for substantial investment and expenses incurred by utilities to provide electric supply to retail consumers. The practices and policies embodied in a utility's resource plan have direct, substantial effects on the costs and reliability of the electric supply to be provided to retail consumers in Oklahoma. Resource planning is a complex process affecting decisions that account for a substantial portion of the total cost of electricity over the long term, including investments in generation and transmission facilities, purchases of power and fuel supply, and investments in energy efficiency. Recognizing the significance of the costs incurred based on resource plans, the Commission believes it is in the best interest of retail ratepayers and the utilities providing regulated retail electric supply to establish regular review of the utilities resource plans to ensure that the utilities' resource planning and resulting investment are reasonably and prudently conducted and that the overall cost of power supply to retail ratepayers is fair, just, and reasonable.

(b) This Subchapter establishes fair, just, and reasonable procedures for:

- (1) Setting standards for prudent resource planning;
- (2) Conducting periodic reviews of utility resource plans;
- (3) Participation of stakeholders, particularly those representing ratepayer interests, to review and have input into the utility's resource plans and the Commission's resource planning policies;
- (4) Establishing the need for additional resources serving as the basis for long-term competitive procurement of resources, including, but not limited to, utility construction of new electric generation facilities, the utility purchase of existing electric generation facilities, and the purchase of long-term power supplies;

(5) Establishing objectives and action plans consistent with Commission resource planning policies;

(6) Establishing appropriate plans for capital expenditures for equipment or facilities at utility generation facilities necessary to comply with the Federal Clean Air Act, as amended, and other federal, state, local, or tribal environmental requirements;

(7) Establishing a clear, before-the-fact foundation for the recovery of prudently incurred investment and expenses in subsequent rate and fuel and purchased-power cost recovery proceedings; and

(8) Establishing the appropriate portfolio of products to be obtained through competitive procurement.

#### **165:35-37-2. Confidential Information**

(a) If a utility is required by this Subchapter to submit information to the Commission that is alleged by the utility to be confidential, a motion for a protective order concerning such information may be filed requesting a determination to be made by the Commission to protect the information pursuant to 51 O.S., Section 24A.22.

(b) Pending a determination regarding approval of any protective order by the Commission, the Commission and Attorney General, at their option, may review the information claimed to be confidential at a mutually agreed upon location, provided that for purposes of 51 O.S., Section 24A.22, the information shall be deemed confidential pending such determination by the Commission.

#### **165:35-37-3. Public Meeting**

(a) A utility shall notify the Commission that it has prepared a proposed initial integrated resource plan at least thirty (30) days prior to submission pursuant to 165:35-37-4. After giving notice, the Commission shall conduct a public meeting on the record concerning the utility's proposed initial integrated resource plan, allowing comment from interested persons as to the strengths and weaknesses of the proposed plan.

(b) The utility shall take into account the comments made at the public meeting and make such changes to the plan as seem reasonable.

(c) The utility shall make the proposed plan available prior to the public meeting to any person who requests it, except any portions subject to a Commission protective order.

(d) The Commission may conduct similar public meetings at its discretion concerning updates to the integrated resource plan as provided by 165:35-37-4.

#### **165:35-37-4. Integrated Resource Plan Reviews**

(a) Each utility shall submit to the Commission a proposed integrated resource plan, with the utility's first plan due on before October 1, 2006, and subsequent plans due every three (3) years thereafter, unless otherwise ordered by the Commission. The proposed resource plan shall include, among other things, a fuel procurement plan, purchased-power procurement plans, a risk management plan, an environmental compliance

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plan, and other elements as described further in this Subchapter. This plan will be made available upon request by any person or entity to the soliciting utility, except any portions subject to a Commission protective order.

(b) Each utility shall have an ongoing obligation to monitor markets and inputs and to notify the Commission when material changes in planning assumptions occur. As the integrated resource plan changes from year to year, the utility shall submit updates to the Commission. The Commission may require the utility to submit an interim, updated integrated resource plan to reflect material change(s) in planning assumptions.

(c) The integrated resource plan shall include, at a minimum, the following:

- (1) An electric demand and energy forecast;
- (2) A forecast of capacity and energy contributions from existing and committed supply-and demand-side resources;
- (3) A description of transmission capabilities and needs covering the forecast period;
- (4) An assessment of need for additional resources;
- (5) A description of the supply, demand-side and transmission options available to the utility to address the identified needs;
- (6) A fuel procurement plan, purchased-power procurement plan, and risk management plan;
- (7) An action plan identifying the near-term (i.e., across the first five [5] years) actions that the utility proposes to take to implement its proposed resource plan;
- (8) Any proposed RFP(s), supporting documentation, and bid evaluation procedures by which the utility intends to solicit and evaluate new resources; and
- (9) A technical appendix for the data, assumptions and descriptions of models needed to understand the derivation of the resource plan.
- (10) A description and analysis of the adequacy of its existing transmission system to determine its capability to serve load over the next ten (10) years, including any planned proposed changes to existing transmission facilities.
- (11) An assessment of the need for additional resources to meet reliability, cost and price, environmental or other criteria established by the Commission, the State of Oklahoma, the Southwest Power Pool, North American Electric Reliability Council, or the Federal Energy Regulatory Commission. This assessment should address both base line forecast condition and important uncertainties, including but not limited to load growth, fuel prices, and availability of planned supplies.
- (12) An analysis of the utility's proposed resource plan and any alternative scenarios necessary to demonstrate how the preferred plan best meets the planning criteria. Technical appendices should be included to document the planning analysis and assumptions used in preparing this analysis.

### **SUBCHAPTER 38. RECOVERABLE COSTS**

#### **165:35-38-1. Purpose of Subchapter**

The purpose of this Subchapter is to provide for utility recovery of (1) costs directly associated with transmission upgrades approved by a regional transmission organization of which such utility is a member and which upgrades are the result of an order by a federal regulatory authority having legal jurisdiction over interstate regulation of transmission rates; (2) capital expenditures for equipment or facilities necessary to comply with the Federal Clean Air Act (Public Law 84-159), as amended, and, as the Commission may deem appropriate, federal, state, local or tribal environmental requirements that apply to generation facilities; and (3) costs associated with the purchase or construction of a generation facility needed to provide reliable service using the competitive bidding RFP Process.

#### **165:35-38-2. Application and Scope of Subchapter**

(a) This Subchapter is applicable to all electric utilities operating within the State of Oklahoma under the jurisdiction of the Commission.

(b) These cost recovery rules are promulgated to establish processes, procedures, enforcement, reporting, and monitoring provisions that apply to electric utilities regarding the expenditures referenced in 165:35-38-1.

(c) The intention of this Subchapter includes, but is not limited to:

(1) The provision of rules for the recovery of costs associated with transmission upgrades, environmental facilities installed at generation facilities, generation assets constructed by the utility, and generation assets acquired by the utility; and

(2) The protection of customers of a utility from imprudent financial obligations or costs.

(d) All amounts subject to recovery are subject to Commission audit and review. The Commission will resolve any disputes regarding this Subchapter.

#### **165:35-38-3. Transmission Upgrades**

(a) Effective July 1, 2006, the portion of costs incurred by an electric utility, which is subject to rate regulation by the Corporation Commission, for transmission upgrades approved by a regional transmission organization to which such utility is a member and resulting from an order of a federal regulatory authority having legal jurisdiction over interstate regulation of transmission rates, shall be presumed recoverable by such utility. The presumption established in this subsection may be rebutted by evidence that the costs so incurred by the utility for such transmission upgrades exceed the scope of the project authorized by the regional transmission organization or order issued by such federal regulatory authority having jurisdiction over interstate regulation of transmission rates. [17 O.S., Section 286(A)]

(b) Costs incurred by a utility that are directly related to transmission upgrades as set forth in 165:35-38-1 are presumed recoverable by such utility. However, the presumption may be rebutted by evidence presented by a complainant or through the audit and review process that the costs so incurred by the utility for such transmission upgrades exceed the scope of the

project authorized by the regional transmission organization or federal regulatory authority order.

(c) Before costs are allowed to go into effect, a cause will be opened by the utility before the Commission. After notice and hearing and upon proper evidence, the Commission may authorize an electric utility to recover all or a portion of the costs incurred by the utility for such transmission upgrades.

(d) A utility seeking cost recovery for transmission upgrades as they pertain to this subsection may file an application to recover such costs and shall provide, at a minimum:

(1) A detailed summary of the costs for which recovery is sought;

(2) Evidence of the approval received by the utility from the regional transmission organization or order received from the federal regulatory authority giving rise to the transmission upgrade; and

(3) A proposed recovery mechanism to recover such costs, which shall be in accordance with Commission's traditional rate making procedures.

**165:35-38-4. Capital Expenditures to Meet Environmental Requirements**

(a) An electric utility subject to rate regulation by the Corporation Commission may file an application seeking Commission authorization of the utility's plan to make capital expenditures for equipment or facilities necessary to comply with the Federal Clean Air Act, as amended, and, as the Commission may deem appropriate, federal, state, local or tribal environmental requirements which apply to generation facilities. If approved by the Commission, after notice and hearing, the equipment or facilities specified in such approved utility plan are conclusively presumed used and useful. The utility may elect to periodically adjust its rates to recover the costs of such expenditures; provided that the utility shall file a request for a review of its rates pursuant to Section 152 of Title 17 of the Oklahoma Statutes. Provided further, that such periodic rate adjustment or adjustments are not intended to prevent a utility from seeking cost recovery of such capital expenditures as otherwise may be authorized by the Commission. However, the reasonableness of the costs to be recovered by the utility shall be subject to Commission review and approval. [17 O.S. Section 286(B)]

(b) A utility may file an application seeking Commission authorization of the utility's plan to make capital expenditures for equipment or facilities necessary to comply with the environmental requirements as set forth in 165:35-37.

(c) If approved by the Commission after notice and hearing, the equipment or facilities specified in the approved utility plan shall be conclusively presumed used and useful.

(d) The utility may elect periodically to adjust its rates to recover the costs of such expenditures provided that the utility shall file a request for a review of its rates pursuant to Section 152 of Title 17 of the Oklahoma Statutes.

(e) Periodic rate adjustments as contemplated above shall not prevent a utility from seeking cost recovery of capital expenditures as otherwise may be authorized by the Commission. However, the reasonableness of the costs to be recovered by the utility shall be subject to Commission review and approval.

**165:35-38-5. Self-build or Purchase Options**

(a) An electric utility subject to rate regulation by the Corporation Commission may elect to file an application seeking approval by the Commission to construct a new electric generating facility or to purchase an existing electric generation facility subject to the provisions of this subsection. If, and to the extent that, the Commission determines there is a need for construction or purchase of such electric generating facility, the generating facility shall be considered used and useful and its costs shall be subject to cost recovery rules promulgated by the Commission. The Commission shall enter an order on an application filed pursuant to this subsection within two hundred forty (240) days of the filing of the application, following notice and hearing and after consideration of reasonable alternatives. [17 Okla. Stat. § 286(C)]

(b) Upon application by an electric utility pursuant to this Subchapter, the Commission shall review the requested cost recovery.

(c) If the soliciting utility wishes to consider an option for full or partial ownership of a self-build option, the utility must submit its construction proposal ("Self-build Proposal") to provide all or part of the capacity requested in the RFP stated in 165-35-34 at the same time the bids are requested.

(d) Once submitted, the Self-build Proposal may not be modified by the soliciting utility. If a Self-build Proposal is selected and approved by the Commission, the amount the soliciting utility shall recover through the rate base or other cost-recovery methods without additional Commission approval is limited to the total project cost identified in the Self-build Proposal.

(e) A Cause shall be opened by the utility for cost recovery if the competitive bidding RFP process established in 165-35-34 is not utilized and the utility wishes to gain approval of cost before construction starts.

(f) Bid responses will be opened with the Independent Evaluator, Commission and the Attorney General present.

(g) Bid award terms and conditions shall be posted on the utility's web site or electronic bulletin board within sixty (60) days after receipt, with a notice to the Commission.

(h) The Commission decision approving or denying the plan shall address the contents of the utility's resource plan, including its fuel procurement plan, purchased-power procurement plan, and risk management plan. If the record contains sufficient evidence, the Commission shall specifically approve or reject:

(1) The utility's proposed plans for resources in the planning period.

(2) The utility's proposed plans for acquiring additional resources through the competitive acquisition process, and

(3) The utility's proposed RFP(s).

(i) Upon the filing of an application pursuant to this Subchapter, the Commission will establish a procedural schedule, which shall provide for a Commission order within two hundred forty (240) days of the date of such filing.

[OAR Docket #06-840; filed 5-5-06]

# Permanent Final Adoptions

## TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #06-837]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 19. Consumer Data, Deposits, and Billing

Part 1. Consumer Records, Information and Interruptions of Service

165:35-19-4. Restoration of Service [AMENDED]

Part 7. Application for Service and Tampering of Equipment

165:35-19-40. Failure to make application for electric service  
[AMENDED]

Subchapter 21. Disconnection of Service

Part 3. Special Provisions Regarding Residential Disconnection

165:35-21-10. Delays to disconnection of residential service  
[AMENDED]

Part 9. Mediation and Commission Review

165:35-21-40. Mediation [AMENDED]

### AUTHORITY:

Oklahoma Corporation Commission; Article IX, §§ 18, 19, Oklahoma Constitution and 17 Okla. Stat. § 151 et seq.

### DATES:

#### Comment Period:

January 19, 2006 through February 27, 2006

#### Public Hearing:

February 27, 2006

#### Adoption:

February 27, 2006

#### Submitted to the Governor:

March 9, 2006

#### Submitted to the House:

March 9, 2006

#### Submitted to Senate:

March 9 2006

#### Gubernatorial approval:

April 24, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 5, 2006

#### Final Adoption:

May 5, 2006

#### Effective Date:

July 1, 2006

#### SUPERSEDED EMERGENCY ACTIONS:

None

#### INCORPORATIONS BY REFERENCE:

None

#### ANALYSIS:

Existing Section 165:35-9-1 has been amended to require use of the 2005 Edition of the National Electric Code for the installation of electric wiring.

Existing Section 165:35-19-4 has been amended to require each utility to provide the Commission's Director of Consumer Services with 24-hour emergency contact names and phone numbers, or the number of any 24-hour emergency operations center. It has also been amended to require notification to Commission staff whenever an outage may cause a high degree of public interest or concern

Existing Section 165:35-19-40 has been amended to correct the citation to a particular Commission rule.

Existing Section 165:35-21-10 has been amended to delete the requirement that the utility must verify a consumer's gross income when negotiating a deferred payment agreement.

Existing Section 165:35-21-40 has been amended to reflect that any issue addressed in this Chapter of the rules may be subject to mediation when disputed.

#### CONTACT PERSON:

Kathy Nelson (405) 522-1638

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

SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JULY 1, 2006:

## SUBCHAPTER 19. CONSUMER DATA, DEPOSITS, AND BILLING

### PART 1. CONSUMER RECORDS, INFORMATION, AND INTERRUPTIONS OF SERVICE

#### 165:35-19-4. Restoration of Service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each electric utility shall have a written restoration of service policy/plan, which shall include a telecommunication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division. This policy shall be reviewed by the utility at least annually, and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each electric utility shall provide and keep current, the phone number of any 24-hour emergency operations center or a list with a minimum of two individuals having 24-hour contact numbers, by September 30 of each year, to the Commission's Director of the Consumer Services Division. The following items are guidelines to be addressed in the policy:

- (1) Assessment of the extent of the service interruption and what resources equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.
- (2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.
- (3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.
- (4) Once electricity to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments, and police 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.
- (5) Attempted notification of high-priority customers or major electric consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage,

and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.

(6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification ~~should~~ shall consist of the following:

- (A) An initial contact to notify Staff of outages which involve a major utility substation or facility; or which, ~~in the judgment of the utility,~~ may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) customers or more, whichever is greater, of the utility's meter count.
- (B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.
- (C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

**PART 7. APPLICATION FOR SERVICE AND TAMPERING OF EQUIPMENT**

**165:35-19-40. Failure to make application for electric service**

(a) A utility may elect not to disconnect electric service to a premises when an application or contract for service is terminated, provided the meter is read and the application or contract for service is terminated, provided the meter is read and the reading recorded when service is terminated and the meter is read and the reading recorded when initiating service to subsequent consumer. Such election does not constitute consent of the utility for a new occupant of such premises to use the service without making proper application or contract for service.

(b) Any person who uses electric service of the utility, but fails to make application or contract for such service of the utility, shall be liable to the utility for payment therefore under the applicable rate schedule. Proper notice as set forth in ~~165:35-21-15~~ 165:35-21-20(a) must be given prior to the utility making a disconnection. The utility may prorate the charge to this customer, based on the date of occupancy.

**SUBCHAPTER 21. DISCONNECTION OF SERVICE**

**PART 3. SPECIAL PROVISIONS REGARDING RESIDENTIAL DISCONNECTION**

**165:35-21-10. Delays to disconnection of residential service**

(a) **Limitations on disconnections.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the electric service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

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(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility may mail a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

- (A) Consideration of the consumer's ~~verified~~ gross income ~~less employer deductions~~.
- (B) Size of the delinquent account.
- (C) Consumer's ability to pay.
- (D) Consumer's payment history with the utility.
- (E) Length of time and reasons why the debt has not been paid.
- (F) Other extraordinary expenses of the consumer.
- (G) Loss of income through unemployment or illness.
- (H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in amount.

(3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if financial circumstances, such as loss of income through unemployment or illness or any other relevant factors concerning the circumstances of the consumer, change during the payment period

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) **Life-threatening situation.**

(1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on electricity, and is needed to sustain the person's life.

Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitory, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. If the life-sustaining equipment without a battery backup is prescribed by a licensed medical doctor, then it shall be considered life-sustaining equipment. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, range/stove, nebulizers that are battery-driven or hand-driven or self-contained, battery-driven sleep apnea monitors, battery-driven cardiac monitors.

(2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend discontinuance of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should electric service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection.

(3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening situation. The form shall be provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum, the Medical Certificate Form provided by the utility shall contain, substantially the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for electric service.

(4) Completion of (2) and (3) of this subsection will suspend a disconnection of electrical service to the specified residence for a period of thirty (30) days from the initial notification. This 30-day period allows the consumer, if eligible, to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form.) The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the consumer beyond a total of sixty (60) days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer or other permanent resident in the household by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not complete the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming life threatening situation once full payment of the account balance from a previous life-threatening claim is made and a Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

**PART 9. MEDIATION AND COMMISSION REVIEW**

**165:35-21-40. Mediation**

(a) Whenever there is a dispute between the utility and the consumer as to the following, the matter may be brought by either party to the Commission's Consumer Services Division:

- (1) The existence of or seriousness of a life-threatening situation.
- (2) The existence of elderly or handicapped status.
- (3) The question of financial assistance or guarantee of payment by a federal, state, or local social service agency.
- (4) The provisions of a deferred payment agreement.
- (5) The terms and conditions of payment of any part of a bill as rendered.
- (6) The proper interpretation of this Section.
- (7) Other issues addressed in this Chapter.

(b) The Commission's Consumer Services Division shall review the matter and issue an informal review decision in writing, setting forth the terms and conditions for continued service, disconnection of service, or deferred payment agreement (DPA). If it is the desire of the consumer, they may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.

(c) If the Commission's Consumer Services Division is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a Complaint with the Commission for final determination.

(d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to the Commission's Consumer Services Division. Upon complaint by the consumer to the Commission, disconnection of service shall be held in abeyance provided the consumer pays the portion of the bill which is not in dispute.

[OAR Docket #06-837; filed 5-5-06]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 45. GAS SERVICE UTILITIES**

[OAR Docket #06-838]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 9. Records and Reports
- 165:45-9-2.1. Restoration of service [AMENDED]
- Subchapter 11. Customer Service
- Part 3. Disconnection of Service
- 165:45-11-14. Delays to disconnection of residential service [AMENDED]
- 165:45-11-20. Mediation [AMENDED]

**AUTHORITY:**

Oklahoma Corporation Commission; Article IX, §§ 18, 19, Oklahoma Constitution and 17 Okla. Stat. § 151 et seq.

**DATES:**

**Comment Period:**

January 19, 2006 through February 27, 2006

**Public Hearing:**

February 27, 2006

**Adoption:**

February 27, 2006

**Submitted to the Governor:**

March 9, 2006

**Submitted to the House:**

March 9, 2006

**Submitted to Senate:**

March 9 2006

**Gubernatorial approval:**

April 24, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 5, 2006

# Permanent Final Adoptions

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**Final Adoption:**

May 5, 2006

**Effective Date:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

Existing Section 165:45-9-2.1 has been amended to require each utility to provide the Commission's Director of Consumer Services with 24-hour emergency contact names and phone numbers, or the number of any 24-hour emergency operations center. As installations having an interest of public health and safety, 911 call centers have been included as an example of an installation having priority status for restoration of service after an unplanned outage. It has also been amended to require notification to Commission staff whenever an outage may cause a high degree of public interest or concern.

Existing Section 165:45-11-14 has been amended to delete the requirement that the utility must verify a consumer's gross income when negotiating a deferred payment agreement.

Existing Section 165:45-11-20 has been amended to reflect that any issue addressed in this Chapter of the rules may be subject to mediation when disputed.

**CONTACT PERSON:**

Kathy Nelson (405) 522-1638

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## SUBCHAPTER 9. RECORDS AND REPORTS

### 165:45-9-2.1. Restoration of service

This Section establishes general parameters to ensure timely communications to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each gas utility shall have a written restoration of service policy/plan, which shall include a communication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division, and updated as changes occur. This policy shall be reviewed by the utility at least annually and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each gas utility shall provide and keep current, the phone number of any 24 hour emergency operations center or a list with a minimum of two individuals with 24-hour contact numbers, to the Commission's Director of the Consumer Services Division. The following items are guidelines to be addressed in the policy:

- (1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.
- (2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from

other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.

(3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.

(4) Once gas service to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments and ~~police departments, and 911 centers~~), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.

(5) Attempted notification of high-priority customers or major gas consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.

(6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification ~~should~~ shall consist of the following:

- (A) An initial contact to notify Staff of outages which involve a major utility substation or facility; or which, ~~in the judgment of the utility~~, may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) customers or more, whichever is greater, of the utility's meter count.
- (B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.
- (C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

## SUBCHAPTER 11. CUSTOMER SERVICE

### PART 3. DISCONNECTION OF SERVICE

#### 165:45-11-14. Delays to disconnection of residential service

- (a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include

limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the gas service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency is provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no conditions is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility may mail a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a

reasonable partial payment in accordance with paragraph (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's ~~verified~~ gross income ~~less employer deductions~~.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in size.

(3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement if the consumer's financial conditions change, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection period as provided in OAC 165:45-11-11(c) on the first and second notice has not been passed. If the disconnection period has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) **Life-threatening situation.**

(1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on gas, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitory, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, and range/stove.

(2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend disconnection of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of

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service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should gas be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection.

(3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening condition. This form is provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for gas service.

(4) Completion of (2) and (3) of this subsection will suspend disconnection of gas service to the specified residence for a period of thirty (30) days from the initial notification. This 30-day period allows the consumer to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the customer beyond a total of sixty (60) days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain utility service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not fulfill the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming a life-threatening situation once full payment of the account balance from a previous life-threatening claim is made and a valid Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

### 165:45-11-20. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to any of the following, the matter may be brought by either party to the Commission's Consumer Services Division:

(1) The existence of or seriousness of a life-threatening situation.

(2) The existence of elderly or handicapped status.

(3) The question of financial assistance or guarantee of payment by a federal, state, or local social service agency.

(4) The provisions of a deferred payment agreement.

(5) The terms and conditions of payment of any part of a bill as rendered.

(6) The proper interpretation of this Section.

~~(7) Any other areas of dispute.~~ Other issues addressed in this Chapter.

(b) The Commission's Consumer Services Division shall review the matter and issue an informal review decision in writing setting forth the terms and conditions for continued service, disconnection of service, or deferred payment plan agreement. If it is the desire of the consumer, the consumer may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.

(c) If the Commission's Consumer Services Division is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a complaint with the Commission for final determination.

(d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may

report the dispute to the Commission's Consumer Services Division. Upon complaint by the consumer to the Commission, disconnection of service shall be held in abeyance, for as long as a resolution of the complaint is pending at the Commission, provided the consumer pays the portion of the bill which is not in dispute.

[OAR Docket #06-838; filed 5-5-06]

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

[OAR Docket #06-839]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 9. Records, Reports, and Filing Requirements  
165:65-9-2.1. Restoration of Service [NEW]

**AUTHORITY:**

Oklahoma Corporation Commission; Article IX, §§ 18, 19, Oklahoma Constitution and 17 Okla. Stat. § 151 *et seq.*

**DATES:**

**Comment Period:**

January 19, 2006 through February 27, 2006

**Public Hearing:**

February 27, 2006

**Adoption:**

February 27, 2006

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March 9, 2006

**Submitted to Senate:**

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**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 5, 2006.

**Final Adoption:**

May 5, 2006

**Effective Date:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

New Section 165:65-9-2.1 is added to require water utility services to have a written restoration of service policy/plan to be followed during an unplanned or emergency interruption, to be reviewed by the utility annually and updated as necessary. It also requires the utility to provide the Commission's Director of the Consumer Services Division with the names and phone numbers of two company representatives who can be reached on a twenty-four hour basis, or in the alternative, the number of any twenty-four hour emergency call center established by the utility.

**CONTACT PERSON:**

Kathy Nelson (405) 522-1638

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**SUBCHAPTER 9. RECORDS, REPORTS, AND FILING REQUIREMENTS**

**165:65-9-2.1. Restoration of service**

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each water utility shall have a written restoration of service policy/plan, which shall include a communication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division. This policy shall be reviewed by the utility at least annually and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each water utility shall provide and keep current, the phone number of any 24 hour emergency operations center or a list with a minimum of two individuals with 24-hour contact numbers to the Commission's Director of the Consumer Services Division. The following items are guidelines to be addressed in the policy:

- (1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.
- (2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.
- (3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.
- (4) Once water to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments, and 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.
- (5) Attempted notification of high-priority customers or major water consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.
- (6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by

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one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification shall consist of the following:

(A) An initial contact to notify Staff of outages which involve a major utility substation or facility, may cause a high degree of public interest or concern, or which have a duration of 4 hours or more and involve 1% or fifty (50) customers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

*[OAR Docket #06-839; filed 5-5-06]*

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

*[OAR Docket #06-850]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Priority Academic Student Skills  
Part 5. Language Arts  
210:15-3-22. [AMENDED]  
210:15-3-23. [AMENDED]

### **AUTHORITY:**

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

### **DATES:**

#### **Comment period:**

December 15, 2005 through February 22, 2006

#### **Public hearing:**

February 23, 2006

#### **Adoption:**

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

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

March 1, 2006

#### **Gubernatorial approval:**

April 17, 2006

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2006

#### **Final adoption:**

April 27, 2006

#### **Effective:**

June 11, 2006

### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded rules:**

Subchapter 3. Priority Academic Student Skills  
Part 5. Language Arts  
210:15-3-22. [AMENDED]  
210:15-3-23. [AMENDED]

### **Gubernatorial approval:**

August 24, 2005

### **Register Publication:**

23 Ok Reg 61

### **Docket Number:**

05-1246

### **INCORPORATION BY REFERENCE:**

N/A

### **ANALYSIS:**

The rule change provides clarity and detail to the Priority Academic Student Skills, Oklahoma's core curriculum. By changing "and" to "or" public educators responsible for implementing the curriculum at Grades 11 and 12 will be able to pursue in-depth studies of American and British literature aligned to state standards. The proposed rule change is to comply with review requirements set forth in 70 O. S. §11-103.6 and will benefit educators by providing clear academic content standards for curriculum planning and implementation purposes.

### **CONTACT PERSON:**

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN O. S. 75,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JUNE 11, 2006:**

## SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

### PART 5. LANGUAGE ARTS

#### **210:15-3-22. Language arts for grade 11**

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(A) Apply knowledge of Greek, Latin, and Anglo-Saxon roots and word parts to draw inferences about the meaning of scientific and mathematical terminology.

(B) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(C) Analyze the meaning of analogies encountered, analyzing specific comparisons as well as relationships and inferences.

(D) Rely on context to determine meanings of words and phrases such as figurative language, connotations and denotations of words, analogies, idioms, and technical vocabulary.

(E) Use word meanings within the appropriate context and verify those meanings by definition, re-statement, example, and analogy.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and positions. At Grade 11, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) **Literal understanding.**

- (i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.
- (ii) Select and explain specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).
- (iii) Use study strategies such as note taking, outlining, and using study-guide questions to better understand texts.
- (iv) Constructs images such as graphic organizers based on text descriptions and text structures.

(B) **Inferences and interpretation.**

- (i) Interpret the possible inferences of the historical context on literary works.
- (ii) Describe the development of plot and identify conflict and how they are addressed and resolved.
- (iii) Investigate influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, or nationality).
- (iv) Make reasonable assertions about author's arguments by using elements of the text to defend and clarify interpretations.

(C) **Summary and generalization.**

- (i) Determine the main idea and supporting details by producing summaries of text.
- (ii) Use text features and elements to support inferences and generalizations about information.
- (iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

- (i) Compare and contrast aspects of texts such as themes, conflicts, and allusions both within and across texts.
- (ii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.
- (iii) Examine the way in which clarity of meaning is affected by the patterns of organization, repetition of the main ideas, organization of language, and word choice in the text.
- (iv) Analyze the way in which authors have used archetypes (universal modes or patterns)

drawn from myth and tradition in literature, film, political speeches, and religious writings.

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of British, American, and/or world literature. Conduct in-depth analysis of themes, styles, and trends of these works across historical periods.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

- (i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.
- (ii) Analyze the characteristics of subgenres including allegory and ballad.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

- (i) Analyze the way in which the theme or meaning of a selection represents a view or comment on life, using textual evidence to support the claim.
- (ii) Analyze the way in which irony, tone, mood, the author's style, and the "sound" of language achieve specific rhetorical (communication) or aesthetic (artistic) purposes or both.
- (iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).
- (iv) Evaluate the significance of various literary devices and techniques, including imagery, irony, tone, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.
- (v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

- (i) Identify and explain figurative language including analogy, hyperbole, metaphor, personification, and simile.
- (ii) Identify and explain sound devices including alliteration and rhyme.
- (iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** Read and respond to historically and culturally significant works of literature.

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- (i) Analyze and evaluate works of literature and the historical context in which they were written.
  - (ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.
  - (iii) Compare works that express the recurrence of archetypal (universal) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.
  - (iv) Analyze the clarity and consistency of political assumptions in a selection of literary works or essays on a topic.
- (4) **Standard - research and information.** The student will conduct research and organize information.
- (A) **Accessing information.** Select the best source for a given purpose.
- (i) Access information from a variety of primary and secondary sources.
  - (ii) Skim text for an overall impression and scan text for particular information.
  - (iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).
- (B) **Interpreting information.** Analyze and evaluate information from a variety of sources.
- (i) Summarize, paraphrase, and/or quote relevant information.
  - (ii) Determine the author's viewpoint to evaluate source credibility and reliability.
  - (iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.
  - (iv) **Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.**
  - (v) Develop presentations by using clear research questions and creative and critical research strategies, such as field studies, oral histories, interviews, experiments, and Internet sources.
- (b) **Writing/grammar/mechanics and usage.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Write coherent and focused texts that show a well defined point of view and tightly reasoned argument. The writing demonstrates progression through the stages of the writing process (prewriting, writing, editing, and revising).
- (1) **Standard - writing process.** The student will use the writing process to write coherently.
- (A) Use a writing process to develop and refine composition skills. Students are expected to:
- (i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers, keeping notes and logs, to develop voice and plan
  - (ii) develop multiple drafts both alone and collaboratively to categorize ideas, organizing them into paragraphs, and blending paragraphs into larger text.
  - (iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.
  - (iv) proofread writing for appropriateness of organization, content and style.
  - (v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.
  - (vi) refine selected pieces frequently to publish for general and specific audiences.
- (B) Demonstrate an understanding of the elements of discourse, such as purpose, speaker, audience, and form when completing narrative expository, persuasive, or descriptive writing assignments.
- (C) Use language in creative and vivid ways to establish a specific tone.
- (D) Use point of view, characterization, style, and related elements for specific rhetorical (communication) and aesthetic (artistic) purposes.
- (E) Structure ideas and arguments in a sustained and persuasive way and support them with precise and relevant examples.
- (F) Evaluate own writing and others' writing to highlight the individual voice, improve sentence variety and style, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and form of writing.
- (2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 11, continue to combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 1,500 words. Refine reflective compositions and historical investigation reports and become familiar with forms of job applications and resumes. Deliver multimedia presentations on varied topics. Demonstrate a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. (Writing demonstrates an awareness of the audience [intended reader] and purpose for writing.)
- (A) Write fictional, biographical or autobiographical narratives that:
- (i) narrate a sequence or events and communicate their significance to the audience.
  - (ii) identify scenes and incidents in specific places.
  - (iii) describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the character; use interior monologue (what character says silently to self) to show the character's feelings.
  - (iv) present action segments to accommodate changes in time and mood. Example: Read

- several short essays by writers on the practice of writing such as an excerpt from Anne Lamott's *BIRD BY BIRD* or essays by Wallace Stegner or other authors on writing. Write an essay on how reading and/or writing have been significant in your life.
- (B) Job applications and resumes that:
- provide clear and purposeful information and address the intended audience appropriately.
  - indicate varied levels, patterns, and types of language to achieve intended effects and aid comprehension.
  - modify the tone to fit the purpose and audience.
  - follow the conventional style for that type of document (resume, cover letter of application) and use page format, fonts (typeface), and spacing that contribute to the readability and impact of the document. Example: Write a resume outlining job experience, extra curricular activities and other skills. Format the document so that the information is clearly represented for the intended audience.
- (C) Write historical investigations that:
- use expository, narration, description, argumentation, or some combination of rhetorical strategies to support the main argument.
  - analyze several historical records of a single event, examining critical relationships between elements of the topic.
  - explain the perceived reason or reasons for the similarities and differences in historical records with information derived from primary and secondary sources to support or enhance the presentation.
  - include information from all relevant perspectives and take into consideration the validity and reliability of sources.
  - include a formal bibliography. Example: Compose an essay on Alexis de Tocqueville's 1830's observations on American political and social life. Examine other historical documents to determine how accurate and perspective de Tocqueville's analysis was, and how his views of society reflect the United States today.
- (D) Write reflective compositions that may address one of the following purposes:
- explore the significance of personal experiences, events, conditions, or concerns by using rhetorical strategies, including narration, description, exposition, and persuasion.
  - draw comparisons between specific incidents and broader themes that illustrate the writer's important beliefs or generalizations about life.
  - maintain a balance in describing individual incidents and relate those incidents to more general and abstract ideas. Example: Select a quotation that is particularly meaningful. Explain the significance of the quotation.
- (E) Write responses to literature that:
- demonstrate a comprehensive understanding of the significant ideas in works or passages.
  - analyze the use of imagery language, universal themes, and unique aspects of the text.
  - support important ideas and viewpoints through accurate and detailed reference to the text or to other works.
  - demonstrate an understanding of author's style and an appreciation of the effects created.
  - identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: After reading, "THE FALL OF THE HOUSE OF USHERS" by Edgar Allan Poe (an example of observer narration), "THE PRISON" by Bernard Malamud (an example of single character point of view), and "THE BOARDING HOUSE" by James Joyce (an example of the multiple character point of view), analyze in an essay how the authors' choices of literary narrator made a difference in the response of the reader. Reference examples from throughout the works in support of a position.
- (F) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Continue to produce other writing forms introduced in earlier grades. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film.
- (G) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.
- (3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.
- (A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.
- Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).
  - Use correct verb forms and tenses.
  - Use correct subject-verb agreement.
  - Use active and passive voice.
  - Use correct pronoun/antecedent agreement and clear pronoun reference.
  - Use correct forms of comparative and superlative adjectives.
- (B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.
- Demonstrate correct use of capitals.
  - Use correct formation of plurals.
  - Demonstrate correct use of punctuation and recognize its effect on sentence structure.

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- (iv) Use correct spelling of commonly misspelled words and homonyms.
  - (C) **Sentence structure.** Demonstrate appropriate sentence structure in writing.
    - (i) Use parallel structure.
    - (ii) Correct dangling and misplaced modifiers.
    - (iii) Correct run-on sentences.
    - (iv) Correct fragments.
  - (D) Apply appropriate manuscript conventions in writing including title page presentation, pagination, spacing and margins, and integration of sources and support material, by citing sources within the text, using direct quotations, and paraphrasing.
- (c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.
- (1) **Standard - listening.** The student will listen for information and for pleasure.
    - (A) Demonstrate proficiency in critical empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.
    - (B) Use effective strategies for listening such as prepares for listening, identifies the types of listening, and adopts appropriate strategies.
    - (C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.
    - (D) Use effective strategies to evaluate own listening such as asking questions for clarification, comparing and contrasting interpretations with others, and researching points of interest or contention.
    - (E) Use effective listening to provide appropriate feedback in a variety of situations such as conversations and discussions and informative, persuasive, or artistic presentations.
  - (2) **Standard speaking.** The student will express ideas and opinions in group or individual situations.
    - (A) Use a variety of verbal and nonverbal techniques in presenting oral messages such as pitch and tone of voice, posture, and eye contact, and demonstrate poise and control while presenting.
    - (B) Use logical, ethical, and emotional appeals that enhance a specific tone and purpose.
    - (C) Evaluate when to use different kinds of effects (including visuals, music, sound, and graphics) to create effective presentations.
    - (D) Ask clear questions for a variety of purposes and respond appropriately to the questions of others.
  - (d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.
    - (1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.
      - (A) Use a range of strategies to interpret visual media (e.g., draw conclusions, make generalizations, synthesizes material viewed, refer to images or information in visual media to support point of view).
      - (B) Describes how editing shapes meaning in visual media (e.g., omission of alternative perspectives; filtered or implied viewpoints; emphasis of specific ideas, images, or information in order to serve particular interests).
    - (2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.
      - (A) Uses a variety of criteria (e.g., clarity, accuracy, effectiveness, bias, relevance of facts) to evaluate informational media (e.g., Web sites, documentaries, news programs).
      - (B) Identifies the rules and expectations about genre that can be manipulated for particular effects or purposes (e.g., combining or altering conventions of different genres, such as presenting news as entertainment; blurring of genres, such as drama-documentaries).
    - (3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.
      - (A) Design and develop genres such as nightly news, news magazines, and documentaries and identify the unique properties of each.
      - (B) Compare, contrast, and critique various media coverage of the same events such as in newspapers, television, and on the Internet and compose a study of the results.

### 210:15-3-23. Language arts for grade 12

- (a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.
  - (1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use those words accurately.
    - (A) Apply knowledge of Greek, Latin, and Anglo-Saxon roots and word parts to draw inferences about new words that have been created in the fields of science and mathematics (gene splicing, genetic engineering).
    - (B) Research unfamiliar words based on characters or themes or historical events.
    - (C) Analyze the meaning of analogies encountered, analysing specific comparisons as well as relationships and inferences.

(D) Rely on context to determine meanings of words and phrases such as figurative language, connotations and denotations of words, analogies, idioms, and technical vocabulary.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and positions. At Grade 12, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Explain specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use study strategies such as note taking, outlining, and using study-guide questions to better understand texts.

(iv) Construct images such as graphic organizers based on text descriptions and text structures.

(v) Read silently with comprehension for a sustained period of time.

(B) **Inferences and interpretation.**

(i) Interpret the possible inferences of the historical context on literary works.

(ii) Describe the development of plot and identify conflict and how they are addressed and resolved.

(iii) Identify influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, or nationality).

(iv) Make reasonable assertions about authors' arguments by using elements of the text to defend and clarify interpretations.

(C) **Summary and generalization.**

(i) Determine the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(iv) Compare and contrast elements of text such as themes, conflicts, and allusions both within and across text.

(D) **Analysis and evaluation.**

(i) Investigate both the features and the rhetorical (communication) devices of different types of public documents, such as policy statements,

speeches, or debates, and the ways in which authors use those features and devices.

(ii) Examine the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iii) Analyze the way in which clarity of meaning is affected by the patterns of organization, repetition of the main ideas, organization of language, and word choice in the text.

(iv) Analyze the way in which authors have used archetypes (universal modes or patterns) drawn from myth and tradition in literature, film, political speeches, and religious writings.

(v) Evaluate the credibility of information sources, including how the writer's motivation may affect that credibility.

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of British, American, ~~and~~ world literature. Conduct in-depth analysis of themes, styles, and trends of these works across historical periods.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including allegory, ballad, elegy, ode, parody, pastoral, satire and tragedy.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Evaluate the way in which the theme or meaning of a selection represents a view or comment on life, using textual evidence to support the claim.

(ii) Analyze the way in which irony, tone, mood, the author's style, and the "sound" of language achieve specific rhetorical (communication) or aesthetic (artistic) purposes or both.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include

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information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration and rhyme.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** Read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(iv) Analyze the clarity and consistency of political assumptions in a selection of literary works or essays on a topic.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Assessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information** - Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Develop presentations by using clear research questions and creative and critical research

strategies, such as field studies, oral histories, interviews, experiments, and Internet sources.

(vi) Compiles written ideas and information into reports, summaries, or other formats and draw conclusions.

(b) **Writing/grammar/mechanics and usage.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Write coherent and focused texts that show a well defined point of view and tightly reasoned argument. The writing demonstrates a progression through the stages of the writing process (prewriting, writing, editing, and revising).

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers, notes and logs, to develop voice, and plan.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and by refining style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Demonstrate an understanding of the elements of discourse, such as purpose, speaker, audience, and form when completing narrative expository, persuasive, or descriptive writing assignments.

(i) Enhance meaning by using rhetorical devices, including the extended use of parallelism, repetition, and analogy and the issuance of a call for action.

(ii) Use point of view, characterization, style, and related elements for specific rhetorical (communication) and aesthetic (artistic) purposes.

(iii) Structure ideas and arguments in a sustained and persuasive way and support them with precise and relevant examples.

(iv) Evaluate own writing and others' writing to highlight the individual voice, improve sentence variety and style, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and form of writing.

(v) Further develop unique writing style and voice, improve sentence variety, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and of writing.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and

reflective modes. At Grade 12, continue to combine the rhetorical strategies of narration, exposition, persuasion, and description: to produce reflective compositions, historical investigation reports, and deliver multimedia presentations. The writing demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write fictional, biographical or autobiographical narratives that:

- (i) narrate a sequence of events and communicate their significance to the audience.
- (ii) locate scenes and incidents in specific places.
- (iii) describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the character; use interior monologue (what character says silently to self) to show the character's feelings.
- (iv) present action segments to accommodate changes in time and mood. Example: After reading from Geoffrey Chaucer's *THE CANTERBURY TALES*, write your own version of a traveler's tale.

(B) Write historical investigations that:

- (i) use expository, narration, description, argumentation, or some combination of rhetorical strategies to support the main argument.
- (ii) analyze several historical records of a single event, examining critical relationships between elements of the topic.
- (iii) explain the perceived reason or reasons for the similarities and differences in historical records with information derived from primary and secondary sources to support or enhance the presentation.
- (iv) include information from all relevant perspectives and take into consideration the validity and reliability of sources.
- (v) include a formal bibliography. Example: Write a historical investigation report on the death of Diana, Princess of Wales. Include perspectives from newspapers or accounts of witnesses. Place the event into the larger societal context of the time, and indicate how or if the event has impacted the British and people from around the world.

(C) Write reflective compositions that may address one of the following purposes:

- (i) explore the significance of personal experiences, events, conditions, or concerns by using rhetorical strategies, including narration, description, exposition, and persuasion.
- (ii) draw comparisons between specific incidents and broader themes that illustrate the writer's important beliefs or generalizations about life.

(iii) maintain a balance in describing individual incidents and relate those incidents to more general and abstract ideas. Example: Write a reflective essay for fellow students on the significance of family in one's life or on growing up at the turn of the 21<sup>st</sup> century. Make personal observations, but connect them to a larger theme of interest to your audience.

(D) Write responses to literature that:

- (i) demonstrate a comprehensive understanding of the significant ideas in works or passages.
- (ii) analyze the use of imagery, language universal themes, and unique aspects of the text.
- (iii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.
- (iv) demonstrate an understanding of author's style and an appreciation of the effects created.
- (v) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: Analyze the events, point of view, and characterization in Virginia Woolf's novel *MRS. DALLOWAY*. Write an essay arguing whether or not criticism of her work is valid.

(E) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Continue to produce other forms of writing introduced in earlier grades. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film.

(F) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.

- (i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).
- (ii) Use correct verb forms and tenses.
- (iii) Use correct subject-verb agreement.
- (iv) Distinguish active and passive voice.
- (v) Use pronouns effectively, correct pronoun/antecedent agreement, and clear pronoun reference.
- (vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

- (i) Demonstrate correct use of capitals.
- (ii) Use correct formation of plurals.
- (iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

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- (iv) Use correct spelling of commonly misspelled words and homonyms.
- (C) **Sentence structure** - The student will demonstrate appropriate sentence structure in writing.
  - (i) Use parallel structure.
  - (ii) Correct dangling and misplaced modifiers.
  - (iii) Correct run-on sentences.
  - (iv) Correct fragments.
- (D) Apply appropriate manuscript conventions in writing including title page presentation, pagination, spacing and margins, and integration of sources and support material, by citing sources within the text, using direct quotations, and paraphrasing.
- (c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.
  - (1) **Standard - listening.** The student will listen for information and for pleasure.
    - (A) Demonstrate proficiency in critical empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.
    - (B) Use effective strategies for listening such as prepares for listening, identifies the types of listening, and adopts appropriate strategies.
    - (C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.
    - (D) Use effective strategies to evaluate own listening such as asking questions for clarification, comparing and contrasting interpretations with others, and researching points of interest or contention.
    - (E) Use effective listening to provide appropriate feedback in a variety of situations such as conversations and discussions and informative, persuasive, or artistic presentations.
  - (2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.
    - (A) Use a variety of verbal and nonverbal techniques in presenting oral messages such as pitch and tone of voice, posture, and eye contact, and demonstrate poise and control while presenting.
    - (B) Use language and rhetorical strategies skillfully in informative and persuasive messages.
    - (C) Use logical, ethical, and emotional appeals that enhance a specific tone and purpose.
    - (D) Use effective and interesting language, including informal expressions for effect, Standard English for clarity, and technical language for specificity.
    - (E) Evaluate when to use different kinds of effects (including visuals, music, sound, and graphics) to create a presentation.
    - (F) Clear questions for a variety of purposes and respond appropriately to the questions of others.
- (d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.
  - (1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.
    - (A) Use a range of strategies to interpret visual media (e.g., draw conclusions, make generalizations, synthesizes material viewed, refer to images or information in visual media to support point of view).
    - (B) Demonstrate how editing shapes meaning in visual media (e.g., omission of alternative perspectives; filtered or implied viewpoints; emphasis of specific ideas, images, or information in order to serve particular interests).
  - (2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.
    - (A) Uses a variety of criteria (e.g., clarity, accuracy, effectiveness, bias, relevance of facts) to evaluate informational media (e.g., Web sites, documentaries, news programs).
    - (B) Identifies the rules and expectations about genre that can be manipulated for particular effects or purposes (e.g., combining or altering conventions of different genres, such as presenting news as entertainment; blurring of genres, such as drama-documentaries).
  - (3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.
    - (A) Use the effects of media on constructing his/her own perception of reality.
    - (B) Use a variety of forms and technologies such as videos, photographs, and Web pages to communicate specific messages.

[OAR Docket #06-850; filed 5-8-06]

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

[OAR Docket #06-852]

**RULEMAKING ACTION:**  
PERMANENT final 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:**

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**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2006

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June 11, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded 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]

**Gubernatorial approval:**

October 6, 2005

**Register Publication:**

23 Ok Reg 153

**Docket Number:**

05-1294

**INCORPORATION BY REFERENCE:**

N/A

**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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

**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.

(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 #06-852; filed 5-8-06]*

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

*[OAR Docket #06-849]*

**RULEMAKING ACTION:**

PERMANENT final 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

# Permanent Final Adoptions

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## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 19. Local Professional Development Programs

210:20-19-2. [AMENDED]

210:20-19-3. [AMENDED]

210:20-19-4. [AMENDED]

### Gubernatorial approval:

October 6, 2005

### Register Publication:

23 Ok Reg 154

### Docket Number:

05-1293

## INCORPORATION BY REFERENCE:

N/A

## 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 RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## 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.

(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 #06-849; filed 5-8-06]*

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

*[OAR Docket #06-848]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools  
Part 19. Standard X: School Facilities

# Permanent Final Adoptions

210:35-3-186. [AMENDED]

**AUTHORITY:**

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

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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools  
Part 19. Standard X: School Facilities  
210:35-3-186. [AMENDED]

**Gubernatorial approval:**

July 26, 2005

**Register Publication:**

23 Ok Reg 47

**Docket Number:**

05-1221

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed rule change will require public schools to conduct two tornado drills each school year and to assure all public schools are preparing students and employees for the possibility of hazardous weather conditions.

**CONTACT PERSON:**

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. § 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## **SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

### **PART 19. STANDARD X: SCHOOL FACILITIES**

**210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety**

(a) The site and building(s) shall be properly sized and equipped for the number of occupants and grades served. [Reference: 11:22-117 School Speed Limit Signs in Municipalities; 25:91.2 Display of Oklahoma Flag on School Premises

Compulsory; 25:153 School to Display Flag; 47:11-801 Speed Limit for School Buses--School Zones Outside Municipalities--Signs; 70:5-131 Educational Courses--Buildings and Equipment; 70:5-131.1 Sewage Disposal System; 74:324.8 State/Municipality Adoption of Building Codes--BOCA, SBCCI or ICBO; 74:324.11 Permits for Construction or Alterations of Building]

(b) The site and building(s) shall be readily accessible, allowing access for handicapped persons to required programs. [Reference: 70:13-103 Authorized Provisions for Education of Exceptional Children]

(c) Adequate space shall be provided for classrooms, specialized instructional areas, support facilities and other areas as needed, these areas being grouped and arranged in such manner to provide optimum instructional function and class control. [Reference: 70:5-131 Educational Courses--Buildings and Equipment; 70:18-152 Legislative Intent--School Facilities; Other citations--State Department of Education SPACE GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES; Vocational Rehabilitation Act of 1973, Section 504; American National Standards Institute (ANSI) A117.1.]

(d) School facilities shall be able to accommodate changes in curriculum and/or equipment within a program. [Reference: 70:18-152 Legislative Intent--School Facilities; 70:18-153 Capital Improvement Plan]

(e) Programs for preventive and corrective maintenance shall be developed and implemented to ensure that the site and building(s) will be clean, in good repair, and maintained with consideration for function and aesthetic values. [Reference: 70:18-152 Legislative Intent--School Facilities]

(f) Equipment, furnishings, and supplies in proper quantity and quality shall be maintained; and a system shall be developed and implemented for inventory, issue, usage, storage, repair, and replacement.

(g) A long-range plan for replacing and/or updating the site, building(s), and equipment shall be developed. [Reference: 70:18-153 Capital Improvement Plan]

(h) The site and building(s) shall ensure that the health and safety of those served are properly safeguarded. Where required, the facility shall have utility systems, plumbing systems, electrical systems, mechanical systems, emergency systems, building interiors and building envelope designed, built, and maintained to recognized standards, codes and/or other legal requirements. [Reference: 59:1002 Authorizes State Department of Health to Adopt Codes--BOCA Plumbing Code; 59:1681 Authorizes State Board of Health to Adopt Codes--Selections from NFPA; 59:1850.3 Authorizes State Board of Health to Adopt Codes--BOCA Plumbing Code; 61:152 through 157 Oklahoma Lighting Energy Conservation Act; 70:3-104 State Board of Education--Powers and Duties; 70:5-131.1 Sewage Disposal System; 74:324.7 Fire Marshal; 74:324.8 State/Municipality Adoption of Building Codes--BOCA, SBCCI or ICBO; 74:324.11 Permits for Construction or Alteration of Buildings] Other citations--State Department of Education SPACE GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES]

(i) The site shall be as free as possible from hazards, provide a safe area for (un)loading of vehicles, with adequate

lighting, signage and drainage. [Reference: 11:22-117 School Speed Limit Signs in Municipalities; 47:11-801 Speed Limit for School Buses--School Zones Outside Municipalities--Signs; 74:324.8 State/Municipality Adoption of Building Codes--BOCA, SBCCI or ICBO]

(j) Appropriate programs pertaining to hazardous materials, hazardous waste, asbestos, underground storage tanks, lead contamination, and other applicable life, health, and/or safety matters shall be developed and implemented. [Reference: 40:403 and 404 Oklahoma Occupational Health and Safety Standards Act; Other citations--29 CFR 1910 Occupational Safety and Health Standards, Oklahoma Corporation Commission's General Rules and Regulations Governing Underground Storage Tanks; 40 CFR 260-272 Asbestos Hazard Emergency Response Act 9 (AHERA), Lead Contamination and Control Act of 1988(LCCA), Resources Conservation and Recovery Act of 1976 (Hazardous and Solid Waste Amendments of 1984)]

(k) Proper precautions shall be taken to prevent injuries. All equipment and facility safety features shall be in place and properly maintained. [Reference: 70:24-117 Safety Goggles--School Board to Provide for Certain Personnel; 70:24-118 Respirators--School Board to Provide for Certain Teachers and Students; 70:324.7 Fire Marshal; 74:324.11 Smoke Detectors]

(l) The school's administration shall ensure that qualified personnel conduct a safety/emergency/disaster procedure review at least annually and safety inspections of site, building(s), and equipment regularly. [Reference: 63:176 Fire Drills; 74:324.7 Fire Marshal]

(m) All public school districts shall conduct a minimum of two tornado drills per school year, in which all students and school employees participate. Such drills shall conform to the written plans and procedures adopted by the district for protecting against natural and man-made disasters and emergencies as required by Title 63 O.S. § 681. Each school district shall document in writing and by school site, compliance with this requirement and such records shall be available to the Regional Accreditation Officer during the accreditation process.

[OAR Docket #06-848; filed 5-8-06]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

[OAR Docket #06-851]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 7. Additional Standards for Middle Level Schools  
Part 9. Standard V: The School Staff  
210:35-7-43. [AMENDED]  
Subchapter 9. Additional Standards for Secondary Schools  
Part 9. Standard V: The School Staff

210:35-9-43. [AMENDED]

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

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Subchapter 7. Additional Standards for Middle Level Schools  
Part 9. Standard V: The School Staff  
210:35-7-43. [AMENDED]  
Subchapter 9. Additional Standards for Secondary Schools  
Part 9. Standard V: The School Staff  
210:35-9-43. [AMENDED]

**Gubernatorial approval:**  
April 17, 2006

**Register Publication:**  
23 Ok Reg 661

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06-169

**INCORPORATION BY REFERENCE:**  
N/A

**ANALYSIS:**  
The proposed change will allow middle level and secondary schools with fewer than 225 students to meet the counselor staffing standards in the Standards for Accreditation without the necessity of requesting a deregulation. The intended effect of the rule change is to help small middle level and secondary level schools meet current Standards for Accreditation without applying for a deregulation.

**CONTACT PERSON:**  
Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

**SUBCHAPTER 7. ADDITIONAL STANDARDS FOR MIDDLE LEVEL SCHOOLS**

**PART 9. STANDARD V: THE SCHOOL STAFF**

**210:35-7-43. Counselor staffing**

All students will receive counseling and guidance services from certified school counselors. The guidance program shall provide one counselor ~~to each~~ for a maximum of 450

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students, with no school district having less than one half-time counselor- with one exception: districts with fewer than 225 students may prorate the number of hours per week a certified school counselor is required by dividing the number of students enrolled by 450 and multiplying the quotient by 30.

## SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

### PART 9. STANDARD V: THE SCHOOL STAFF

#### 210:35-9-43. Counselor staffing

All students will receive counseling and guidance services from certified school counselors. The guidance program shall provide one counselor ~~to each~~ for a maximum of 450 students, with no school district having less than one half-time counselor- with one exception: districts with fewer than 225 students may prorate the number of hours per week a certified school counselor is required by dividing the number of students enrolled by 450 and multiplying the quotient by 30.

*[OAR Docket #06-851; filed 5-8-06]*

## TITLE 210. STATE DEPARTMENT OF EDUCATION

### CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

*[OAR Docket #06-847]*

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 9. Additional Standards for Secondary Schools  
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate  
210:35-9-31. [AMENDED]

#### AUTHORITY:

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

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#### Superseded rules:

Subchapter 9. Additional Standards for Secondary Schools  
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate  
210:35-9-31. [AMENDED]

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August 24, 2005

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05-1244

#### INCORPORATION BY REFERENCE:

N/A

#### ANALYSIS:

The intended effect of the rule change is to establish rules for approval of courses offered by supplemental education organizations as defined in Senate Bill 982. The rules for Supplemental Education Organizations establish the approval process for courses offered by these organizations to be counted for academic credit and toward meeting graduation requirements as described in 70 O. S. § 11-103.6. A district board of education shall submit the supplemental education organization documentation approved by the local board for approval by the State Board of Education.

#### CONTACT PERSON:

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

### PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

#### 210:35-9-31. Program of studies and graduation requirements

Every student at every high school shall have the opportunity to acquire all the competencies to matriculate at a comprehensive graduate institution of the Oklahoma State System of Higher Education without the necessity of enrolling at the university in secondary-level courses. Each student will have the opportunity to attain proficiency in the Priority Academic Student Skills.

(1) Effective with the school year 2000-2001 through 2001-2002 a high school student must demonstrate competency in at least 21 units of credit or sets of competencies in Grades 9-12 which must include the state-mandated curriculum (Priority Academic Student Skills) and meet all other state and local mandates to be eligible for graduation.

- (A) Language Arts: 4 units or sets of competencies
- (B) Science: 2 units or sets of competencies
- (C) Mathematics: 3 units or sets of competencies
- (D) Social Studies: 2 units or sets of competencies (must include American History and Oklahoma History)

- (E) The Arts: 2 units or sets of competencies (Visual Art and General Music)
  - (F) Total minimum Core Curriculum: 13 units or sets of competencies
  - (G) Total minimum Elective courses: 8 units or sets of competencies
  - (H) Total minimum graduation requirements: 21 units or sets of competencies
- (2) Beginning with students graduating from high school in the school year 2002-2003, graduation requirements specified in subsection (1) of this section are superseded by requirements specified in this subsection. Units of credit required for high school graduation with a Standard Diploma (effective 2002-2003 and thereafter) are:
- (A) Language Arts: 4 units or sets of competencies, to consist of 1 unit or set of competencies of grammar and composition, and 3 units or sets of competencies which may include, but are not limited to, the following courses: American Literature, English Literature, World Literature, Advanced English Courses, or other English courses with content and/or rigor equal to or above grammar and composition;
  - (B) Mathematics: 3 units or sets of competencies, to consist of 1 unit or set of competencies of Algebra I or Algebra I taught in a contextual methodology, and 2 units or sets of competencies which may include, but are not limited to, the following courses: Algebra II, Geometry or Geometry taught in a contextual methodology, Trigonometry, Math Analysis or Precalculus, Calculus, Statistics and/or Probability, Computer Science, or other mathematics courses with content and/or rigor equal to or above Algebra I. Provided credit may be granted for Applied Mathematics I and II and Computer Science whether taught at the comprehensive high school or at a career and technology center;
  - (C) Science: 3 units or sets of competencies, to consist of 1 unit or set of competencies of Biology I or Biology I taught in a contextual methodology, and 2 units or sets of competencies in the areas of life, physical, or earth science or technology which may include, but are not limited to, the following courses: Chemistry I, Physics, Biology II, Chemistry II, Physical Science, Earth Science, Botany, Zoology, Physiology, Astronomy, Applied Physics, Principles of Technology, qualified agricultural education courses, or other science courses with content and/or rigor equal to or above Biology I. Provided, credit may be granted for Applied Biology/Chemistry, Physics, and Principles of Technology whether taught at the comprehensive high school or at a career and technology center;
  - (D) Social Studies: 3 units or sets of competencies, to consist of 1 unit or set of competencies of United States History, 1/2 to 1 unit or set of competencies of United States Government, 1/2 unit or set of competencies of Oklahoma History, and 1/2 to 1 unit or set of

- competencies which may include, but are not limited to, the following courses: World History, Geography, Economics, Anthropology, or other social studies courses with content and/or rigor equal to or above United States History, United States Government, and Oklahoma History; and
  - (E) Arts: 2 units or sets of competencies which may include, but are not limited to, courses in Visual Arts and General Music.
  - (F) Total minimum Core Curriculum: 15 units or sets of competencies
  - (G) Total minimum Elective courses: 8 units or sets of competencies
  - (H) Total minimum graduation requirements: 23 units or sets of competencies
- (3) No student shall receive credit for high school graduation more than once for completion of the same unit or set of competencies to satisfy the core curriculum requirements.
- (4) "Qualified agricultural courses" means courses that have been determined by the State Board of Education to offer the sets of competencies in the Priority Academic Student Skills (PASS) for one or more science content areas and which correspond to academic science courses. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.
- (5) A "unit" means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.
- (6) As a condition of receiving accreditation from the State Board of Education, students in grades nine through twelve shall enroll in a minimum of six periods, or the equivalent in block scheduling, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes.
- (7) Each high school's academic program shall be designed to prepare all students for employment and/or postsecondary education. The secondary academic program shall be designed to provide the teaching and learning of the skills and knowledge in the Priority Academic Student Skills. Beginning with 1999-2000 school year all high schools accredited by the State Department of Education shall offer the core curriculum required for the Standard Diploma during a student's high school career. To meet graduation requirements, local options may include courses taken by advanced placement, concurrent enrollment, correspondence courses or courses bearing different titles.
- (8) The secondary academic programs may also provide the traditional units of credit to be offered in Grades 9-12 with each secondary school offering and teaching at least 38 units or their equivalent each school year. Four (4) of these units may be offered on a two-year alternating plan with 34 units or their equivalent to be taught in the current school year. In schools with other than a four-year

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organization, these units shall be offered and taught in conjunction with the affiliated schools containing those grade levels. Career and technology center courses in which secondary students are enrolled may count toward the 38 required units of credit or their equivalent.

(9) District boards of education can make exceptions to state high school graduation requirements for students who move to this state from another state after their junior year of high school.

(A) After a student from another state enrolls in an accredited Oklahoma high school the school board can make an exception to the high school graduation requirements of Section 11-103.6 of Title 70 of the Oklahoma Statutes. Individual exceptions can only be made when there are differing graduation requirements between the two states and completing Oklahoma graduation requirements will extend the student's date of graduation beyond the graduation date for the student's class.

(B) The district must report all exceptions made to state graduation requirements for these senior students to the State Department of Education each school year. All exceptions made at each district high school will be forwarded to the State Department of Education on or before July 1 of each year. Districts may report the information on the Annual Statistical Report. This reporting provision does not include students who have individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA) and who satisfy graduation requirements through the individualized education program.

(10) In order for a course offered by a supplemental educational organization to be counted for purposes of student academic credit and towards graduation requirements the local board of education must verify that the course meets all requirements in 70 O.S. § 11-103.6.

(11) Upon verification the local school board of education's request for course approval shall be submitted to the State Board of Education for final approval.

[OAR Docket #06-847; filed 5-8-06]

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 20. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

[OAR Docket #06-854]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
252:20-1-3. [AMENDED]  
252:20-1-4. [AMENDED]  
252:20-1-6. [AMENDED]  
252:20-1-7. [AMENDED]

**AUTHORITY:**  
Environmental Quality Board 27A O.S. §§ 2-2-101, 2-2-201, 2-3-402 and 4-2-102

**DATES:**

**Comment period:**  
January 16, 2006 through February 17, 2006  
February 24, 2006

**Public hearing:**  
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**Gubernatorial approval:**  
April 17, 2006

**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**  
April 28, 2006

**Effective:**  
June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**  
None

**INCORPORATIONS BY REFERENCE:**  
**Incorporated standards:**

40 CFR, Parts 355, 370 and 372

**Incorporating rules:**  
252:20-1-3

**Availability:**  
From the contact person listed below

**ANALYSIS:**

The proposed amendments require Tier II forms to be submitted to the DEQ electronically via the DEQ website using our approved software, with a grace period given to facilities with less than 5 full-time employees and companies operating under SIC code 1311 with less than 20 locations. Additionally, DEQ will require that latitude/longitude information be included on Tier II forms. The procedure for submitting reporting forms has been amended to clarify that submitting a paper Tier II report to the appropriate Local Emergency Planning Committee and the local Fire Department is no longer necessary since the DEQ will make the information available to those entities.

Fee rules have been restructured, separating the facilities into three groups: (1) except for agricultural chemical dealership facilities, non-oil and gas production facilities that will be charged a set fee per hazardous substance or extremely hazardous substance, with a cap of \$1,000 as a maximum per company; (2) oil and natural gas production facilities that will be charged a set fee per location, again with a cap of \$1,000 as a maximum fee per company; and (3) agriculture chemical dealerships that will be charged a set fee per facility with a cap of \$1,000 as a maximum fee per company. (Amended per Environmental Quality Board meeting 2/24/06)

**CONTACT PERSON:**

Monty Elder, Department of Environmental Quality, Customer Services Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-1000, fax (405) 702-1001, e-mail monty.elder@deq.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

**252:20-1-3. Incorporations by reference**

(a) **Reference to CFR.** Reference to Title 40 of the Code of Federal Regulations (40 CFR) shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning, and Community Right-to-Know Regulations, July, ~~2003~~ 2004.

(b) **Incorporation.** The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:

- (1) Part 355 (Emergency Planning and Notification);
- (2) Part 370 (Hazardous Chemical Reporting: Community Right-to-Know);
- (3) Part 372 (Toxic Chemical Release Reporting: Community Right-to-Know).

(c) **Interface with CFR.** In the Parts of 40 CFR incorporated by reference, the term "Commission" shall mean the Department.

(d) **References incorporated.** Incorporation by reference of a provision of the Code of Federal Regulations also incorporates all citations and definitions contained therein.

(e) **Penalties.** Penalties cited in 40 CFR are subject to limitations under Oklahoma law.

**252:20-1-4. Submission of plans and reports**

(a) **Emergency planning and notification, Part 355.** The owner or operator of a facility subject to emergency planning or emergency release notification as described in 40 CFR Part 355 shall comply with the requirements of such Part.

(b) **Hazardous Chemical Reporting: Community Right-to-Know, Part 370.** The owner or operator of a facility subject to Material Safety Data Sheets (MSDS) or chemical lists, and inventory reporting (Tier I or Tier II), as described in 40 CFR Part 370 shall comply with the requirements of such Part. Tier II forms shall be submitted to the Department (DEQ) electronically via the DEQ internet website utilizing DEQ approved software. Only submissions via the website shall be accepted. A two-year grace period from the requirement to submit via the website for facilities with less than 5 full time employees and companies operating under SIC code 1311 with fewer than 20 locations will be granted from the time of the effective date of these rules. The owner or operator of a facility subject to Tier II reporting also shall report the latitude/longitude for each location reported.

(c) **Toxic Chemical Release Reporting: Community Right-to-Know, Part 372.** The owner or operator of a facility subject to toxic chemical release record-keeping and reporting as described in 40 CFR Part 372 shall comply with the requirements of such Part.

(d) **Requests for information.** Any person who owns or operates any facility that may be subject to regulation under 40 CFR shall accurately respond to requests from the Department for information on the type of facility and the nature and quantity of chemical substances present.

**252:20-1-6. Address Procedure for submitting reporting forms**

(a) **Non-confidential.** All non-confidential forms, sanitized versions of materials submitted under a Claim of confidentiality, and separate Tier Two Confidential Location Information Sheets (see 40 CFR 370.41), shall be submitted to the ~~Oklahoma Department of Environmental Quality, P.O. Box 1677, Oklahoma City, Oklahoma, 73101-1677~~ Department via the DEQ internet website.

(b) **Confidential.** All materials submitted under a Claim of confidentiality, except separate Tier Two Confidential Location Information Sheets, shall be submitted as described in 40 CFR 350.16 to EPCRA Substantiation Packets, P.O. Box 1515, Lanham-Seabrook, MD 20703-1515 or FedEx and courier packages to EPCRA Substantiation Packets, c/o Computer Sciences Corp., Suite 300, 8400 Corporate Dr., New Carrollton, MD 20785.

(c) **Information dissemination.** Any requirement for an owner or operator of a facility subject to Tier II reporting under 40 CFR 370 to submit a paper Tier II report to the appropriate Local Emergency Planning Committee (LEPC) and to the local Fire Department is met by reporting to DEQ via electronic on-line internet reporting as the Department will make the information available, in a timely fashion, to the LEPCs and Fire Departments.

**252:20-1-7. Fees**

Fees for environmental services to validate reports from facilities required to report (but not merely to notify) under the Oklahoma Hazardous Materials Planning and Notification Act (27A O.S.Supp. ~~2000-2005~~, § 4-2-101 *et seq.*) are:

(1) For owner/operators of ~~ten (10) or less facilities: \$10.00 per facility; facilities other than oil and gas production facilities (SIC code 1311) and agriculture chemical dealership facilities:~~

(A) \$15.00 per hazardous substance per 40 CFR 370 subject to Tier II reporting;

(B) \$30.00 per extremely hazardous substance per 40 CFR 355 subject to Tier II reporting;

(C) With a \$1,000 maximum fee per company.

(2) For owner/operators of ~~eleven (11) to twenty four (24) facilities: \$20.00 per facility; and~~

(3) ~~For owners/operators of 25 or more facilities: \$500.00 per company.~~ oil and natural gas production facilities (SIC code 1311):

(A) \$12.00 per reported facility

(B) With a \$1,000 maximum fee per company.

(3) For agriculture chemical dealerships:

(A) \$12.00 per facility

(B) With a \$1,000 maximum fee per company.

[OAR Docket #06-854; filed 5-9-06]

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

[OAR Docket #06-855]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

252:100-1-3. [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 1. General Provisions [AMENDED]

252:100-8-1.1. [AMENDED]

Part 5. Permits for Part 70 Sources [AMENDED]

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252:100-8-2. [AMENDED]  
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas [AMENDED]  
252:100-8-30. [AMENDED]  
252:100-8-31. [AMENDED]  
252:100-8-32. [REVOKED]  
252:100-8-32.1. [NEW]  
252:100-8-32.2. [NEW]  
252:100-8-32.3. [NEW]  
252:100-8-33. [AMENDED]  
252:100-8-34. [AMENDED]  
252:100-8-35. [AMENDED]  
252:100-8-35.1. [NEW]  
252:100-8-35.2. [NEW]  
252:100-8-36. [AMENDED]  
252:100-8-36.1. [NEW]  
252:100-8-36.2. [NEW]  
252:100-8-37. [AMENDED]  
252:100-8-38. [NEW]  
252:100-8-39. [NEW]  
Part 9. Major Sources Affecting Nonattainment Areas [AMENDED]  
252:100-8-50. [AMENDED]  
252:100-8-50.1. [NEW]  
252:100-8-51. [AMENDED]  
252:100-8-51.1. [NEW]  
252:100-8-52. [AMENDED]  
252:100-8-53. [AMENDED]  
252:100-8-54. [AMENDED]  
252:100-8-55. [NEW]  
252:100-8-56. [NEW]  
252:100-8-57. [NEW]

## **AUTHORITY:**

Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

## **DATES:**

### **Comment period:**

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September 15, 2005 through October 19, 2005  
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### **Public hearing:**

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### **Adoption:**

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### **Submitted to Senate:**

March 3, 2006

### **Gubernatorial approval:**

April 17, 2006

### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

### **Final adoption:**

April 28, 2006

### **Effective:**

June 15, 2006

### **SUPERSEDED EMERGENCY ACTIONS:**

None

### **INCORPORATIONS BY REFERENCE:**

#### **Incorporated standards:**

40 CFR 51.166(w) with some exceptions  
40 CFR 51.165(a)(1) with some exceptions  
40 CFR 51.165(a)(3) except (a)(3)(ii)(H) and (I)  
40 CFR 51.165(b)  
40 CFR 51.165(a)(4)  
40 CFR 51.165(a)(5)  
40 CFR 51.165(a)(6)(i) through (v)  
40 CFR 51.165(a)(7)

40 CFR 51.165(f) with exceptions

### **Incorporating rules:**

252:100-8-38  
252:100-8-50.1  
252:100-8-51  
252:100-8-51.1  
252:100-8-52(1)  
252:100-8-53(a)  
252:100-8-55(b)  
252:100-8-55(c)  
252:100-8-55(d)  
252:100-8-56

### **Availability:**

The rules are available to the public for examination at the Department of Environmental Quality office at 707 North Robinson, 4<sup>th</sup> Floor, Oklahoma City, Oklahoma.

### **ANALYSIS:**

The Department of Environmental Quality (DEQ) is proposing amendments to Subchapter 8, Part 70 Sources. DEQ proposes to revise Parts 7 and 9 of Subchapter 8 to incorporate the Environmental Protection Agency's (EPA) revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. These proposed amendments contain revisions to the method of determining what should be classified as a modification subject to major NSR and includes Plantwide Applicability Limitations (PAL) Exclusions. These proposed amendments should result in fewer modifications to major NSR sources being considered major and therefore requiring a Prevention of Significant Deterioration (PSD) permit and the use of Best Available Control Technology (BACT). The proposed amendments also include other NSR revisions not previously incorporated by DEQ and some changes in location of some definitions to reduce redundancy. As part of the revision DEQ proposes to make the following changes to Section 8-1.1 in Part 1: 1) move 8 definitions to Subchapter 1; delete 2 definitions from Section 8-1.1 because they are the same as those in Subchapter 1; move paragraph (B) of the definition of "begin actual construction" to Section 8-2 in Part 5; move 8 definitions to 8-31 in Part 7; and move 3 definitions that were previously located in Section 8-31 to Section 8-1.1. In 8-2 of Part 5, DEQ proposes to revise the definition of "insignificant activities" to reflect the changes made to Subchapter 41 and the new Subchapter 42.

### **CONTACT PERSON:**

Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **252:100-1-3. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

**"Act"** means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

**"Administrator"** means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

**"Air contaminant source"** means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, or person contributing to emission of air

contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

**"Air pollution abatement operation"** means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

**"Air pollution episode"** means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

**"Ambient air standards"** or **"Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

**"Atmosphere"** means the air that envelops or surrounds the earth.

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

**"Building, structure, facility, or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

**"Catalytic cracking unit"** means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

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

**"Commence"** means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

**"Complete"** means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude

the ~~reviewing authority~~ Director from requesting or accepting any additional information.

**"Construction"** means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

**"Crude oil"** means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

**"Division"** means Air Quality Division, Oklahoma State Department of Environmental Quality.

**"Dust"** means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

**"EPA"** means the United States Environmental Protection Agency.

**"Excess emissions"** means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

**"Existing source"** means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

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

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

**"Federally enforceable"** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

**"Fuel-burning equipment"** means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

**"Fugitive dust"** means solid airborne particulate matter emitted from any source other than a stack or chimney.

**"Fugitive emissions"** means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**"Fume"** means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

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**"Garbage"** means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

**"In being"** means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

**"Incinerator"** means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

**"Installation"** means an identifiable piece of process equipment.

**"Lowest achievable emissions rate" or "LAER"** means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

**"Major source"** means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

**"Malfunction"** means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**"Mist"** means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

**"Modification"** means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

**"National Emission Standards for Hazardous Air Pollutants" or "NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

**"New installation", "New source", or "New equipment"** means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

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

**"Opacity"** means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

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

**"Owner or operator"** means any person who owns, leases, operates, controls or supervises a source.

**"Part 70 permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Part 70 program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Part 70 source"** means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

**"PM-10 emissions"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured during a stack test of the source's emissions.

**"PM-10 (particulate matter - 10 micrometers)"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a federal reference method based on Appendix J of 40 CFR Part 50.

**"Particulate matter"** means any material that exists in a finely divided form as a liquid or a solid.

**"Particulate matter emissions"** means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

**"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it

would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

**"Prevention of significant deterioration"** or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

**"Process equipment"** means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

**"Process weight"** means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

**"Reasonably available control technology"** or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

**"Reconstruction"** means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

**"Refinery"** means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

**"Refuse"** means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

**"Refuse-burning equipment"** means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

**"Responsible official"** means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

**"Shutdown"** means the cessation of operation of any process, process equipment, or air pollution control equipment.

**"Smoke"** means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

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"**Source operation**" means the last operation preceding the emission of an air contaminant, which operation:

- (A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,
- (B) is not an air pollution abatement operation.

"**Stack**" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"**Standard conditions**" means a gas temperature of 68 degrees Fahrenheit (20°Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"**Startup**" means the setting into operation of any process, process equipment, or air pollution control equipment.

"**Stationary source**" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"**Total Suspended Particulates**" or "**TSP**" means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"**Temperature inversion**" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"**Visible emission**" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"**Volatile organic compound**" or "**VOC**" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonates, which participates in atmospheric photochemical reactions. Any organic compound listed in 40 CFR 51.100(s)(1) will be presumed to have negligible photochemical reactivity and will not be considered to be a VOC.

## SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

### PART 1. GENERAL PROVISIONS

#### 252:100-8-1.1. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

"**A stack in existence**" means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

- (B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

~~"Act" means the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.~~

~~"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of regulated air pollutants emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).~~

~~"Administrator" means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.~~

~~"Allowable emissions" means, for purposes of Parts 7 and 9 of this Subchapter, the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:~~

- ~~(A) the applicable standards as set forth in 40 CFR Parts 60 and 61;~~
- ~~(B) the applicable State rule allowable emissions;~~
- ~~or;~~
- ~~(C) the emissions rate specified as an enforceable permit condition.~~

~~"Adverse impact on visibility" means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.~~

~~"Begin actual construction" means:~~

- ~~(A) for purposes of Parts 7 and 9 of this Subchapter, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.~~
- ~~(B) for purposes of Part 5 of this Subchapter, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.~~

~~"Best available control technology" or "BACT" means the control technology to be applied for a major source or modification is the best that is available as determined by the Director on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternate control systems.~~

**"Building, structure, facility, or installation"** means, for purposes of Parts 7 and 9 of this Subchapter, all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two digit code), as described in the Standard Industrial Classification manual, 1972, as amended by the 1977 Supplement.

**"Commence"** for purposes of Parts 7 and 9 of this Subchapter means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or,
- (B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**"Construction"** means, for purposes of Parts 7 and 9 of this Subchapter, any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

**"Dispersion technique"** means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

- (A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
- (B) The merging of exhaust gas streams where:
  - (i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;
  - (ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the emission limitation for the pollutant affected by such change in operation; or
  - (iii) before July 8, 1985, such merging was part of a change in operation at the facility that included

the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.

- (C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

**"Emission limitations and emission standards"** means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

**"Emissions unit"** means, for purposes of Parts 7 and 9 of this Subchapter, any part of a source which emits or would have the potential to emit any pollutant subject to regulation.

**"EPA"** means the United States Environmental Protection Agency.

**"Fugitive emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

**"National Emission Standards for Hazardous Air Pollutants"** or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

**"Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

**"Necessary preconstruction approvals or permits"** means, for purposes of Parts 7 and 9 of this Subchapter, those permits or approvals required under all applicable air quality control laws and rules.

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

**"Part 70 permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Part 70 program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Part 70 source"** means any source subject to the permitting requirements of Part 5 of this Subchapter, as provided in OAC 252:100-8-3(a) and (b).

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**"Potential to emit"** means, for purposes of Parts 7 and 9 of this Subchapter, the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

**"Secondary emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (A) emissions from trains coming to or from the new or modified stationary source; and,
- (B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

**"Stack"** means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

**"Stationary source"** means, for purposes of Parts 7 and 9 of this Subchapter, any building, structure, facility or installation which emits or may emit any air pollutant subject to OAC 252:100.

**"Visibility impairment"** means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

## PART 5. PERMITS FOR PART 70 SOURCES

### 252:100-8-2. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

**"Administratively complete"** means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by OAC 252:2-15-20(b)(3);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

**"Affected source"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Affected states"** means:

- (A) all states:
  - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
  - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

**"Affected unit"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Applicable requirement"** means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;
- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

**"Begin actual construction"** means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"Designated representative"** means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

**"Draft permit"** means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

**"Emergency"** means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

**"Emissions allowable under the permit"** means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**"Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

**"Final permit"** means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

**"Fugitive emissions"** means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**"General permit"** means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

**"Insignificant activities"** means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) ~~through (C)~~ and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

- (A) 5 tons per year of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAP's, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

~~(C) 0.6 tons per year for any one category A substance, 1.2 tons per year for any one category B substance or 6 tons per year for any one category C substance as defined in OAC 252:100-41-40.~~

**"MACT"** means maximum achievable control technology.

**"Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or.

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant (except that fraction of particulate matter that exhibits an average aerodynamic particle diameter of more than 10 micrometers) (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section

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302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

- (i) For ozone non-attainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
- (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide non-attainment areas:

- (I) that are classified as "serious"; and
- (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and
- (iv) For particulate matter (PM-10) non-attainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

**"Maximum capacity"** means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

**"Permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Permit modification"** means a revision to a Part 70 construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

**"Permit program costs"** means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

**"Permit revision"** means any permit modification or administrative permit amendment.

**"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

**"Proposed permit"** means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

**"Regulated air pollutant"** means the following:

- (A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);
- (B) Any pollutant for which a national ambient air quality standard has been promulgated;
- (C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit), and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

**"Renewal"** means the process by which a permit is reissued at the end of its term.

**"Responsible official"** means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Subchapter, a principal executive officer or installation commander of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions

under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Subchapter.

**"Section 502(b)(10) changes"** means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

**"Small unit"** means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

**"State-only requirement"** means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

**"State program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Stationary source"** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

**"Trivial activities"** means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

**"Unit"** means, for purposes of Title IV, a fossil fuel-fired combustion device.

## PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

### 252:100-8-30. Applicability

~~The new source requirements of this Part, in addition to the requirements of Parts 1, 3, and 5 of this Subchapter, shall apply to the construction of all major stationary sources and major modifications as specified in 252:100-8-31 through 252:100-8-33. Sources subject to this Part are also subject to the operating permit provisions contained in Part 5 of 252:100-8.~~

#### (a) General applicability.

(1) The requirements of this Part shall apply to the construction of any new major stationary source or any project that is a major modification at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(2) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.

(3) No new major stationary source or major modification to which the requirements of OAC 252:100-8-34

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through 252:100-8-36.2(b) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(4) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications.

### (b) **Major modification.**

#### (1) **Major modification applicability determination.**

(A) Except as otherwise provided in OAC 252:100-8-30(c), and consistent with the definition of "major modification", a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:

- (i) a significant emissions increase and
- (ii) a significant net emissions increase.

(B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

#### (2) **Calculating significant emissions increase and significant net emissions increase before beginning actual construction.**

The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, according to OAC 252:100-8-30(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase". This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such pre-construction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-30(b)(3)

or (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-30(b)(3) for the existing unit and determined using the method specified in 252:100-8-30(b)(4) for the new emissions unit.

(6) **Actual-to-potential test for projects that only involve existing emissions units.** In lieu of using the actual-to-projected-actual test, owners or operators may choose to use the actual-to-potential test to determine if a significant emissions increase of a regulated NSR pollutant will result from a proposed project. A significant emissions increase of a regulated NSR pollutant will occur if the sum of the difference between the potential emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant. Owners or operators who use the actual to potential test will not be subject to the recordkeeping requirements in OAC 252:100-8-36.2(c).

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with the requirements under OAC 252:100-8-38.

### 252:100-8-31. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise:— All terms used in this Part that are not defined in this Subsection shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, or in the Oklahoma Clean Air Act.

"**Actual emission emissions**" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with the following:— paragraphs (A) through (C) of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under OAC 252:100-8-38. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

(A) In general, actual emissions as of a particular date shall equal the average rate in ~~tons per year~~ TPY at which the unit actually emitted the pollutant during a ~~two-year consecutive~~ 24-month period which precedes the particular date and which is representative of normal source operation. The ~~reviewing authority may~~ Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. ~~Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.~~

(B) The ~~reviewing authority~~ Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(C) For any emissions unit ~~which~~ that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case by case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with:~~

- ~~(A) times of visitor use of the Federal Class I area; and~~
- ~~(B) the frequency and timing of natural conditions that reduce visibility.~~

"Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (A) the applicable standards as set forth in 40 CFR Parts 60 and 61;
- (B) the applicable State rule allowable emissions;
- or,
- (C) the emissions rate specified as an enforceable permit condition.

"Baseline actual emissions" means the rate of emissions, in TPY, of a regulated NSR pollutant, as determined in accordance with paragraphs (A) through (E) of this definition.

(A) The baseline actual emissions shall be based on current emissions data and the unit's utilization during the period chosen. Current emission data means the most current and accurate emission factors available and could include emissions used in the source's latest permit or permit application, the most recent CEM data, stack test data, manufacturer's data, mass balance, engineering calculations, and other emission factors.

(B) For any existing electric utility steam generating unit (EUSGU), baseline actual emissions means the average rate, in TPY, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Director for a permit required under OAC 252:100-8. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.
- (ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that

occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units affected by the project. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (B)(ii) of this definition.

(C) For an existing emissions unit (other than an EUSGU), baseline actual emissions means the average rate in TPY, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Director for a permit required either under this Part or under a plan approved by the Administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a MACT standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if DEQ has taken credit for such emissions reduction in an attainment demonstration of maintenance plan consistent with requirements of 40 CFR 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

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(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (C)(ii) and (iii) of this definition.

(D) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(E) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing EUSGU in accordance with the procedures contained in paragraph (B) of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph (C) of this definition, and for a new emissions unit in accordance with the procedures contained in paragraph (D) of this definition.

**"Baseline area"** means any intrastate areas (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 µg/m<sup>3</sup> (annual average) of the pollutant for which the minor source baseline date is established.

(A) Area redesignations under section 107(d)(1)(D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

- (i) establishes a minor source baseline date; or
- (ii) is subject to 40 CFR 52.21 or OAC 252:100-8, Part 7, and would be constructed in the same State as the State proposing the redesignation.

(B) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that such baseline area shall not remain in effect if the Director rescinds the corresponding minor source baseline date in accordance with paragraph (D) of the definition of "baseline date".

**"Baseline concentration"** means that ambient concentration level ~~which that~~ exists in the baseline area at the time of the applicable minor source baseline date.

(A) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (B) of this definition.
- (ii) the allowable emissions of major stationary sources ~~which that~~ commenced construction before the major source baseline date, but were

not in operation by the applicable minor source baseline date.

(B) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (i) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and,
- (ii) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

**"Baseline date"** means:

(A) ~~for major sources,~~ Major source baseline date means:

- (i) in the case of particulate matter and sulfur dioxide, January 6, 1975, and;
- (ii) in the case of nitrogen dioxide, February 8, 1988; ~~and,~~

(B) ~~for minor sources,~~ Minor source baseline date means the earliest date after the trigger date on which a major stationary source or major modification (subject to 40 CFR 52.21 or OAC 252:100-8, Part 7) submits a complete application. The trigger date is:

- (i) in the case of particulate matter and sulfur dioxide, August 7, 1977, and
- (ii) in the case of nitrogen ~~oxides-dioxide~~, February 8, 1988.

(C) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (i) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under OAC 252:100-8, Part 7; and
- (ii) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(D) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Director may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Director, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.

**"Begin actual construction"** means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature.

(A) Such activities include, but are not limited to, installation of building supports and foundations,

laying of underground pipework, and construction of permanent storage structures.

(B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

**"Best available control technology" or "BACT"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**"Clean coal technology"** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

**"Clean coal technology demonstration project"** means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The Federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

**"Commence"** means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**"Complete"** means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

**"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

**"Continuous emissions monitoring system" or "CEMS"** means all of the equipment that may be required to meet the data acquisition and availability requirements to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**"Continuous emissions rate monitoring system" or "CERMS"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**"Continuous parameter monitoring system" or "CPMS"** means all of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub>, or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

**"Electric utility steam generating unit" or "EUSGU"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**"Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an EUSGU. There are two types of emissions units as described in paragraphs (A) and (B) of this definition.

(A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (A) of this definition. A replacement unit is an existing emissions unit.

**"Federal land manager Land Manager"** means with respect to any lands in the United States, the Secretary of the department with authority over the Federal Class I area or his representative such lands.

**"High terrain"** means any area having an elevation 900 feet or more above the base of the stack of a source.

**"Innovative control technology"** means any system of air pollution control that has not been adequately demonstrated

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in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

**"Low terrain"** means any area other than high terrain.

**"Major modification"** means ~~any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant subject to regulation;~~

(A) Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

(A~~i~~) ~~Any net—significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds—VOC shall be considered significant for ozone.~~

(B~~ii~~) A physical change or change in the method of operation shall not include:

(~~i~~) routine maintenance, repair and replacement;

(~~ii~~) use of an ~~alternate—~~alternative fuel or raw material by reason of any order under ~~Sections—sections~~ 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(~~iii~~) use of an ~~alternate—~~alternative fuel by reason of an order or rule under ~~Section—section~~ 125 of the ~~Federal Clean Air Act~~;

(~~iv~~) use of an ~~alternate—~~alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(~~v~~) ~~Use—~~use of an ~~alternate—~~alternative fuel or raw material by a stationary source which:

(~~1~~) the source was capable of accommodating before January 6, 1975, (unless such change would be prohibited under any enforceable permit ~~limitation—~~condition which was established after January 6, 1975); ~~or,~~

(~~2~~) the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 252:100-8;

(~~vi~~) ~~An—~~an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit limitation—condition which was established after January 6, 1975;

(~~vii~~) ~~Any—~~any change in source ownership;

(VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided the

project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated;

(IX) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant (on a pollutant-by-pollutant basis) emitted by the unit; or

(X) the reactivation of a very clean coal-fired EUSGU.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-38 for a PAL for that pollutant. Instead, the definition of "PAL major modification" at 40 CFR 51.166(w)(2)(viii) shall apply.

**"Major stationary source"** means ~~any source which meets any of the following conditions:~~

(A) A major stationary source is:

(A~~i~~) ~~Any—~~any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year—TPY or more of any a regulated NSR pollutant—subject to regulation:

(~~i~~) carbon black plants (furnace process),

(~~ii~~) charcoal production plants,

(~~iii~~) chemical process plants,

(~~iv~~) coal cleaning plants (with thermal dryers),

(~~v~~) coke oven batteries,

(~~vi~~) fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input,

(~~vii~~) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,

(~~viii~~) fuel conversion plants,

(~~ix~~) glass fiber processing plants,

(~~x~~) hydrofluoric, sulfuric or nitric acid plants,

(~~xi~~) iron and steel mill plants,

(~~xii~~) kraft pulp mills,

(~~xiii~~) lime plants,

(~~xiv~~) municipal incinerators capable of charging more than 50 tons of refuse per day,

(~~xv~~) petroleum refineries,

(~~xvi~~) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

(~~xvii~~) phosphate rock processing ~~plant~~ plants,

(~~xviii~~) portland cement plants,

(~~xix~~) primary aluminum ore reduction plants,

(~~xx~~) primary copper smelters,

- ~~(xxiXXI)~~ primary lead smelters,
- ~~(xxiiXXII)~~ primary zinc smelters,
- ~~(xxiiiXXIII)~~ secondary metal production plants,
- ~~(xxivXXIV)~~ sintering plants,
- ~~(xxvXXV)~~ sulfur recovery plants, or
- ~~(xxviXXVI)~~ taconite ore processing plants;

~~(B)ii) Any any other stationary source not on the list in (A)(i) of this definition which emits, or has the potential to emit, 250 tons per year TPY or more of any a regulated NSR pollutant subject to regulation;~~

~~(C)iii) Any any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under (A) and (B) of this definition if the change would constitute a major stationary source by itself.~~

~~(D)B) A major source that is major for volatile or organic compounds VOC shall be considered major for ozone.~~

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Part whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) the stationary sources listed in (A)(i) of this definition;
- (ii) any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

~~"Natural conditions" mean naturally occurring phenomena against which any changes in visibility are measured in terms of visual range, contrast or coloration.~~

"Necessary preconstruction approvals or permits" means those permits or approvals required under all applicable air quality control laws and rules.

"Net emissions increase" means:

(A) The with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

- (i) any the increase in actual emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-30(b); and,
- (ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

~~(C) An increase or decrease in actual emissions is creditable only if: the Executive Director has not relied on it in issuing a permit under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

- (i) it is contemporaneous; and
- (ii) the Director has not relied on it in issuing a permit for the source under OAC 252:100-8, Part 7, which permit is in effect when the increase in actual emissions from the particular change occurs.

~~(D) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.~~

~~(E) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(F) A decrease in actual emissions is creditable only to the extent that: it meets all the conditions in (F)(i) through (iii) of this definition.~~

- (i) It is creditable if the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- (ii) It is creditable if it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
- (iii) It is creditable if it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

~~(G) An increase that results from a physical change at a source occurs when the emission emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.~~

(H) Paragraph (A) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub>, or CO<sub>2</sub> concentrations),

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and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

**"Prevention of Significant Deterioration (PSD) program"** means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

**"Project"** means a physical change in, or change in method of operation of, an existing major stationary source.

**"Projected actual emissions"** means

(A) Projected actual emissions means the maximum annual rate, in TPY, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (A) of this definition (before beginning actual construction), the owner or operator of the major stationary source:

(i) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(ii) shall include fugitive emissions to the extent quantifiable and emissions associated with start-ups, shutdowns, and malfunctions; and

(iii) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) in lieu of using the method set out in (B)(i) through (iii) of this definition, may elect to use the emissions unit's potential to emit, in TPY.

**"Reactivation of a very clean coal-fired electric utility steam generating unit"** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the Department's emissions inventory at the time of enactment;

(B) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(C) is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

(D) is otherwise in compliance with the requirements of the Act.

**"Regulated NSR pollutant"** means

(A) A regulated NSR pollutant is:

(i) any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., VOC are precursors for ozone);

(ii) any pollutant that is subject to any standard promulgated under section 111 of the Act;

(iii) any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(iv) any pollutant that otherwise is subject to regulation under the Act.

(B) Regulated NSR pollutant does not include:

(i) any or all HAP either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act; or

(ii) any pollutant that is regulated under section 112(r) of the Act, provided that such pollutant is not otherwise regulated under the Act.

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met. No creditable emission reduction shall be generated from shutting down the existing emissions unit that is replaced.

(A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**"Repowering"** means

(A) Repowering shall mean the replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(B) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(C) The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Act.

**"Significant"** means:

(A) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, significant means a rate of emissions that would equal or exceed any of the following rates:

- (i) carbon monoxide: 100 tons per year (tpy) TPY,
- (ii) nitrogen oxides: 40 tpy-TPY,
- (iii) sulfur dioxide: 40 tpy-TPY,
- (iv) particulate matter: 25 tpy-TPY of particulate matter emissions or 15 tpy-TPY of PM-10 emissions,
- (v) ozone: 40 tpy-TPY of volatile organic compounds-VOC,
- (vi) lead: 0.6 tpy-TPY,
- (vii) asbestos: 0.007 tpy,
- (viii) beryllium: 0.0004 tpy,
- (ix) mercury: 0.1 tpy,
- (x) vinyl chloride: 1 tpy,
- (xi-vii) fluorides: 3 tpy-TPY,
- (xii-viii) sulfuric acid mist: 7 tpy-TPY,
- (xiii-ix) hydrogen sulfide (H<sub>2</sub>S): 10 tpy-TPY,
- (xiv-x) total reduced sulfur (including H<sub>2</sub>S): 10 tpy, and-TPY,
- (xv-xi) reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy-TPY,
- (xii) municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.5 x 10<sup>-6</sup> TPY,
- (xiii) municipal waste combustor metals (measured as particulate matter): 15 TPY,

(xiv) municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 40 TPY,

(xv) municipal solid waste landfill emissions (measured as nonmethane organic compounds): 50 TPY.

(B) Notwithstanding (A) of this definition, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 6 miles of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

**"Significant emissions increase"** means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

**"Significant net emissions increase"** means a significant emissions increase and a net increase.

**"Stationary source"** means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant.

**"Temporary clean coal technology demonstration project"** means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Oklahoma Air Pollution Control Rules in OAC 252:100 and other requirements necessary to attain and/or maintain the NAAQS during and after the project is terminated.

**"Visibility impairment"** means any humanly perceptible reduction in visibility (visual range, contrast and coloration) from that which would have existed under natural conditions.

**252:100-8-32. Source applicability determination [REVOKED]**

Proposed new sources and source modifications to which this Part is applicable are determined by size, geographical location and type of emitted pollutants:

(+) **Size.**

(A) Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant and other associated definitions in 252:100 8-31, 252:100 8-1.1, and 252:100 1.

(B) When a source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the requirements of 252:100 8, Parts 1, 3, 5, and 7 shall apply to that source or modification as though construction had not yet commenced on it.

(2) **Location.**

(A) Sources and modifications which are major in size and proposed for construction in an area which has been designated as attainment or unclassified for

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any applicable ambient air standard are subject to the PSD requirements.

(B) Those sources and modifications locating in an attainment or unclassified area but impacting on a nonattainment area may also be subject to the requirements for major sources affecting nonattainment areas in 252:100-8, Part 9.

## **252:100-8-32.1. Ambient air increments and ceilings**

(a) **Ambient air increments.** Increases in pollutant concentration over the baseline concentration in Class I, II, or III areas shall be limited to those listed in OAC 252:100-3-4 regarding significant deterioration increments.

(b) **Ambient air ceilings.** No concentration of a pollutant shall exceed whichever of the following concentrations is lowest for the pollutant for a period of exposure:

- (1) the concentration allowed under the secondary NAAQS, or
- (2) the concentration permitted under the primary NAAQS.

## **252:100-8-32.2. Exclusion from increment consumption**

The following cases are excluded from increment consumption.

(1) Concentrations from an increase in emissions from any stationary source converting from the use of petroleum products, natural gas, or both by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act shall be excluded.

(A) Such exclusion is limited to five years after the effective date of the order or plan whichever is applicable.

(B) If both an order and a plan are applicable, the exclusion shall not apply more than five years after the later of the effective dates.

(2) Emissions of particulate matter from construction or other temporary emission-related activities of new or modified sources shall be excluded.

(3) A temporary increase of sulfur dioxide, particulate matter, or nitrogen oxides from any stationary source by order or authorized variance shall be excluded. For purposes of this exclusion any such order or variance shall:

(A) specify the time over which the temporary emissions increase would occur (not to exceed 2 years in duration unless a longer time is approved by the Director);

(B) specify that the exclusion is not renewable;

(C) allow no emissions increase from a stationary source which would impact a Class I area or an area where an applicable increment is known to be violated or cause or contribute to the violation of a NAAQS; and

(D) require limitations to be in effect by the end of the time period specified in such order or variance, which would ensure that the emissions levels from

the stationary source affected would not exceed those levels occurring from such source before the order or variance was issued.

## **252:100-8-32.3. Stack heights**

(a) Emission limitation of any air pollutant under this Part shall not be affected in any manner by:

- (1) stack height of any source that exceeds good engineering practice, or
- (2) any other dispersion technique.

(b) OAC 252:100-8-32.3(a) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

## **252:100-8-33. Exemptions**

(a) **Exemptions from PSD—the requirements of OAC 252:100-8-34 through 252:100-8-36. 2.**—PSD requirements do not apply to a particular source or modification if:

(1) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a particular major stationary source or major modification if the source or modification is:

(1A) It is a nonprofit health or nonprofit educational institution; or

(2B) The source is major by virtue of only if fugitive emissions, to the extent quantifiable, are included in calculating the potential to emit and such source is a source other than: not

(A) One one of the categories listed in (A)(i) through (xxvi) under paragraph (C) of the definition of "Major stationary source" in OAC 252:100-8-31; or

(B) A stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.

(3C) The source or modification is a portable stationary source which has previously received a permit under the PSD—requirements contained in OAC 252:100-8-34 through 252:100-8-36.2 and proposes to relocate to a temporary new location from which its emissions would not impact a Class I area or an area where an applicable increment is known to be violated.

(2) The requirements in OAC 252:100-8-34 through 252:100-8-36.2 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment for that pollutant under section 107 of the Act.

(b) **Exemption from air quality impact evaluation—analyses in OAC 252:100-8-35(a) and (c) and 252:100-8-35. 2.**

(1) The requirements of OAC 252:100-8-35 252:100-8-35(a) and (c) and 252:100-8-35.2 are not applicable with respect to a particular pollutant, if the allowable emissions, with respect to a particular pollutant, of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be

temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(2) ~~The requirements of OAC 252:100-8-35 are not applicable to the emissions, with respect to a particular pollutant, to 252:100-8-35(a) and (c) and 252:100-8-35.2 as they relate to any PSD increment for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant, from the modification after the application of BACT, would be less than 50 tons per year-TPY.~~

**(c) Exemption from monitoring air quality analysis requirements in OAC 252:100-8-35(c).**

(1) ~~The monitoring requirements of OAC 252:100-8-35-252:100-8-35(c) regarding air quality analysis are not applicable for a particular pollutant if the emission increase of the pollutant from a new-proposed major stationary source or the net emissions increase of the pollutant from a major modification would cause, in any area, air quality impacts less than the following listed amounts, or are pollutant concentrations that are not on the list:~~

- (A) Carbon monoxide - 575 µg/m<sup>3</sup>, 8-hour average,
- (B) Nitrogen dioxide - 14 µg/m<sup>3</sup>, annual average,
- (C) Particulate matter - 10 µg/m<sup>3</sup>, TSP or PM-10, 24-hour average, ~~or 10 µg/m<sup>3</sup> PM 10, 24 hour average,~~
- (D) Sulfur dioxide - 13 µg/m<sup>3</sup>, 24-hour average,
- (E) Ozone - ~~see (N) below~~ no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data,
- (F) Lead - 0.1 µg/m<sup>3</sup>, 24-hour 3-month average,
- ~~(G) Mercury - 0.25 µg/m<sup>3</sup>, 24 hour average,~~
- ~~(H) Beryllium - 0.001 µg/m<sup>3</sup>, 24 hour average,~~
- ~~(I) Fluorides - 0.25 µg/m<sup>3</sup>, 24-hour average,~~
- ~~(J) Vinyl chloride - 15 µg/m<sup>3</sup>, 24 hour average,~~
- ~~(K) Total reduced sulfur - 10 µg/m<sup>3</sup>, 1-hour average,~~
- ~~(L) Hydrogen sulfide - 0.2 µg/m<sup>3</sup>, 1-hour average,~~ or
- ~~(M) Reduced sulfur compounds - 10 µg/m<sup>3</sup>, 1-hour average.~~
- ~~(N) No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.~~

(2) ~~The requirements for air quality monitoring in OAC 252:100-8-35(b),(c) and (d)(2) shall not apply to a source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted before June 8, 1981 and the Director subsequently determined that the application was complete except for~~

~~OAC 252:100-8-35(b), (c) and (d)(2). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to such source or modification.~~

~~(3) The requirements for air quality monitoring in OAC 252:100-8-35(b), (c), and (d)(2) shall not apply to a source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted before June 8, 1981 and the Director subsequently determined that the application as submitted was complete, except for the requirements in OAC 252:100-8-35(b), (c) and (d)(2).~~

~~(4) The Director shall determine if the requirements for air quality monitoring of PM 10 in OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2) may be waived for a source or modification when an application for a permit was submitted on or before June 1, 1988 and the Director subsequently determined that the application, except for the requirements for monitoring particulate matter under OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2), was complete before that date.~~

~~(5) The requirements for air quality monitoring of PM 10 in OAC 252:100-8-35(b), (c), (d)(2) and (d)(6) shall apply to a source or modification if an application for a permit was submitted after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions of OAC 252:100-8-33(b)(1), except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data required by OAC 252:100-8-35(b)(1) and OAC 252:100-8-35(c) shall have been gathered over that shorter period.~~

~~(2) The pollutant is not listed in preceding OAC 252:100-8-33(c)(1).~~

**(d) Exemption from monitoring requirements in OAC 252:100-8-35(c)(1)(B) and (D).**

(1) ~~The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application was complete except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D). Instead, the requirements in 40 CFR 52.21(m)(2) as in effect on June 19, 1978, shall apply to any such source or modification.~~

(2) ~~The requirements for air quality monitoring in OAC 252:100-8-35(c)(1)(B) and (D) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if a permit application was submitted on or before June 8, 1981, and the Director subsequently determined that the application as submitted was complete, except for the requirements in OAC 252:100-8-35(c)(1)(B) and (D).~~

**(e) Exemption from the preapplication analysis required by OAC 252:100-8-35(c)(1)(A), (B), and (D).**

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(1) The Director shall determine if the requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(c)(1)(A), (B), and (D) may be waived for a particular source or modification when an application for a PSD permit was submitted on or before June 1, 1988, and the Director subsequently determined that the application, except for the requirements for monitoring particulate matter under OAC 252:100-8-35(c)(1)(A), (B), and (D), was complete before that date.

(2) The requirements for air quality monitoring of PM-10 in OAC 252:100-8-35(c)(1)(B)(i), 252:100-8-35(c)(1)(D), and 252:100-8-35(c)(3) shall apply to a particular source or modification if an application for a permit was submitted after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application became otherwise complete in accordance with the provisions of OAC 252:100-8-35(c)(1)(C), except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data required by OAC 252:100-8-35(c)(1)(B)(ii) shall have been gathered over that shorter period.

(d-f) Exemption from BACT requirements and—monitoring air quality analyses requirements. If a complete permit application for a source or modification was submitted before August 7, 1980 the requirements for BACT in OAC 252:100-8-34 and for monitoring in OAC 252:100-8-35(a) through (c) and OAC 252:100-8-35(d)(2) through (4) the requirements for air quality analyses in OAC 252:100-8-35(c)(1) are not applicable to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978. Instead, the federal requirements at 40 CFR 52.21 (j) and (n) as in effect on June 19, 1978, are applicable to any such source or modification.

(e) Exemption of modifications. As specified in the applicable definitions of OAC 252:100-8-31, 252:100-8-1.1, and 252:100-1, the requirements of OAC 252:100-8, Part 7 for PSD and OAC 252:100-8, Part 9 for nonattainment areas are not applicable to a modification if the existing source was not major on August 7, 1980 unless the proposed addition to that existing minor source is major in its own right.

(f-g) Exemption from impact analyses—OAC 252:100-8-35(a)(2). The permitting requirements of OAC 252:100-8-35 and OAC 252:100-8-36-252:100-8-35(a)(2) do not apply to a stationary source or modification with respect to any maximum allowable increase—PSD increment for nitrogen oxides if the owner or operator of the source or modification submitted a completed—complete application for a permit before February 8, 1988.

(g) Exemption from increment consumption. Excluded from increment consumption are the following cases:

(1) Concentrations from an increase in emissions from any source converting from the use of petroleum products, natural gas, or both by reason of any order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or

by reason of a natural gas curtailment plan pursuant to the Federal Power Act. Such exclusion is limited to five years after the effective date of the order or plan.

(2) Emissions of particulate matter from construction or other temporary emission related activities of new or modified sources.

(3) A temporary increase of sulfur dioxide, particulate matter, or nitrogen oxides by order or authorized variance from any source.

### 252:100-8-34. Best available control technology—Control technology review

(a) Requirement to comply with rules and regulations. A major stationary source or major modification shall meet each applicable emissions limitation under OAC 252:100 and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61.

(b) Requirement to apply best available control technology (BACT).

(a-1) A new major stationary source must demonstrate that the control technology to be applied is the best that is available (i.e., BACT as defined herein shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts).

(b-2) A major modification must demonstrate that the control technology to be applied is the best that is available—shall apply BACT for each regulated NSR pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(c) The determination of best available control technology shall be made on a case by case basis taking into account costs and energy, environmental and economic impacts.

(d-3) For phased construction projects the determination of best available control technology—BACT shall be reviewed and modified at the discretion of the Executive—Director at a reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator may be required to demonstrate the adequacy of any previous determination of best available control technology—BACT.

### 252:100-8-35. Air quality impact evaluation

(a) Source impact analysis (impact on NAAQS and PSD increment). The owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increase from that source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed:

- (1) any NAAQS in any air quality control region; or
- (2) the remaining available PSD increment for the specified air contaminants as determined by the Director.

(b) **Air quality models.**

(1) All estimates of ambient concentrations required under this Part shall be based on the applicable air quality models, data bases, and other requirements specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006.

(2) Where an air quality model specified in appendix W of 40 CFR 51 (Guideline on Air Quality Models) as it existed on January 2, 2006, is inappropriate, the model may be modified or another model substituted, as approved by the Administrator. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Modified or substitute models shall be submitted to the Administrator with written concurrence of the Director. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in Sec. 51.102 as it existed on January 2, 2006.

(c) **Air quality analysis.**

(1) **Preapplication analysis.**

(a) ~~Application contents~~ **Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the Executive Director determines appropriate, an ~~evaluation~~ analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

- (1-i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;
- (2-ii) for a major modification, each regulated pollutant for which it would result in a significant net emissions increase.

(B) **Monitoring requirements.**

(i) **Non-NAAQS pollutants.** For any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess the ambient air quality for that pollutant in that area.

(ii) **NAAQS pollutants.** For visibility and any pollutant, other than VOC, for which a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant would cause or contribute to a violation of the NAAQS or any PSD increment.

~~(b) **Continuous monitoring data.** For visibility and any pollutant, other than volatile organic compounds, for which an ambient air quality standard exists, the evaluation shall contain continuous air quality monitoring data gathered to determine whether emissions of that pollutant would cause or contribute to a violation of the applicable ambient air quality standard. For any such pollutant for which a standard does not exist, the monitoring data required shall be that which the Executive Director determines is necessary to assess the ambient air quality for that pollutant in that area. (Amended 7-9-87, effective 8-10-87)~~

~~(e) **Increment consumption.** The evaluation shall demonstrate that, as of the source's start up date, the increase in emissions from that source, in conjunction with all other applicable emissions increases or reductions of that source, will not cause or contribute to any increase in ambient concentrations exceeding the remaining available PSD increment for the specified air contaminants as determined by the Executive Director.~~

~~(d) **Monitoring.**~~

~~(4-C) **Monitoring method.** With respect to any requirements for air quality monitoring of PM-10 under 252:100-8-33(e)(4) and 252:100-8-33(e)(5) OAC 252:100-8-33(e)(1) and (2), the owner or operator of the source or modification shall use a monitoring method approved by the Executive Director and shall estimate the ambient concentrations of PM-10 using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Executive Director.~~

~~(2-D) **Monitoring period.** The In general, the required continuous air monitoring data shall have been gathered for a time over a period of up to one year and shall represent the year preceding submission of the application. Ambient monitoring data collected for a time gathered over a period shorter than one year (but no less than four months) or for a time period other than immediately preceding the application may be acceptable if such data are determined by the Executive Director to be within the time period that maximum pollutant concentrations would occur, and to be complete and adequate for determining whether the source or modification will cause or contribute to a violation of any applicable ambient air quality standard NAAQS or consume more than the remaining available PSD increment.~~

~~(3-E) **Monitoring period exceptions.**~~

~~(A-i) **Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which becomes became complete except as to for the monitoring requirements of 252:100-8-35(b) through 252:100-8-35(e) and 252:100-8-35(d)(2) OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D), between June 8, 1981, and February 9, 1982, the data that 252:100-8-35(b) and 252:100-8-35(e) require 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over the period from February 9, 1981, to the date the application becomes became otherwise complete, except that:~~

~~(i-I) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over the period required by those regulations.~~

~~(ii-II) If the Executive Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, not to be less than four months, the data~~

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that ~~252:100-8-35(b) and 252:100-8-35(e) require~~ OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

~~(iii)~~ (iii) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the ~~Executive~~ Director may waive the otherwise applicable requirements of ~~252:100-8-35(d)(3)(A)~~ OAC 252:100-8-35(c)(1)(E)(i) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(B-ii) Monitoring period exception for PM-10. For any application that ~~becomes~~ became complete, except as ~~to~~ for the requirements of ~~252:100-8-35(b), (e) and (d)(2)~~ OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D) pertaining to monitoring of PM-10, after December 1, 1988, and no later than August 1, 1989, the data that ~~252:100-8-35(b) and (e) require~~ 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the ~~Executive~~ Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not ~~to be~~ less than 4 months), the data that ~~252:100-8-35(b) and 252:100-8-35(e) require~~ 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(4-F) Ozone post-approval monitoring. The ~~application for a owner or operator of a proposed major stationary source or major modification of volatile organic compounds which VOC who satisfies all conditions of OAC 252:100-8-54 and 40 CFR 51, Appendix S, Section IV as it existed on January 16, 1979,~~ may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under ~~252:100-8-35~~ OAC 252:100-8-35(c)(1).

(5-2) Post-construction monitoring. The ~~applicant for a permit for owner or operator of a new major stationary source or major modification~~ shall conduct, after construction, such ambient monitoring and visibility monitoring as the ~~Executive~~ Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area. ~~(Amended 7-9-87, effective 8-10-87)~~

(6-3) Monitoring system operation—Operation of monitoring stations. The operation of monitoring stations for any air quality monitoring required under this Part 7 of this Subchapter shall meet the requirements of 40 CFR 58 Appendix B as it existed January 2, 2006.

(e) Air quality models.

(1) Any air quality dispersion modeling that is required under Part 7 of this Subchapter for estimates of ambient

concentrations shall be based on the applicable air quality models, data bases and other requirements specified in the Guidelines on Air Quality Models, OAQPS 1.2-080, U.S. Environmental Protection Agency, April, 1978 and subsequent revisions.

(2) Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted, as approved by the Executive Director. Methods like those outlined in the Workbook for the Comparison of Air Quality Models, U.S. Environmental Protection Agency, April, 1977 and subsequent revisions, can be used to determine the comparability of air quality models.

(f) Growth analysis. Upon request of the ~~Executive Director~~ for the permit application shall provide information on the nature and extent of any or all general commercial, residential, industrial and other growth which has occurred since August 7, 1977 in the area the source or modification would affect. The permit application shall also contain an analysis of the air quality impact projected for the area as a result of general commercial, residential and other growth associated with the source or modification.

(g) Visibility and other impacts analysis. The permit application shall provide an analysis of the impairment to visibility, soils and vegetation as a result of the source or modification. The ~~Executive Director~~ may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the ~~Executive Director~~ deems necessary and appropriate. ~~(Amended 7-9-87, effective 8-10-87)~~

### 252:100-8-35.1. Source information

(a) The permit application for a proposed new major stationary source or major modification subject to this Part shall contain the construction permit application content required in OAC 252:100-8-4.

(b) In addition to the requirements of OAC 252:100-8-35.1(a), the owner or operator of a proposed new major stationary source or major modification subject to this Part shall supply the following information in the permit application.

(1) The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

(2) The permit application shall contain a detailed description of the system of continuous emission reduction planned for the source or modification, emission estimates, and any other information necessary to determine that BACT as applicable would be applied.

(3) Upon request of the Director, the owner or operator shall also provide information on:

(A) the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(B) the air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since

August 7, 1977, in the area the source or modification would affect.

**252:100-8-35.2. Additional impact analyses**

(a) **Growth analysis.** The permit application shall provide an analysis of the projected air quality impact and impairment to visibility, soils, and vegetation as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(b) **Visibility monitoring.** The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

**252:100-8-36. Source impacting Class I areas**

(a) **Permits issuance-Class I area variance.** Permits may be issued at variance to the limitations imposed on a Class I area in compliance with the procedures and limitations established in State and Federal Clean Air Acts.

(b) **Impact analysis required.** The permit application for a proposed new source or modification will contain an analysis on the impairment of visibility and an assessment of any anticipated adverse impacts on soils and vegetation in the vicinity of the source resulting from construction of the source. The Executive Director shall notify the appropriate Federal Land Manager of the receipt of any such analysis and include a complete copy of the permit application. Any analysis performed by the Land Manager shall be considered by the Executive Director provided that the analysis is filed with the DEQ within 30 days of receipt of the application by the Land Manager. Where the Executive Director finds that such an analysis does not demonstrate to the satisfaction of the Executive Director that an adverse impact on visibility will result in the Federal Class I area, the Executive Director will, in any notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained. Further, upon presentation of good and sufficient information by a Federal Land Manager, the Executive Director may deny the issuance of a permit for a source, emissions from which will adversely impact areas heretofore or hereafter categorized as Class I areas even though the emissions would not cause the increment for such Class I areas to be exceeded.

(b) **Notice to Federal Land Managers.**

(1) The Director shall notify any affected Federal Land Manager of the receipt of any permit application for a proposed major stationary source or major modification, emissions from which may affect a Class I area. Such notification must be made in writing within 30 days of receipt of an application for a permit to construct and at least 60 days prior to public hearing on the application. The notification must include a complete copy of the permit application. The Director shall also notify any affected Federal Land Manager within 30 days of receipt of any advance notification of such permit application.

(2) The permit application will contain an analysis on the impairment of visibility and an assessment of any anticipated adverse impacts on soils and vegetation in the vicinity of the source resulting from construction of the source.

(c) **Visibility analysis.** Any analysis performed by the Federal Land Manager shall be considered by the Director provided that the analysis is filed with the DEQ within 30 days of receipt of the application by the Federal Land Manager. Where the Director finds that such an analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the Federal Class I area, the Director will, in any notice of public hearing on the permit application, either explain the decision or give notice as to where the explanation can be obtained.

(d) **Permit denial.** Upon presentation of good and sufficient information by a Federal Land Manager, the Director may deny the issuance of a permit for a source, if the emissions will adversely impact areas categorized as Class I areas even though the emissions would not cause the increment for such Class I areas to be exceeded.

**252:100-8-36.1. Public participation**

See OAC 252:4 and O.S. §§ 27A-2-5-112 and 27A-2-14-101 to § 2-14-304.

**252:100-8-36.2. Source obligation**

(a) **Obtaining and complying with preconstruction permits.** Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(b) **Consequences of relaxation of permit requirements.** When a source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the requirements of OAC 252:100-8, Parts 1, 3, 5, and 7 and 252:100-8-34 through 252:100-8-37 shall apply to that source or modification as though construction had not yet commenced on it.

(c) **Requirements when using projected actual emissions.** The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

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(B) Identification of the existing emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the base-line actual emissions, the projected actual emissions, the amount of emissions excluded under (B)(iii) of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall provide a copy of the information set out in OAC 252:100-8-36.2(c)(1) to the Director. Nothing in OAC 252:100-8-36.2(c)(2) shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in OAC 252:100-8-36.2(c)(1)(B); and calculate and maintain a record of the annual emissions, in TPY on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(4) If the unit is an existing EUSGU, the owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under OAC 252:100-8-36.2(c)(3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an EUSGU, the owner or operator shall submit a report to the Director if the annual emissions, in TPY, from the project identified in OAC 252:100-8-36.2(c)(1), exceed the baseline actual emissions (as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C)) by an amount that is significant for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C). Such report shall be submitted to the Director within 60 days after the end of such year. The report shall contain the following:

(A) The name, address and telephone number of the major stationary source;

(B) The annual emissions as calculated pursuant to OAC 252:100-8-36.2(c)(3); and

(C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) The owner or operator of the source shall make the information required to be documented and maintained

pursuant to OAC 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public.

(7) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

(8) If an owner or operator materially fails to comply with the provisions of OAC 252:100-8-36.2(c), then the calendar year emissions are presumed to equal the source's potential to emit.

### **252:100-8-37. Innovative control technology**

(a) An applicant for a permit for a proposed major stationary source or major modification may request the Executive Director in writing to approve a system of innovative control technology.

(b) The Executive Director may determine that the innovative control technology is permissible if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function.

(2) The applicant agrees to achieve a level of continuous emissions reductions equivalent to that which would have been required for ~~best available control technology~~ BACT under ~~252:100-8-34~~ OAC 252:100-8-34(b)(1) by a date specified by the Executive Director. Such date shall not be later than 4 years from the time of start-up or 7 years from permit issuance.

(3) The source or modification would meet the requirements equivalent to those in ~~Parts 1 and 5 of this Subchapter and 252:100-8-36~~ OAC 252:100-8-34 and 252:100-8-35(a) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Executive Director.

(4) The source or modification would not, before the date specified, cause or contribute to any violation of the applicable ~~ambient air standards~~ NAAQS, or impact any Class I area or area where an applicable increment is known to be violated.

(5) All other applicable requirements including those for public ~~review participation~~ have been met.

(6) The provisions of OAC 252:100-8-36 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(c) The Executive Director shall withdraw approval to employ a system of innovative control technology made under OAC 252:100-8-37, if:

(1) The proposed system fails by the specified date to achieve the required continuous reduction rate; or,

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or,

- (3) The ~~Executive~~ Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.
- (d) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with OAC 252:100-8-37(c), the Director may allow the source or modification may be allowed up to an additional 3 years to meet the requirement for application of ~~best available control technology~~ BACT through the use of a demonstrated system of control.

**252:100-8-38. Actuals PAL**

- (a) **Incorporation by reference.** With the exception of the definitions in OAC 252:100-8-38(c), 40 CFR 51.166(w), Actuals PALs, is hereby incorporated by reference, as it exists on January 2, 2006, and does not include any subsequent amendments or editions to the referenced material.
- (b) **Inclusion of CFR citations and definitions.** When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.
- (c) **Terminology related to 40 CFR 51.166(w).** For purposes of interfacing with 40 CFR, the following terms apply.
- (1) "Baseline actual emissions" is synonymous with the definition of "baseline actual emissions" in OAC 252:100-8-31.
  - (2) "Building, structure, facility, or installation" is synonymous with the definition of "building, structure, facility, or installation" in OAC 252:100-1-3.
  - (3) "EPA" is synonymous with Department of Environmental Quality (DEQ).
  - (4) "Major modification" is synonymous with the definition of "major modification" in OAC 252:100-8-31.
  - (5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-31.
  - (6) "Reviewing authority" is synonymous with "Director".
  - (7) "State implementation plan" is synonymous with OAC 252:100.
  - (8) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

**252:100-8-39. Severability**

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS**

**252:100-8-50. Applicability**

The new source requirements of this Part, in addition to the applicable requirements of Parts 1, 3, and 5 of this Subchapter, shall apply to the construction of all major sources and major modifications affecting designated nonattainment areas as specified in 252:100-8-51 through 252:100-8-53.

(a) **General applicability.**

- (1) The requirements of this Part shall apply to the construction of any new major stationary source or major modification which would locate in or affect a nonattainment area located in Oklahoma, designated under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification is major for the pollutant for which the area is designated nonattainment.
- (2) The requirements of OAC 252:100-8, Parts 1, 3, and 5 also apply to the construction of any new major stationary source or major modification.
- (3) In addition, the requirements of a PSD review (OAC 252:100-8, Part 7) would be applicable if any regulated NSR pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.

(b) **Major modification.**

- (1) **Major modification applicability determination.**
  - (A) Except as otherwise provided in OAC 252:100-8-50(c), and consistent with the definition of "major modification" contained in OAC 252:100-8-51, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases:
    - (i) a significant emissions increase, and
    - (ii) a significant net emissions increase.
  - (B) The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
- (2) **Calculating significant emissions increase and significant net emissions increase.** The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions unit(s) being modified, according to OAC 252:100-8-50(b)(3) through (5). This is the first step in determining if a proposed modification would be considered a major modification. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of "net emissions increase" in OAC 252:100-8-50.1 and 252:100-8-51. This is the second step in the process of determining if a proposed modification is a major modification. Both steps occur prior to the beginning of actual construction. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
- (3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A

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significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, as applicable, for each existing emissions unit, equals or exceeds the amount that is significant for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the amount that is significant for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in OAC 252:100-8-50(b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the amount that is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in OAC 252:100-8-50(b)(3) for the existing unit and determined using the method specified in 252:100-8-50(b)(4) for the new emissions unit.

(c) **Plantwide applicability limitation (PAL).** Major stationary sources seeking to obtain or maintain a PAL shall comply with requirements under OAC 252:100-8-56.

### **252:100-8-50.1. Incorporation by reference**

(a) **Inclusion of CFR citations and definitions.** When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.

(b) **Terminology related to 40 CFR.** When these terms are used in rules incorporated by reference from 40 CFR, the following terms or definitions shall apply.

(1) "Baseline actual emissions" is synonymous with the definition of "baseline actual emissions" in OAC 252:100-8-31.

(2) "Building, structure, facility, or installation" is synonymous with the definition of "building, structure, facility, or installation" in OAC 252:100-1-3.

(3) "EPA" is synonymous with Department of Environmental Quality (DEQ).

(4) "Major modification" is synonymous with the definition of "major modification" in OAC 252:100-8-51.

(5) "Net emissions increase" is synonymous with the definition of "net emissions increase" in OAC 252:100-8-51.

(6) "Reviewing authority" is synonymous with "Director".

(7) "Secondary emissions" is synonymous with the definition of "secondary emissions" in OAC 252:100-8-1.1.

(8) "State implementation plan" is synonymous with OAC 252:100.

(9) "Volatile organic compound (VOC)" is synonymous with the definition of "volatile organic compound" or "VOC" in OAC 252:100-1-3.

### **252:100-8-51. Definitions**

The definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference as they exist on January 2, 2006, except for the definitions found at 40 CFR 51.165(a)(1)(xxxv) "baseline actual emissions"; (ii) "building, structure, facility, or installation"; (xxix) "Clean Unit"; (v) "major modification"; (vi) "net emissions increase"; (xxv) "pollution control project (PCP)"; (xxxviii) "reviewing authority"; (viii) "secondary emissions"; and (xix) "volatile organic compound (VOC)". With the exception of "pollution control project (PCP)", "Clean Unit", and "reviewing authority" these terms are defined in OAC 252:100-8-31, 252:100-8-51, or 252:100-1-3. The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:—

**"Actual emissions"** means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

(A) In general, actual emissions as of a particular date shall equal the average rate in tons per year at which the unit actually emitted the pollutant during a two year period which precedes the operation. The reviewing authority may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. Actual emissions may also be determined by source tests, or by best engineering judgment in the absence of acceptable test data.

(B) The reviewing authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(C) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**"Lowest achievable emissions rate"** means the control technology to be applied to a major source or modification which the Director, on a case by case basis, determines is achievable for a source based on the lowest achievable emission rate achieved in practice by such category of source (i.e., lowest achievable emission rate as defined in the Federal Clean Air Act).

**"Major modification"** means: any physical change in, or change in the method of operation of, a major source that would result in a significant net emissions increase of any pollutant subject to regulation.

(A) Any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase

of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source is a major modification.

~~(A-i)~~ Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for ~~volatile organic compounds-VOC and/or oxides of nitrogen (NO<sub>x</sub>)~~ shall be considered significant for ozone.

~~(B-ii)~~ A physical change or change in the method of operation shall not include:

~~(i-I)~~ routine maintenance, repair and replacement;

~~(ii-II)~~ use of an ~~alternate~~-alternative fuel or raw material by reason of any order under ~~Sections-sections~~ Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

~~(iii-III)~~ use of an ~~alternate~~-alternative fuel by reason of an order or rule under ~~Section-section~~ Section 125 of the ~~Federal Clean Air Act~~;

~~(iv-IV)~~ use of an ~~alternate~~-alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

~~(v-V)~~ Use-use of an ~~alternate~~-alternative fuel or raw material by a source which:

~~(i)~~ the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit limitation-condition which was established after December 21, 1976; or;

~~(ii)~~ the source is approved to use under any permit issued under 40 CFR 52.21 or OAC 252:100-7 or 8; or;

~~(iii-III)~~ An-an increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit limitation-condition which was established after December 21, 1976; or;

~~(iv-IV)~~ any change in source ownership; (VIII) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with OAC 252:100 and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

(B) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under OAC 252:100-8-56 for a PAL for that pollutant. Instead the definition at 40 CFR 51.165(f)(2)(viii) shall apply.

"Major stationary source" means:

~~(A) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation; or,~~

~~(B) any physical change that would occur at a source not qualifying under (A) of this definition as a major source, if the change would constitute a major source by itself.~~

~~(C) for ozone, a source that is major for volatile organic compounds shall be considered major.~~

"Net emissions increase" means:

(A) The-With respect to any regulated NSR pollutant emitted by a major stationary source, net emissions increase shall mean the amount by which the sum of the following exceeds zero:

(i) any-the increase in actual-emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to OAC 252:100-8-50(b); and,

(ii) any other increases and decreases in actual emission-emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under (A)(ii) of this definition shall be determined as provided in the definition of "baseline actual emissions", except that (B)(iii) and (C)(iv) of that definition shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within 3 years before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions is creditable only if: the Director has not relied on it in issuing a permit under Part 9 of this Subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.

(i) it is contemporaneous; and

(ii) the Director has not relied on it in issuing a permit under OAC 252:100-8, Part 9, which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) the reviewing authority-Director has not relied on it in issuing any permit under State air quality rules-OAC 252:100; and,

(iv) it has approximately the same qualitative significance for public health and welfare as

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that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational after a reasonable shakedown period, not to exceed 180 days.

(G) Paragraph 40 CFR 51.165(a)(1)(xii)(B) of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"**Significant**" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- (A) Carbon monoxide: 100 tons per year (tpy);
- (B) Nitrogen oxides: 40 tpy;
- (C) Sulfur dioxide: 40 tpy;
- (D) Particulate matter: 15 tpy of PM-10 emissions;
- (E) Ozone: 40 tpy of volatile organic compounds,
- or
- (F) Lead: 0.6 tpy.

## 252:100-8-51.1. Emissions reductions and offsets

The requirements in 40 CFR 51.165(a)(3) regarding emissions reductions and offsets, except for 40 CFR 51.165(a)(3)(ii)(H) and (I), are hereby incorporated by reference as they exist on January 2, 2006.

## 252:100-8-52. ~~Source applicability determination~~ Applicability determination for sources in attainment areas causing or contributing to NAAQS violation

Proposed new sources and source modifications to which Part 9 of this Subchapter is applicable are determined by size, geographical location and type of emitted pollutants:

### (1) ~~Size.~~

(A) ~~Permit review will apply to sources and modifications that emit any regulated pollutant in major amounts. These quantities are specified in the definitions for major stationary source, major modification, potential to emit, net emissions increase, significant, and other associated definitions in OAC 252:100-8-51, 252:100-8-1.1, and 252:100-1-3.~~

(B) ~~At such time that a particular source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Parts 1, 3, 5, and 9 of this Subchapter shall apply to that source or modification as though construction had not yet commenced on it.~~

### (2) ~~Location.~~

(A) ~~Sources and modifications that are major in size and proposed for construction in an area which has been designated as nonattainment for any applicable ambient air quality standard are subject to the requirements for the nonattainment area, if the source or modification is major for the nonattainment pollutant(s) of that area.~~

(B) ~~In addition, the requirements of a PSD review (Part 7 of this Subchapter) would be applicable if any other regulated pollutant other than the nonattainment pollutant is emitted in significant amounts by that source or modification.~~

### (3) ~~Location in attainment or unclassifiable area but causing or contributing to NAAQS violation.~~

(a) The requirements in 40 CFR 51.165(b) regarding a source located in an attainment or unclassifiable area but causing or contributing to a NAAQS violation are hereby incorporated by reference as they exist on January 2, 2006.

(A) ~~A proposed major source or major modification that would locate in an area designated attainment or unclassifiable is considered to cause or contribute to a violation of the national ambient air quality standards when such source or modification would, as a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:~~

#### (i) ~~SO<sub>2</sub>:~~

- (I) ~~1.0 µg/m<sup>3</sup> annual average;~~
- (II) ~~5 µg/m<sup>3</sup> 24-hour average;~~
- (III) ~~25 µg/m<sup>3</sup> 3-hour average;~~

#### (ii) ~~PM-10:~~

- (I) ~~1.0 µg/m<sup>3</sup> annual average;~~
- (II) ~~5 µg/m<sup>3</sup> 24-hour average;~~

#### (iii) ~~NO<sub>2</sub>: 1.0 µg/m<sup>3</sup> annual average;~~

#### (iv) ~~CO:~~

- (I) ~~500 µg/m<sup>3</sup> 8-hour average;~~
- (II) ~~2000 µg/m<sup>3</sup> one-hour average.~~

(B) ~~A proposed major source or major modification subject to OAC 252:100-8-52(3)(A) may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where the proposed source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, a permit for the proposed source or modification shall be denied.~~

(C) ~~The requirements of OAC 252:100-8-52(3)(A) and (B) shall not apply to a major source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated nonattainment.~~

(D) ~~b) Sources of volatile organic compounds—VOC located outside a designated ozone nonattainment area will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source~~

may be granted its permit since the area has not yet been designated nonattainment.

(E-c) Sources locating in an attainment area but impacting on a nonattainment area above the significant levels listed in OAC ~~252:100-8-52(3)~~ 252:100-8-52(1) are exempted from the condition of OAC 252:100-8-54(4)(A).

(F-d) The determination whether a source or modification will cause or contribute to a violation of an applicable ambient air quality standard for sulfur dioxide, particulate matter or carbon monoxide will be made on a ~~case-by-case~~ case-by-case basis as of the proposed new source's start-up date by an atmospheric simulation model. For sources of nitrogen oxides the model can be used for an initial determination assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level, and the initial concentration estimates will be adjusted if adequate data are available to account for the expected oxidation rate.

(G-e) The determination as to whether a source would cause or contribute to a violation of applicable ambient air quality standards will be made on a ~~case-by-case~~ case-by-case basis as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be attainment as part of the state implementation plan control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

**252:100-8-53. Exemptions**

(a) ~~Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if:~~

(1) ~~The source is major by virtue of fugitive emissions, to the extent quantifiable, included in calculating the potential to emit and is a source other than one of the following categories:~~

- (A) carbon black plants (furnace process);
- (B) charcoal production plants;
- (C) chemical process plants;
- (D) coal cleaning plants (with thermal dryers);
- (E) coke oven batteries;
- (F) fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input;
- (G) fossil fuel fired steam electric plant of more than 250 million BTU per hour heat input;
- (H) fuel conversion plants;
- (I) glass fiber processing plants;
- (J) hydrofluoric, sulfuric or nitric acid plants;
- (K) iron and steel mills;
- (L) kraft pulp mills;
- (M) lime plants;
- (N) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (O) petroleum refineries;
- (P) petroleum storage and transfer units with a total storage exceeding 300,000 barrels;
- (Q) phosphate rock processing plants;
- (R) portland cement plants;
- (S) primary aluminum ore reduction plants;
- (T) primary copper smelters;

- (U) primary lead smelters;
- (V) primary zinc smelters;
- (W) secondary metal production plants;
- (X) sintering plants;
- (Y) sulfur recovery plants;
- (Z) taconite ore processing plants; or
- (AA) ~~any other stationary source category which, as of August 7, 1980, is being regulated by NSPS or NESHAP.~~

(a) The requirement in 40 CFR 51.165(a)(4) regarding exemption of fugitive emissions in determining if a source or modification is major are hereby incorporated by reference as they exist on January 2, 2006.

(2-b) A Nonattainment area requirements do not apply to a particular source or modification locating in or impacting on a nonattainment area if the source or modification was not subject to 40 CFR Part 51, Appendix S (emission offset interpretative ruling) as in effect it existed on January 16, 1979, and the source:

- (A-1) ~~Obtained~~ obtained all final federal and state construction permits before August 7, 1980;
- (B-2) ~~Commenced~~ commenced construction within 18 months from August 7, 1980, or any earlier time required by the State Implementation Plan; and,
- (C-3) ~~Did~~ did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(b-c) Secondary emissions are excluded in determining the potential to emit ~~(see definition of "potential to emit" in 252:100-8-1.1).~~ However, upon determination of the ~~Executive~~ Director, if a source is subject to the requirements on the basis of its direct emissions, the applicable requirements must also be met for secondary emissions but the source would be exempt from the conditions of ~~252:100-8-52(3)(F)~~ OAC 252:100-8-52(4) and 252:100-8-54(1) through 252:100-8-54(3). Also, the indirect impacts of mobile sources are excluded.

(e-d) As specified in the applicable definitions, the requirements of Part 7 for PSD and Part 9 for nonattainment areas of this Subchapter are not applicable to a modification if the existing source was not major on August 7, 1980, unless the proposed addition to the existing minor source is major in its own right.

**252:100-8-54. Requirements for sources located in nonattainment areas**

In the event a major source or modification would be constructed in an area designated as nonattainment for a pollutant for which the source or modification is major, approval shall be granted only if the following conditions are met:

- (1) The new source must demonstrate that it has applied control technology which the ~~Executive~~ Director, on a ~~case-by-case~~ case-by-case basis, determines is achievable for a source based on the lowest achievable emission rate (LAER) achieved in practice by such category of source (i.e., lowest achievable emission rate as defined in the Act).

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- (2) If the ~~Executive~~—Director determines that imposition of an enforceable numerical emission standard is infeasible due to technological or economic limitations on measurement methodology, a design, equipment, work practice or operational standard, or combination thereof, may be prescribed as the emission limitation rate.
- (3) The owner or operator of the new source must demonstrate that all other major sources owned or operated by such person in Oklahoma are in compliance, or are meeting all steps on a schedule for compliance, with all applicable limitations and standards under Oklahoma and Federal Clean Air Acts.
- (4) The owner or operator of the new source must demonstrate that upon commencing operations:
- (A) The emissions from the proposed source and all other sources permitted in the area do not exceed the planned growth allowable for the area designated in the State Implementation Plan; or,
- (B) The total allowable emissions from existing sources in the region and the emissions from the proposed source will be sufficiently less than the total emissions from existing sources allowed under the State Implementation Plan at the date of construction permit application so as to represent further progress toward attainment or maintenance of the ambient air quality standards in the problem area.
- (5) The owner or operator may present with the application an analysis of alternate sites, sizes and production processes for such proposed source.

## **252:100-8-55. Source obligation**

**(a) Construction permits required.** An owner or operator shall obtain a construction permit prior to commencing construction of a new major stationary source or major modification.

**(b) Responsibility to comply and the consequences of relaxation of permit conditions.** The requirements in 40 CFR 51.165(a)(5) regarding the responsibility to comply with applicable local State or Federal law and the consequences of becoming a major source by virtue of a relaxation in any enforcement limitation are hereby incorporated by reference as they exist on January 2, 2006.

**(c) Requirements when using projected actual emissions.**

**(1) The specific provisions in 40 CFR 51.165(a)(6)(i) through (v) shall apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the methods specified in the definition of "projected actual emissions" at 40 CFR 51.165(a)(xxviii)(B)(1) through (3) (as they existed on January 2, 2006) for calculating projected actual emissions.**

**(2) The requirements in 40 CFR 51.165(a)(6)(i) through (v) are hereby incorporated by reference as they existed on January 2, 2006.**

**(d) Availability of information.** The requirements in 40 CFR 51.165(a)(7) regarding availability of information required to document the use of projected actual emissions

for determining if a project is a major modification are hereby incorporated by reference as they existed on January 2, 2006.

## **252:100-8-56. Actuals PAL**

The requirements in 40 CFR 51.165(f) regarding actuals PAL except for the terminology contained in OAC 252:100-8-50.1(b), are hereby incorporated by reference as they existed on January 2, 2006.

## **252:100-8-57. Severability**

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[OAR Docket #06-855; filed 5-9-06]

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

[OAR Docket #06-856]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 4. New Source Performance Standards  
252:100-4-5. [AMENDED]

### **AUTHORITY:**

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

### **DATES:**

#### **Comment period:**

September 15, 2005 through February 23, 2006 and February 24, 2006

#### **Public hearing:**

October 19, 2005 and February 24, 2006

#### **Adoption:**

February 24, 2006

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

March 3, 2006

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March 3, 2006

#### **Gubernatorial approval:**

April 17, 2006

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

#### **Final adoption:**

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#### **Effective:**

June 15, 2006

### **SUPERSEDED EMERGENCY ACTIONS:**

None

### **INCORPORATIONS BY REFERENCE:**

#### **Incorporated standards:**

The 40 CFR Part 60 is incorporated by reference in its entirety as it existed on September 1, 2005 with the exceptions of:

- (1) Sections 60.4, 60.9, 60.10 and 60.16 of Subpart A
- (2) Subpart B
- (3) Subpart C
- (4) Subpart Cb
- (5) Subpart Cc

- (6) Subpart Cd
- (7) Subpart Ce
- (8) Subpart AAA
- (9) Subpart BBBB
- (10) Subpart DDDD
- (11) Subpart HHHH
- (12) Appendix G

**Incorporating Rule:**  
252:100-4-5

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

**ANALYSIS:**

The proposed amendments to OAC 252:100-4-5 would incorporate the Federal New Source Performance Standards (NSPS). Subsection 5 would be amended to incorporate the NSPS, specified in 40 CFR 60, as they existed on September 1, 2005, with exceptions of:

- (1) Sections 60.4, 60.9, 60.10 and 60.16 of Subpart A. General Provisions.
- (2) Subpart B. Adoption and Submittal of State Plans for Designated Facilities.
- (3) Subpart C. Emission Guidelines and Compliance Times.
- (4) Subpart Cb. Emissions Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before September 20, 1994.
- (5) Subpart Cc. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.
- (6) Subpart Cd. Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units.
- (7) Subpart Ce. Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.
- (8) Subpart AAA. Standards of Performance for New Residential Wood Heaters.
- (9) Subpart BBBB. Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999.
- (10) Subpart DDDD. Emission Guidelines and Compliance Times for Commercial and Industrial Hazardous Waste Incineration Units that Commenced Construction on or Before November 30, 1999.
- (11) Subpart HHHH. Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units.
- (12) Appendix G. Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

**SUBCHAPTER 4. NEW SOURCE PERFORMANCE STANDARDS**

**252:100-4-5. Incorporation by reference**

40 CFR Part 60 is hereby incorporated by reference, as it ~~exists~~ existed on ~~July~~ ~~September 1, 2002-2005~~, except for the following:

- (1) **Sections 60. 4, 60.9, 60.10 and 60.16 of Subpart A.** General Provisions.
- (2) **Subpart B.** Adoption and Submittal of State Plans for Designated Facilities.

(3) **Subpart C.** Emission Guidelines and Compliance Times.

~~(4) **Subpart Ca.** Emissions Guidelines and Compliance Times for Municipal Waste Combustors.~~

~~(5) **Subpart Cb.** Emissions Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before September 20, 1994.~~

~~(6) **Subpart Cc.** Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.~~

~~(7) **Subpart Cd.** Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units.~~

~~(8) **Subpart Ce.** Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.~~

~~(9) **Subpart AAA.** Standards of Performance for New Residential Wood Heaters.~~

~~(9) **Subpart BBBB.** Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999.~~

~~(10) **Subpart DDDD.** Emission Guidelines and Compliance Times for Commercial and Industrial Hazardous Waste Incineration Units that Commenced Construction on or Before November 30, 1999.~~

~~(11) **Subpart HHHH.** Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units.~~

~~(12) **Appendix G.** Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service.~~

[OAR Docket #06-856; filed 5-9-06]

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

[OAR Docket #06-857]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants  
Part 3. Hazardous Air Pollutants  
252:100-41-15. [AMENDED]

**AUTHORITY:**

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

**DATES:**

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**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:****Incorporated standards:**

The following Subparts of 40 CFR Part 63 are incorporated by reference in their entirety, as they existed on September 1, 2005:

- (1) Subpart A
- (2) Subparts F through I
- (3) Subparts L through O
- (4) Subparts Q through U
- (5) Subparts W through Y
- (6) Subparts AA through EE
- (7) Subparts GG through MM
- (8) Subparts OO through YY
- (9) Subparts CCC through EEE
- (10) Subparts GGG through JJJ
- (11) Subparts LLL through RRR
- (12) Subparts TTT through VVV
- (13) Subpart XXX
- (14) Subpart AAAA
- (15) Subpart CCCC through KKKK
- (16) Subparts MMMM through ZZZZ
- (17) Subparts AAAAA through TTTTT

The following Subparts of 40 CFR Part 61 are incorporated by reference in their entirety as they existed on September 1, 2005:

- (1) Subpart A
- (2) Subpart C through F
- (3) Subpart J
- (4) Subpart L through P
- (5) Subpart V
- (6) Subpart Y
- (7) Subpart BB
- (8) Subpart FF
- (9) Appendix A
- (10) Appendix B
- (11) Appendix C

**Incorporating Rule:**

252:100-41-15

**Availability:**

The standards are on file at the Department of Environmental Quality (DEQ), 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

**ANALYSIS:**

The amendments to OAC 252:100-41-15 update references to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department of Environmental Quality (DEQ) periodically updates these references in accordance with its delegation agreement with the U.S. Environmental Protection Agency (EPA). Subsection 15(a) is amended to incorporate the NESHAP, specified in 40 CFR 61, as they existed on September 1, 2005. Subsection 15(b) is amended to incorporate by reference Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants in 40 CFR Part 63.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

## SUBCHAPTER 41. CONTROL OF EMISSION OF HAZARDOUS AIR POLLUTANTS AND TOXIC AIR CONTAMINANTS

### PART 3. HAZARDOUS AIR POLLUTANTS

**252:100-41-15. National emission standards for hazardous air pollutants (NESHAP)**

(a) NESHAP, as found in 40 CFR Part 61, are hereby incorporated by reference as they ~~exist~~existed on September 1, ~~2004-2005~~, with the exception of Subparts B, H, I, K, Q, R, T, W and Appendices D and E, all of which address radionuclides. These standards shall apply to both existing and new sources of hazardous air pollutants (HAPs).

(b) General Provisions as found in 40 CFR Part 63, Subpart A, and the Maximum Achievable Control Technology (MACT) standards as found in 40 CFR Part 63, Subparts F, G, H, I, ~~J~~-L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, ~~KK~~, LL, ~~KK~~-MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS and TTTTT are hereby incorporated by reference as they ~~exist~~existed on September 1, ~~2004-2005~~. These standards shall apply to both existing and new sources of HAPs.

[OAR Docket #06-857; filed 5-9-06]

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

[OAR Docket #06-858]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Laboratory Accreditation Process

252:300-5-1. [AMENDED]

Subchapter 7. General Operations

252:300-7-3. [AMENDED]

Subchapter 17. Quality Assurance/Quality Control

Part 1. Quality Assurance/Quality Control General Criteria [NEW]

Part 2. Standard Operating Procedures and Methods Manual [NEW]

252:300-17-21. [NEW]

252:300-17-22. [NEW]

252:300-17-23. [NEW]

252:300-17-24. [NEW]

252:300-17-25. [NEW]

Subchapter 19. Classifications

252:300-19-2. [AMENDED]

252:300-19-3. [AMENDED]

Appendix D. Analytes for Petroleum Hydrocarbon Laboratory Category [REVOKED]

Appendix D. Analytes for Petroleum Hydrocarbon Laboratory Category [NEW]

**AUTHORITY:**

Environmental Quality Board 27A O.S. §§ 2-2-101, 2-2-201 and Article IV, Laboratory Services and Certification, §§ 2-4-101 *et seq.*

**DATES:**

**Comment period:**

December 15, 2005 through January 17, 2006  
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**SUPERCEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The proposed change to Subchapter 5 is a reference to the need for compliance with other DEQ rules chapters. In Subchapter 7, the proposed change is from one edition of the federal rules to more current one. The proposed new rules in Subchapter 17 are designed to be consistent with NELAC provisions about standard operating procedures. Subchapter 19 and Appendices proposed changes were made at the request of the Oklahoma Corporation Commission. Classifications were expanded to include the Oklahoma GRO and DRO methodologies. Accordingly, Appendix D was revoked and rewritten to reflect that change.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

**SUBCHAPTER 5. LABORATORY ACCREDITATION PROCESS**

**252:300-5-1. Accreditation exception**

Operational testing analyses for municipal wastewater treatment systems and water supply systems may be submitted to the DEQ by an unaccredited laboratory if, at the time of the analyses, the laboratory was operated by an individual certified by the DEQ as a laboratory operator and the certified laboratory operator approves and signs the analyses report. For further explanation, refer to and comply with the following rules:

(1) 252:606 Oklahoma Pollutant Discharge Elimination System Standards - OPDES, 252:606-11-2;

(2) 252:631 Public Water Supply Operations, 252:631-3-2; and

(3) 252:710 Waterworks and Wastewater Works Operator Certification 252:710-5-53.

**SUBCHAPTER 7. GENERAL OPERATIONS**

**252:300-7-3. Personnel and subcontractors**

(a) **All accredited laboratories.** All accredited laboratories shall have at least one full-time on-site employee who has laboratory experience in his area of analysis or works under the direct supervision of an individual who has laboratory experience.

(b) **Drinking water accredited laboratories.** In addition, personnel of drinking water accredited laboratories shall conform with the requirements established by the EPA for laboratories which analyze drinking water. Refer to the Manual for the Certification of Laboratories Analyzing Drinking Water, ~~4<sup>th</sup> Edition, March, 1997~~ 5<sup>th</sup> Edition, January 2005.

(c) **Water quality accredited laboratories.** A general water quality accredited laboratory shall have an employee or supervisor qualified as follows:

(1) **Commercial laboratory.** At least one employee or supervisor in a commercial laboratory shall have an earned bachelors degree in chemistry or a closely related field from an accredited institution of higher education, plus two years of analytical experience in an environmental laboratory.

(2) **Industrial laboratory, including a branch office or substation of a company's laboratory.** An employee or supervisor of an industrial laboratory, including a branch office or substation of a company's laboratory, must meet the educational requirements for a commercial laboratory unless the employee or supervisor is and has been performing environmental testing for not less than two (2) consecutive years and demonstrates satisfactory participation on performance evaluation samples.

(d) **Subcontractors.** A laboratory may subcontract with another laboratory (subcontractor) for analysis of analytes. Such subcontracting shall be only for those analytes for which the subcontractor is DEQ-accredited.

**SUBCHAPTER 17. QUALITY ASSURANCE/QUALITY CONTROL**

**PART 1. QUALITY ASSURANCE/QUALITY CONTROL GENERAL CRITERIA**

**PART 2. STANDARD OPERATING PROCEDURES AND METHODS MANUAL**

## Permanent Final Adoptions

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### **252:300-17-21. General**

(a) Laboratories must comply with the rules in this Part within two years from the effective date thereof unless a waiver is granted by the DEQ for good cause shown.

(b) The laboratory shall use appropriate methods and procedures for all environmental tests and/or calibrations within its scope. These include sampling, handling, transport, storage and preparation of samples, and, where appropriate, an estimation of the measurement uncertainty as well as statistical techniques for analysis of environmental test and/or calibration data.

(c) The laboratory shall have instructions on the use and operation of all relevant equipment, and on the handling and preparation of samples where the absence of such instructions could jeopardize the results of environmental tests and/or calibrations. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be kept up to date and shall be made readily available to personnel. Deviation from environmental test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the client.

### **252:300-17-22. Standard Operating Procedures (SOPs)**

(a) Laboratories shall maintain Standard Operating Procedures (SOPs) that accurately reflect all phases of current laboratory activities such as assessing data integrity, corrective actions, handling customer complaints, and all test methods.

(b) SOPs may be equipment manuals provided by the manufacturer or internally written documents. Test methods may be copies of published methods as long as any changes or selected options in the methods are documented and included in the methods manual.

(c) Copies of all SOPs shall be accessible to all personnel.

(d) SOPs shall be well organized and shall clearly indicate the effective date of the document, the revision number and the signature(s) of the approving authority.

### **252:300-17-23. Laboratory Method Manual(s)**

(a) The laboratory shall have and maintain an in-house methods manual(s) for each accredited analyte or test method.

(b) This manual may consist of copies of published or referenced test methods or SOPs that have been written by the laboratory. In cases where modifications to the published method have been made by the laboratory or where the referenced test method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described. Each test method shall include or reference the following, where applicable:

- (1) Identification of the test method;
- (2) Applicable matrix or matrices;
- (3) Detection limit;
- (4) Scope and application, including components to be analyzed;
- (5) Summary of the test method;
- (6) Definitions;
- (7) Interferences;

- (8) Safety;
- (9) Equipment and supplies;
- (10) Reagents and standards;
- (11) Sample collection, preservation, shipment and storage;
- (12) Quality control;
- (13) Calibration and standardization;
- (14) Procedure;
- (15) Calculations;
- (16) Method performance;
- (17) Pollution prevention;
- (18) Data assessment and acceptance criteria for quality control measures;
- (19) Corrective actions for out-of-control data;
- (20) Contingencies for handling out-of-control or unacceptable data;
- (21) Waste management;
- (22) References; and
- (23) Any tables, diagrams, flowcharts and validation data.

### **252:300-17-24. Selection of methods**

The laboratory shall use methods for environmental testing and/or calibration, including methods for sampling, which meet the needs of the client and which are appropriate for the environmental tests and/or calibrations it undertakes.

### **252:300-17-25. Sources of methods**

(a) Methods published in international, regional or national standards shall preferably be used. The laboratory shall ensure that it uses the latest valid edition of a standard unless it is not appropriate or possible to do so. When necessary, the standard shall be supplemented with additional details to ensure consistent application.

(b) When the use of specified methods for a sample analysis are mandated or requested, only those methods shall be used.

(c) When the client does not specify the method to be used or where methods are employed that are not required, as in the Performance Based Measurement System approach, the methods shall be fully documented and validated and be available to the client and other recipients of the relevant reports. The laboratory shall select appropriate methods that have been published either in international, regional or national standards, or by reputable technical organizations, or in relevant scientific texts or journals, or as specified by the manufacturer of the equipment. Laboratory-developed methods or methods adopted by the laboratory may also be used if they are appropriate for the intended use and if they are validated. The client shall be informed as to the method chosen.

(d) The laboratory shall inform the client when the method proposed by the client is considered to be inappropriate or out of date.

## SUBCHAPTER 19. CLASSIFICATIONS

**252:300-19-2. Accreditation requirements**

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

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

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

(2) **Water quality laboratories.** Water quality laboratories shall analyze water pollution (WP) PT samples. ~~Petroleum~~ For each method used, petroleum hydrocarbon laboratories shall analyze BTEX and TPH in soil and or water matrices.

**252:300-19-3. Methods**

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

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

(1) "Test Methods for Evaluating Solid Waste, November 1986, Laboratory Manual Physical/Chemical Methods," SW-846, 3rd edition, Volume 1A through 1C, as

amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996) and IIIA (April 1998), hereinafter referred to as SW-846.

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

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

(4) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms," 5<sup>th</sup> Edition, EPA 821-R-02-012 (October 2002).

(5) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms," 4<sup>th</sup> Edition, EPA 821-R-02-013 (October 2002).

(6) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms," 3<sup>rd</sup> Edition, EPA 821-R-02-014 (October 2002).

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

(8) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC<sub>6</sub> to nC<sub>35</sub>).

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

(10) Oklahoma GRO ~~8120/8015-8020/8015~~(Modified).

(11) Oklahoma DRO 8000/8100 (Modified).

## Permanent Final Adoptions

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### APPENDIX D. ANALYTES FOR PETROLEUM HYDROCARBON LABORATORY CATEGORY [REVOKED]

### APPENDIX D. ANALYTES FOR PETROLEUM HYDROCARBON LABORATORY CATEGORY [NEW]

Analytes considered for petroleum hydrocarbon laboratory accreditation include the following:

- (A) Total Petroleum Hydrocarbons
  - (1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC<sub>6</sub> to nC<sub>35</sub>)
  - (2) Oklahoma GRO 8020/8015 (Modified)
  - (3) Oklahoma DRO 8000/8100 (Modified)
- (B) BTEX
  - (1) EPA 8021B Aromatic and Halogenated Volatiles by Gas Chromatography; or
  - (2) Oklahoma GRO 8020/8015 (Modified)
- (C) Flash Point
  - (1) Appendix B, Category 7, Hazardous Waste Characteristics
- (D) MTBE
  - (1) Gas Chromatography/mass spectrometry (624/8260)

*[OAR Docket #06-858; filed 5-9-06]*

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 305. LABORATORY SERVICES**

*[OAR Docket #06-859]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Appendix A. Samples Submitted by Governmental Entities [REVOKED]  
Appendix A. Samples Submitted by Governmental Entities [NEW]  
Appendix B. Samples Submitted by Private Citizens [REVOKED]  
Appendix B. Samples Submitted by Private Citizens [NEW]

**AUTHORITY:**

Environmental Quality Board 27A O.S. §§ 2-2-101, 2-2-201 and Article IV, Laboratory Services and Certification, §§ 2-4-101 *et seq.*

**DATES:**

**Comment period:**

December 15, 2005 through January 17, 2006  
February 24, 2006

**Public hearing:**

January 19, 2006  
February 24, 2006

**Adoption:**

February 24, 2006

**Submitted to Governor:**

March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**

April 28, 2006

**Effective:**

June 15, 2006

**SUPERCEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The proposed rule amendments are necessitated by increased cost for providing analytical services to public water supplies, other governmental entities and the programs of the DEQ. This proposal includes the cost for replacement of equipment. Proposed fees are calculated on current costs of analyses. Some fees for individual analytes were lowered, but most were raised. Obsolete analytes were deleted; new analytes were added. Methods were updated. The overall impact is a 33% increase in fees.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JUNE 15, 2006:**

# Permanent Final Adoptions

## APPENDIX A. SAMPLES SUBMITTED BY GOVERNMENTAL ENTITIES [REVOKED]

## APPENDIX A. SAMPLES SUBMITTED BY GOVERNMENTAL ENTITIES [NEW]

METHOD	ANALYTE	MATRIX	FEE
<b>GAS CHROMATOGRAPHY/MESS SPECTRA</b>			
EPA 524.2	VOLATILE ORGANICS IN DRINKING WATER-VOC	LIQUID	\$150.00
EPA 524.2	VOLATILE ORGANICS IN DRINKING WATER-THM	LIQUID	\$120.00
EPA 8260M	VOLATILE ORGANICS	SOLID	\$300.00
EPA 8260M	VOLATILE ORGANICS	LIQUID	\$300.00
EPA 8270M	SEMIVOLATILE ORGANICS	SOLID	\$450.00
EPA 8270M	SEMIVOLATILE ORGANICS	LIQUID	\$450.00
<b>GENERAL CHEMISTRY</b>			
SM 2320	ALKALINITY, BICARBONATE	LIQUID	\$15.00
SM 2320	ALKALINITY, CARBONATE	LIQUID	\$15.00
EPA 310.1	ALKALINITY, TOTAL	LIQUID	\$15.00
EPA 300.0	ANIONS BY IC (SO4; CL; NO3; NO2; BR; F; ORTHO-P	LIQUID	\$84.00
EPA 300.1	BROMATE	LIQUID	\$60.00
EPA 300.1	BROMIDE	LIQUID	\$30.00
SM 5310C	CARBON, TOTAL DISSOLVED	LIQUID	\$45.00
SM 5910B	CARBON, TOTAL DISSOLVED W/UV-254 (SUVA)	LIQUID	\$65.00
SM 5310C	CARBON, TOTAL ORGANIC	LIQUID	\$40.00
SM10200H2	CHLOROPHYLL A / PHEOPHYTIN	EXTRACT	\$8.00
SM10200H2	CHLOROPHYLL A / PHEOPHYTIN, (FILTER & EXTRACTION ONLY)	LIQUID	\$22.00
	CHLOROPHYLL A IN PERIPHYTIN (ETHANOL)	EXTRACT	\$12.00
EPA 300.1	CHLORATE	LIQUID	\$60.00
EPA 325.2	CHLORIDE	LIQUID	\$20.00
EPA 325.2M	CHLORIDE	SOLID	\$28.00
SM 4500 Cl	CHLORINE, TOTAL	LIQUID	\$8.00
SM 4500 Cl	CHLORINE, TOTAL RESIDUAL	LIQUID	\$8.00
EPA 300.1	CHLORITE	LIQUID	\$80.00
EPA 110.2	COLOR, APPARENT	LIQUID	\$10.00
EPA 110.2	COLOR, TRUE	LIQUID	\$13.00
EPA 335.4	CYANIDE	LIQUID	\$60.00
EPA 335.2M	CYANIDE	SOLID	\$60.00
SM 5210B	DEMAND, BIOCHEMICAL OXYGEN-5 DAY (BOD-5)	LIQUID	\$40.00
SM 5210B	DEMAND, BIOCHEMICAL OXYGEN-20 DAY (BOD-20)	LIQUID	\$57.00
EPA 405.1	DEMAND, CARBONACEOUS BIOCHEMICAL OXYGEN-5 DAY (BOD-5)	LIQUID	\$40.00
EPA 405.1	DEMAND, CARBONACEOUS BIOCHEMICAL OXYGEN-20 DAY (BOD-20)	LIQUID	\$57.00
EPA 410.2	DEMAND, OXYGEN CHEMICAL	LIQUID	\$31.00
EPA 410.2M	DEMAND, OXYGEN CHEMICAL	SOLID	\$36.00
	FILTRATION CENTRIFUGATION (SAMPLE PREPARATION)	LIQUID	\$8.00
EPA 300.1	FLUORIDE	LIQUID	\$23.00
EPA 215.2	HARDNESS, CALCIUM	LIQUID	\$15.00
EPA 130.1	HARDNESS, TOTAL	LIQUID	\$15.00
EPA 350.1	NITROGEN, AMMONIA	LIQUID	\$23.00
EPA 350.1	NITROGEN, AMMONIA	SOLID	\$25.00
EPA 351.2	NITROGEN, KJELDAHL	LIQUID	\$25.00
EPA 351.3	NITROGEN, KJELDAHL	SOLID	\$30.00
EPA 353.2	NITROGEN, NITRATE	LIQUID	\$23.00
EPA 353.2	NITROGEN, NITRATE/NITRITE	LIQUID	\$23.00

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EPA 353.2	NITROGEN, NITRITE	LIQUID	\$23.00
CALCULATED	NITROGEN, ORGANIC	LIQUID	\$5.00
CALCULATED	NITROGEN, TOTAL	LIQUID	\$5.00
EPA 1664	OIL & GREASE	LIQUID	\$60.00
EPA 1664M	OIL & GREASE	SOLID	\$75.00
SM4500-0	OXYGEN, DISSOLVED	LIQUID	\$8.00
EPA 150.1	pH	LIQUID	\$10.00
EPA 9045	pH	SOLID	\$10.00
EPA 365.1	PHOSPHORUS, ORTHO	LIQUID	\$15.00
EPA 365.3	PHOSPHORUS, TOTAL	LIQUID	\$29.00
MEHLICH 3	PHOSPHORUS, TOTAL EXTRACTABLE	SOLID	\$43.00
EPA 160.5	SOLIDS, SETTLEABLE	LIQUID	\$12.00
EPA 160.2	SOLIDS, TOTAL SUSPENDED	LIQUID	\$29.00
EPA 160.3	SOLIDS, TOTAL	LIQUID	\$24.00
EPA 160.1	SOLIDS, TOTAL DISSOLVED	LIQUID	\$29.00
EPA 160.4	SOLIDS, TOTAL VOLATILE	LIQUID	\$30.00
EPA 160.4	SOLIDS, VOLATILE SUSPENDED	LIQUID	\$30.00
EPA 120.1	SPECIFIC CONDUCTANCE	LIQUID	\$10.00
EPA 375.4	SULFATE	LIQUID	\$15.00
EPA 180.1	TURBIDITY	LIQUID	\$15.00
<b>METALS</b>			
EPA 200.7/6010	ALUMINUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	ALUMINUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	ALUMINUM, TOTAL BY ICP	SOLID	\$20.00
EPA 200.7/6010	ANTIMONY, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	ANTIMONY, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	ANTIMONY, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	ANTIMONY, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	ARSENIC, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	ARSENIC, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 200.7/6010	ARSENIC, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	ARSENIC, TOTAL BY XRF	SOLID	\$11.00
CEM 5BI-8/6020	ARSENIC, TOTAL BY ICP-MS	FISH	\$27.00
EPA 200.7/6010	BARIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	BARIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	BARIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	BARIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	BERYLLIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	BERYLLIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	BERYLLIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 200.7/6010	BORON, TOTAL	LIQUID	\$20.00
EPA 6010	BORON, TOTAL	SOLID	\$20.00
EPA 200.7/6010	CADMIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	CADMIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	CADMIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	CADMIUM, TOTAL BY XRF	SOLID	\$11.00
CEM 5BI-8/6020	CADMIUM, TOTAL BY ICP-MS	FISH	\$27.00
EPA 200.7/6010	CALCIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 6010	CALCIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	CALCIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	CHROMIUM, TOTAL BY ICP	LIQUID	\$20.00

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EPA 200.8	CHROMIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	CHROMIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	CHROMIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	COBALT, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	COBALT, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	COBALT, TOTAL BY ICP	SOLID	\$19.00
EPA 6200	COBALT, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	COPPER, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	COPPER, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	COPPER, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	COPPER, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	IRON, TOTAL BY ICP	LIQUID	\$20.00
EPA 6010	IRON, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	IRON, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	LEAD, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	LEAD, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	LEAD, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	LEAD, TOTAL BY XRF	SOLID	\$11.00
CEM 581-8/6020	LEAD, TOTAL BY ICP-MS	FISH	\$27.00
EPA 200.7/6010	MAGNESIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 6010	MAGNESIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 200.7/6010	MANGANESE, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	MANGANESE, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	MANGANESE, TOAL BY ICP	SOLID	\$20.00
EPA 6200	MANGANESE, TOTAL BY XRF	SOLID	\$11.00
EPA 245.1/7470	MERCURY, TOTAL	LIQUID	\$65.00
EPA 7470/7471	MERCURY, TOTAL	SOLID	\$79.00
EPA 6200	MERCURY BY XRF	SOLID	\$11.00
EPA 245.6	MERCURY, TOTAL	FISH	\$79.00
EPA 7473	MERCURY, TOTAL (DIRECT ANALYSIS)	FISH	\$40.00
EPA 200.7/6010	MOLYBDENUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	MOLYBDENUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	MOLYBDENUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	MOLYDNENUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	NICKEL, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	NICKEL, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	NICKEL, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	NICKEL, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	POTASSIUM, TOAL BY ICP	LIQUID	\$20.00
EPA 6010	POTASSIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	POTASSIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	SELENIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	SELENIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	SELENIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	SELENIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	SILVER, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	SILVER, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	SILVER, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	SILVER, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	SODIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 6010	SODIUM, TOTAL BY ICP	SOLID	\$20.00

EPA 200.7/6010	THALLIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	THALLIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	THALLIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	THALLIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7	TIN, TOTAL BY ICP	LIQUID	\$20.00
EPA 6010	TIN, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	TIN, TOTAL BY XRF	SOLID	\$11.00
EPA 1311	TOXIC CHARACTERISTIC LEACHING PROCEDURE (TCLP) (METALS ONLY)		\$421.00
EPA 200.8	URANIUM, TOTAL BY ICP-MS	LIQUID	\$25.00
EPA 6200	URANIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	VANADIUM, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	VANADIUM, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	VANADIUM, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	VANADIUM, TOTAL BY XRF	SOLID	\$11.00
EPA 200.7/6010	ZINC, TOTAL BY ICP	LIQUID	\$20.00
EPA 200.8	ZINC, TOTAL BY ICP-MS	LIQUID	\$20.00
EPA 6010	ZINC, TOTAL BY ICP	SOLID	\$20.00
EPA 6200	ZINC, TOTAL BY XRF	SOLID	\$11.00
CEM 5BI-8/6020	ZINC, TOTAL BY ICP-MS	FISH	\$27.00
CLP 05.3	SOLIDS, PERCENT	SOLID	\$20.00
<b>MICROBIOLOGY</b>			
SM 9223	COLIFORM, TOTAL & E. COLI, MOST PROBABLE NUMBER (MPN)/QUANTI-TRAY	LIQUID	\$20.00
SM 9223	COLIFORM, TOTAL AND E. COLI, PRESENCE/ABSENCE (PA)	LIQUID	\$20.00
SM 9222B	TOTAL & FECAL COLIFORMS (MF) (WECHERCHIA COLI BROTH CONFIRMATION)	LIQUID	\$24.00
SM 9260	ENTERIC PATHOGEN (SALMONELLA, SHIGELLA, ETC.) (QUALITATIVE)	LIQUID	\$75.00
SM 9230C	FECAL STREPTOCOCCI-MF	LIQUID	\$20.00
SM 9222D	FECAL COLIFORM-MF	LIQUID	\$20.00
EPA 1600	ENTEROCOCCI SCREEN (BY SPECIAL REQUEST)	LIQUID	\$26.00
EPA 1600	ENTEROCOCCI CONFIRM (BY SPECIAL REQUEST)	LIQUID	\$65.00
ASTM D6503	ENTEROCOCCI SCREEN	LIQUID	\$26.00
HACH	IRON AND SULFUR BACTRIA (P/A)	LIQUID	\$35.00
SM 9215B	STANDARD PLATE COUNT (HETEROTROHIC PLATE COUNT)	LIQUID	\$30.00
SWTR	SIM PLATE COUNT (HPC)	LIQUID	\$26.00
SM 8050B	MICROTOX	LIQUID	\$100.00
<b>ORGANIC CHEMISTRY</b>			
EPA 504.1	ETHYLENE DIBROMIDE (EDB) IN DRINKING WATER	LIQUID	\$125.00
EPA 552.1	HALOACETIC ACIDS/DALAPON IN WATER	LIQUID	\$220.00
EPA 608	PCB IN WASTEWATER	LIQUID	\$135.00
EPA 8082	PCB IN SEDIMENT	SOLID	\$175.00
EPA 507	NITROGEN-PHOSPHOROUS PESTICIDES IN DRINKING WATER	LIQUID	\$300.00
EPA 614	NITROGEN-PHOSPHOROUS PESTICIDES IN WASTEWATERS	LIQUID	\$300.00
EPA 8141	NITROGEN-PHOSPHORUS PESTICIDES IN SOLIDS & WASTES	SOLIDS	\$300.00
EPA 508	CHLORINATED PESTICIDES IN DRINKING WATER	LIQUID	\$200.00
EPA 608	ORGANOCHLORINATED PESTICIDES IN WASTEWATER	LIQUID	\$150.00
EPA 8081	CHLORINATED PESTICIDES IN SEDIMENT	SOLID	\$150.00
EPA 515.3	HERBICIDES IN DRINKING WATER & WASTEWATER	LIQUID	\$300.00
EPA 8151	HERBICIDES IN WATER, WASTE	LIQ/SED	\$350.00
EPA 551.1	CHLORAL HYDRATE IN DRINKING WATER	LIQUID	\$125.00
SEL SOP 125	PERCENT MOISTURE IN SEDIMENT	SOLID	\$20.00
FDA 303E1C1	FISH TISSUE SAMPLE (FILET) PREPARATION ONLY	FISH	\$290.00
FDA 303E1C1	FISH TISSUE SAMPLE (WHOLE EVISCERATED) PREPARATION ONLY	FISH	\$310.00

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FDA 303E1C1	FISH TISSUE SAMPLE (WHOLE UNEVICERATED) PREPARATION ONLY	FISH	\$335.00
DEQ	PESTICIDE SCAN IN FISH	FISH	\$150.00
EPA 1020	FLASH POINT	LIQUID	\$25.00
TX 1005 M	TOTAL PETROLEUM HYDROCARBONS (TPH)	LIQUID SOLID	\$70.00
OK 8020/8015	GASOLINE RANGE ORGANIC CONSTITUENTS INCLUDING BTEX (OKLA-GRO)	LIQUID	\$70.00
DEQ	POLYCHLORINATE BIPHENYL (PCB) IN OIL	LIQUID	\$140.00
<b>RADIOCHEMISTRY</b>			
EPA 900.0	GROSS ALPHA/BETA		\$60.00
DEQ1	GROSS ALPHA/BETA IN SWIPE		\$50.00
EPA 903.0	RADIUM 226	LIQUID	\$65.00
EPA 904.0	RADIUM 228	LIQUID	\$100.00
EPA 200.8	URANIUM	LIQUID	\$25.00
EPA 520/5-87-005	RADON AIR	AIR	\$25.00

**APPENDIX B. SAMPLES SUBMITTED BY PRIVATE CITIZENS [REVOKED]**

**APPENDIX B. SAMPLES SUBMITTED BY PRIVATE CITIZENS [NEW]**

<b>PRIVATE CITIZEN SAMPLES</b>			
SM 9223	COLIFORM, TOTAL AND E COLI, PRESENCE/ABSENCE (PA)	LIQUID	\$20.00
	ROUTINE CHEMICAL (INCLUDES ALKALINITY, CHLORIDE, NITRATE/NITRITE, SPECIFIC CONDUCTANCE, pH, SULFATE, TOTAL DISSOLVED SOLIDS, TOTAL HARDNESS)	LIQUID	\$137.00
EPA 200.8	LEAD	LIQUID	\$20.00
EPA 300.1	FLUORIDE	LIQUID	\$23.00
EPA 353.2	NITRATE/NITRITE	LIQUID	\$23.00
EPA 325.2	CHLORIDE	LIQUID	\$20.00
EPA 507	NITROGEN-PHOSPHORUS PESTICIDE IN DRINKING WATER	LIQUID	\$300.00
EPA 508	CHLORINATED PESTICIDE IN DRINKING WATER	LIQUID	\$200.00
EPA 520/5-87-005	RADON CANISTERS	AIR	\$25.00

[OAR Docket #06-859; filed 5-9-06]

# Permanent Final Adoptions

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

[OAR Docket #06-860]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Appendix A. Fee Schedule for Radiation Management [REVOKED]  
Appendix A. Application and Annual Fee Schedule for Radiation  
Machines [NEW]

**AUTHORITY:**

Environmental Quality Board, 27A O.S. §§ 2-2-101, 2-2-201, and 2-9-104

**DATES:**

**Comment Period:**

March 1, 2005 through April 13, 2005 and February 24, 2006

**Public Hearing:**

April 13, 2005 and February 24, 2006

**Adoption:**

February 24, 2006

**Submitted to Governor:**

March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on  
April 28, 2006

**Final adoption:**

April 28, 2006

**Effective:**

June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The proposed rulemaking will change the fee schedule for radiation machines. The proposed fee establishes seven groups of machines with differing annual fees on a graduated scale based on the risk of radiation exposure. Group A consists of cyclotrons used for the production of radionuclides. Groups B-1 and B-2 are for accelerators of differing energy levels used in therapy. Groups C-1 and C-2 are for electron beam machines and other linear accelerators used in research and industry. Groups D-1 and D-2 cover open beam and cabinet x-ray machines. Machines used in therapeutic medical applications are being added to the fee schedule, while very low-energy x-ray machines are dropped from the fee schedule. Under the proposed schedule fees for one machine range from \$200.00 for a Group D-2 machine to \$2000.00 for a Group A machine, and \$50.00 to \$400.00 for each additional machine. The maximum annual fee ranges from \$750.00 for Group D machines to \$3,000.00 per year for Group A machines.

**CONTACT PERSON:**

Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK. or at P. O. Box 1677, 73101-1677, phone 405-702-5100, FAX 405-702-5101, e-mail mike.broderick@deq.state.ok.us.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JUNE 15, 2006:**

APPENDIX A. FEE SCHEDULE FOR RADIATION MANAGEMENT [REVOKED]

APPENDIX A. APPLICATION AND ANNUAL FEE SCHEDULE FOR RADIATION MACHINES [NEW]

DESCRIPTION	FIRST MACHINE	ADDITIONAL MACHINES
*Group A. Cyclotrons used for the production of radionuclides - OAC 252:410-17	\$2000.00	\$400.00
*Group B-1. Therapeutic accelerators with beam energies greater than 1 MeV - OAC 252:410-11, Part 5	\$1000.00	\$200.00
*Group B-2. Other therapy machines with beam energies less than 1 MeV - OAC 252:410-11, Part 3; and simulators used for therapy treatment planning - OAC 252:410-11-75	\$300.00	\$75.00
*Group C-1. Linear accelerators, research or industrial use, except industrial electron beam systems - OAC 252:410-17	\$1000.00	\$200.00
*Group C-2. Industrial electron beam systems - OAC 252:410-17-8	\$500.00	\$100.00
*Group D-1. Open beam x-ray machines - OAC 252:410-13, Part 5; and x-ray machines used for industrial radiography - OAC 252:410-15	\$300.00	\$75.00
*Group D-2. Cabinet x-ray machines greater than 10 kVp and 1 mA - OAC 252:410-13	\$200.00	\$50.00

\*Maximum Fee for Group A - \$3000.00  
 Maximum Fee for Group B - \$2000.00  
 Maximum Fee for Group C - \$1200.00  
 Maximum Fee for Group D - \$ 750.00

[OAR Docket #06-860; filed 5-9-06]

# Permanent Final Adoptions

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #06-861]

### RULEMAKING ACTION

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
252:515-1-4. [AMENDED]  
Subchapter 3. Permit Provisions and Applications  
Part 3. Permit Applications and Modifications  
252:515-3-35. [AMENDED]  
252:515-3-40. [AMENDED]  
Subchapter 13. Leachate Collection and Management  
Part 1. General Provisions  
252:515-13-1. [AMENDED]  
Subchapter 17. Stormwater Management  
252:515-17-3. [AMENDED]  
Subchapter 19. Operational Requirements  
Part 5. Cover and Soil Borrow Requirements for Land Disposal Facilities  
252:515-19-51. [AMENDED]  
Part 7. Additional Operational Requirements for MSWLFs  
252:515-19-73. [AMENDED]  
Subchapter 23. Regulated Medical Waste Management  
Part 1. General Provisions  
252:515-23-1. [AMENDED]  
Subchapter 25. Closure and Post-Closure Care  
Part 5. Post-Closure  
252:515-25-54. [AMENDED]  
Subchapter 27. Cost Estimates and Financial Assurance  
Part 1. General Provisions  
252:515-27-4. [AMENDED]  
Part 7. Financial Assurance Mechanisms  
252:515-27-81.1. [NEW]  
Subchapter 35. Oklahoma Recycling Initiative  
252:515-35-1. [AMENDED]  
Appendix B. Uppermost Aquifer Protective Values [REVOKED]  
Appendix B. Uppermost Aquifer Protective Values [NEW]

### SUMMARY:

The proposed amendments to 252:515 are minor. They reflect language clarifications and corrections of legal citations and typographical errors. References to April 1 of each year was changed to April 9 of each year throughout Subchapter 27. One new proposed rule was added to clarify that other facilities, such as NIHW and C&D landfills, may take advantage of the corporate financial test to demonstrate financial assurance just as MSWLFs can. The arsenic value in Appendix B was changed from 0.05 to 0.01.

### AUTHORITY:

Environmental Quality Board and Solid Waste Management Advisory Council powers and duties: 27A O.S. §§ 2-2-101, 2-2-201, and 2-10-101 *et seq.*

### DATES:

#### Comment period:

October 17 through November 17, 2005 and February 24, 2006

#### Public hearing:

November 17, 2005, Solid Waste Management Advisory Council and February 24, 2006, Environmental Quality Board

#### Adoption:

February 24, 2006

#### Submitted to Governor:

March 3, 2006

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March 3, 2006

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#### Gubernatorial approval:

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#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

#### Final adoption:

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#### Effective:

June 15, 2006

#### SUPERSEDED EMERGENCY ACTIONS:

None

#### INCORPORATIONS BY REFERENCE:

None

#### ANALYSIS:

The proposed amendments to 252:515 are minor. They reflect language clarifications and corrections of legal citations and typographical errors. References to April 1 of each year was changed to April 9 of each year throughout Subchapter 27. One new proposed rule was added to clarify that other facilities, such as NIHW and C&D landfills, may take advantage of the corporate financial test to demonstrate financial assurance just as MSWLFs can. The arsenic value in Appendix B was changed from 0.05 to 0.01.

#### CONTACT PERSON:

Dee Ready, Land Protection Division, Solid Waste Management Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at dee.ready@deq.state.ok.us, phone 405-702-5100, or fax 405-702-5101

**PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 252:515-1-4. Test methods and map scales

(a) **Test methods.** All testing required for compliance with this Chapter shall utilize industry-standard methods and procedures, unless alternatives are approved in advance by the DEQ.

(1) **Engineering test methods.** All engineering tests shall be in accordance with the latest published ASTM test procedures.

(2) **Water sampling/analyses.** Water sampling and analyses methods shall be in accordance with EPA approved procedures.

(b) **Map scales.** Map scale requirements of Subchapter 3, Parts 5 and 7 do not apply when the DEQ has approved the use of alternative map scales or published maps.

### SUBCHAPTER 3. PERMIT PROVISIONS AND APPLICATIONS

#### PART 3. PERMIT APPLICATIONS AND MODIFICATIONS

#### 252:515-3-35. Engineer of record

(a) **Professional engineer seal required.** Permit—Maps, drawings, surveys, calculations, information and data submitted in support of permit applications for new solid waste disposal facilities, or for Tier II or Tier III or modifications of existing permits, must be prepared and stamped or sealed by a professional engineer licensed in the State of Oklahoma if the facility serves a population equivalent of 5,000 persons or more.

(b) **Seal placement.** The engineer's stamp or seal shall be placed on the application page. Each map and drawing included in the application shall be stamped or sealed in accordance with the requirements of the State Board of Registration for Professional Engineers and Land Surveyors.

(c) **Failure to seal.** Documents that are not stamped or sealed in accordance with this Section will be returned to the applicant.

**252:515-3-40. Permits for commercial regulated medical waste processing facilities**

(a) **Certificate of Need.** Prior to submitting a permit application for a new commercial regulated medical waste processing facility, the applicant shall obtain a Certificate of Need in accordance with 27A O.S. § 2-10-308.

(1) **Submit to DEQ.** A request for a Certificate of Need shall be submitted to the DEQ and contain, at a minimum, the information specified by 27A O.S. § 2-10-308(B).

(2) **DEQ review.** The DEQ will review and thoroughly investigate the information submitted within 30 days of receipt of the request. The DEQ may request additional information as necessary.

(3) **Present to EQB.** When the DEQ's review is complete, the Certificate of Need request and results of the DEQ's investigation will be presented to the Environmental Quality Board (EQB) at its next regularly scheduled meeting.

(4) **EQB review.** The EQB will consider the request and information presented by the DEQ and determine whether the conditions of 27A O.S. § 2-10-308(D) have been met.

(5) **EQB action.** The EQB may remand the request to the DEQ for additional information or investigation.

(6) **EQB denial.** The request shall be deemed denied if the EQB fails to approve the request within one year of original receipt by the EQB.

(b) **General requirements.** In addition to the requirements of OAC 252:515-3-36, permit applications for commercial regulated medical waste processing facilities shall identify how compliance with the requirements of Parts 3 and 5 of OAC 252:515-23 (relating to operational requirements for commercial regulated medical waste processing and incinerating facilities) will be achieved and maintained.

**SUBCHAPTER 13. LEACHATE COLLECTION AND MANAGEMENT**

**PART 1. GENERAL PROVISIONS**

**252:515-13-1. Applicability, with exceptions**

(a) **Existing facilities.** Existing facilities with a leachate collection system are subject to 252:515-13-2, 13-34 and Part 5 of this Subchapter.

(~~a~~) **New facilities and expansions.** Except as provided in (~~b~~) and (~~c~~) and (d) of this Section, this Subchapter applies

to all new land disposal facilities and expansions of waste disposal boundaries of existing land disposal facilities constructed after the effective date of this Chapter.

(~~b~~) **All disposal facilities.** All solid waste disposal facilities shall manage leachate in accordance with the requirements of Part 5 of this Subchapter.

(~~e~~) **Exceptions.** C&D landfills and yard waste composting facilities are not subject to the requirements of this Subchapter, except for (~~b~~) (~~c~~) of this Section.

**SUBCHAPTER 17. STORMWATER MANAGEMENT**

**252:515-17-3. Discharges**

(a) **All disposal facilities.** All solid waste disposal facilities shall be operated to:

(1) prevent the discharge of contaminated stormwater unless the proper permit is obtained from the DEQ's Water Quality Division;

(2) prevent the discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the federal Clean Water Act, including, but not limited to, the Oklahoma Pollutant Discharge Elimination System (OPDES) requirements;

(3) prevent the discharge of a non-point source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved in accordance with the federal Clean Water Act; and

(4) comply with all requirements of their OPDES permit, if applicable. A copy of the OPDES permit shall be maintained in the operating record.

(b) **Land disposal facilities.** If required by OAC ~~252:605~~ ("Discharges—OPDES") ~~252:606~~ (Oklahoma Pollutant Discharge Elimination System Standards - OPDES), active land disposal facilities shall have:

(1) a Stormwater Pollution Prevention Plan (SWPPP) and a Sector L General Permit for Stormwater Discharges. A copy of the SWPPP and Sector L permit shall be maintained in the operating record; and

(2) an OPDES stormwater permit for construction sites for any on- or off-site soil borrow areas of ~~five acres~~ one acre or more.

**SUBCHAPTER 19. OPERATIONAL REQUIREMENTS**

**PART 5. COVER AND SOIL BORROW REQUIREMENTS FOR LAND DISPOSAL FACILITIES**

# Permanent Final Adoptions

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## 252:515-19-51. ~~Protective~~ Daily cover

- (a) ~~Protective~~ Daily cover required. Solid waste disposed at land disposal facilities shall be covered with at least six inches of compacted earthen material.
- (b) **Waste free.** The earthen material shall be free of garbage, trash or other unsuitable material.
- (c) **Minimum frequency.**
- (1) **C&D landfills.** ~~Protective~~ Daily cover at C&D landfills shall be applied a minimum of once every seven days. More frequent application may be required for adequate control of disease vectors, fires, odors, blowing litter, or scavenging.
  - (2) **NHIW landfills.** ~~Protective~~ Daily cover at NHIW landfills shall be applied in accordance with the permit for the facility. More frequent application than that specified by the permit may be required for adequate control of disease vectors, fires, odors, blowing litter, or scavenging.
  - (3) **MSWLFs and other land disposal facilities.** ~~Protective~~ Daily cover at MSWLFs and other land disposal facilities shall be applied a minimum of once per day at the end of each operating day. More frequent application may be required for adequate control of disease vectors, fires, odors, blowing litter, or scavenging.
- (d) **Alternative ~~protective~~ daily cover.** The DEQ may approve the use of an alternative ~~protective~~ daily cover upon a demonstration the alternative is capable of controlling disease vectors, fires, odors, and blowing litter without presenting a threat to human health or the environment.

## PART 7. ADDITIONAL OPERATIONAL REQUIREMENTS FORMSWLFS

## 252:515-19-73. Municipal sewage

~~Treated municipal~~ Municipal sewage sludge treated to Class B requirements, as described in 40 CFR 503.32(b), may be disposed at a MSWLF if the sludge passes the PFLT.

## SUBCHAPTER 23. REGULATED MEDICAL WASTE MANAGEMENT

### PART 1. GENERAL PROVISIONS

## 252:515-23-1. Applicability and exclusions

- (a) **Federal requirements.** Persons or facilities involved in the handling, storage, packaging, labeling, and/or transportation of regulated medical waste may be subject to requirements of the federal Department of Transportation (49 CFR Part 173), the federal Occupational Safety and Health Administration (29 CFR 1910.1030), or other federal or state agencies.
- (b) **Commercial processing facilities.** Commercial regulated medical waste processing facilities are subject to the requirements of Parts 1 and 3 of this Subchapter as well as Part 3 of OAC 252:515-19.

(c) **Commercial incinerators.** Commercial regulated medical waste incinerators are subject to the requirements of (b) of this Section and Part 5 of this Subchapter.

(d) **Shared services facilities.** Shared services facilities shall meet the standards of OAC 252:515-23-32(b), 33, 34, and 35, ~~and 36,~~

but are not required to obtain DEQ approval.

## (e) Exclusions.

(1) **General.** The following are not subject to the requirements of this Subchapter if they do not contain any regulated medical waste:

(A) wastes generated by the processing or caring for animals, except for untreated sharps and those wastes identified in subparagraph (F) of the definition of "regulated medical waste";

(B) regulated medical wastes treated in accordance with OAC 252:515-23-4;

(C) biological products distributed for any purpose other than treatment and disposal;

(D) diagnostic specimens shipped to a qualified diagnostic laboratory;

(E) laundry or medical equipment conforming to 29 CFR 1910.1030;

(F) corpses, remains, and/or anatomical parts intended for ceremonial interment or cremation.

(2) **Hazardous waste.** Hazardous waste is not subject to the requirements of this Subchapter, but shall be subject to the requirements of OAC 252:205.

(3) **Household waste.** Household wastes are not subject to the requirements of this Subchapter even if they contain regulated medical wastes generated in the household from treatment of a resident of the household.

## SUBCHAPTER 25. CLOSURE AND POST-CLOSURE CARE

### PART 5. POST-CLOSURE

## 252:515-25-54. Post-closure operational requirements

(a) **All disposal facilities.** All disposal facilities in post-closure monitoring shall perform the following.

(1) **Security and access control.** Fences and locked gates shall be maintained and signs shall be posted on the outer perimeter to provide notice that the site is a closed solid waste disposal facility.

(2) **Annual post-closure report.** No later than April 1st of each year after the DEQ's approval of the certification of final closure, a post-closure maintenance and monitoring report shall be submitted to the DEQ until the post-closure period ends. This report shall document the maintenance performed and summarize all monitoring data for the previous year.

(b) **Land disposal facilities.** Land disposal facilities in post-closure monitoring shall also perform the following.

(1) **Monitoring.** The integrity of the groundwater and/or explosive gas monitoring systems shall be maintained.

(A) Groundwater monitoring shall be performed at least semi-annually, unless reduced in accordance with OAC 252:515-9-73(c).

(B) Explosive gas monitoring, if required during the active life, shall be performed at least semi-annually.

(2) **Leachate collection, treatment and disposal.**

(A) The leachate collection system shall be maintained and operated to ensure leachate is collected, treated and/or disposed in accordance with Subchapter 13 of this Chapter.

(B) The leachate collection systems shall be equipped with a system for automatic and continuous removal of leachate not requiring intervention by the owner/operator.

(C) Untreated leachate shall not be stored on-site unless the permit provides a specified method and capacity.

(3) **Final cover.** The integrity and effectiveness of the final cover shall be maintained in compliance with OAC 252:515-19-53, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, ponding of water, or other events, and prevent run-on and run-off from eroding or otherwise damaging the final cover.

**SUBCHAPTER 27. COST ESTIMATES AND FINANCIAL ASSURANCE**

**PART 1. GENERAL PROVISIONS**

**252:515-27-4. Updating unit costs**

(a) **Unit costs.** ~~Provided they remain in effect, no later than April 1, 2005, and at least every five years thereafter, the DEQ shall update the unit costs and worksheets in Appendices H and I shall be updated no later than April 9, 2005, and at least every five years thereafter.~~

(b) **Annual updates and adjustments.** All references to and deadlines of "April 1 of each year" in this subchapter shall be postponed to April 9 of each year. Refer to 252:515-27-8(c) and 27-34(a).

**PART 7. FINANCIAL ASSURANCE MECHANISMS**

**252:515-27-81.1. Corporate financial test for other facilities**

A corporate owner/operator of other solid waste facilities, such as NHIW and C&D facilities, may use the corporate financial test to demonstrate financial assurance in the same manner as a MSWLF in accordance with 252:515-27-81.

**SUBCHAPTER 35. OKLAHOMA RECYCLING INITIATIVE**

**252:515-35-1. Applicability**

This Subchapter applies to governmental entities located in the state of Oklahoma desiring to ~~see~~ seek reimbursement under the Oklahoma Recycling Initiative.

## Permanent Final Adoptions

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### APPENDIX B. UPPERMOST AQUIFER PROTECTIVE VALUES [REVOKED]

### APPENDIX B. UPPERMOST AQUIFER PROTECTIVE VALUES [NEW]

<b>Chemical</b>	<b>MCL (mg/l)</b>
Arsenic	0.01
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

[OAR Docket #06-861; filed 5-9-06]

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

[OAR Docket #06-862]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Permit Provisions and Applications
  - Part 1. General Provisions
    - 252:515-3-1. [AMENDED]
  - Part 3. Permit Applications and Modifications
    - 252:515-3-39.1. [NEW]
- Subchapter 21. Waste Tire Processing, Certification, Permits and Compensation
  - Part 1. General Provisions
    - 252:515-21-2. [AMENDED]
    - 252:515-21-3. [AMENDED]
    - 252:515-21-5. [NEW]
  - Part 3. Waste Tire Facilities
    - 252:515-21-31. [REVOKED]
    - 252:515-21-32. [AMENDED]
    - 252:515-21-32.1. [NEW]
    - 252:515-21-36. [NEW]
  - Part 7. Compensation from the Waste Tire Indemnity Fund
    - 252:515-21-71. [AMENDED]
    - 252:515-21-72. [AMENDED]
    - 252:515-21-73. [AMENDED]
  - Part 9. Erosion Control, River Bank Stabilization and Other Conservation Projects
    - 252:515-21-91. [AMENDED]
    - 252:515-21-92. [AMENDED]

**AUTHORITY:**

Environmental Quality Board and Solid Waste Management Advisory Council powers and duties: 27A O.S. §§ 2-2-101, 2-2-201, and 2-11-401 *et seq.*

**DATES:**

**Comment period:**

October 17 through November 17, 2005 and February 24, 2006

**Public hearing:**

November 17, 2005, Solid Waste Management Advisory Council  
February 24, 2006, Environmental Quality Board

**Adoption:**

February 24, 2006

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March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**

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**Effective:**

June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The proposed amendments to 252:515, Subchapters 3 and 21, arise from legislation enacted in 2005, effective June 2005. Legal citations were updated. There is minor cleanup language as well. Definitions contained in the Act were deleted in the rules and new definitions were added where necessary, i.e. Erosion Control Installer. Waste tires used by permitted facilities were

included in the term "recycling". Some proposed rules were reformatted with minor amendments. Permit application information required for tire derived fuel (TDF) facilities that store more than 50 waste tires was added. Community wide or other special collection events were added to reasons dumps were placed on the PCL. Requirements for TDF facilities that choose to collect and transport waste tires to the facility were added. Monthly, quarterly and annual reports were moved to a new rule. Language was added to clarify and emphasize that certain entities are eligible to receive compensation only for collection and transportation of waste tires that are listed by the Oklahoma Tax Commission in its rules. Rim diameter restrictions were deleted, and provisions for Erosion Control Installer to comply with certain provisions of the Act were added.

**CONTACT PERSON:**

Dee Ready, Land Protection Division, Solid Waste Management Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at dee.ready@deq.state.ok.us, phone 405-702-5100, or fax 405-702-5101.

**PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

**SUBCHAPTER 3. PERMIT PROVISIONS AND APPLICATIONS**

**PART 1. GENERAL PROVISIONS**

**252:515-3-1. Permit required**

(a) **Solid waste disposal facilities.** The following solid waste disposal facilities are subject to the requirements of this Subchapter and require a solid waste permit from the DEQ prior to construction and/or operation:

- (1) land disposal facilities;
- (2) solid waste processing facilities, including:
  - (A) transfer stations;
  - (B) solid waste incinerators receiving waste from off-site sources;
  - (C) regulated medical waste processing facilities receiving waste from off-site sources, and that are not shared service facilities;
  - (D) waste tire facilities;
  - (E) composting facilities, except yard waste composting facilities;
  - (F) permanently established household hazardous waste collection facilities; and
  - (G) any other type of facility that processes solid waste;
- (3) facilities used for the storage of solid waste for longer than 10 days; and
- (4) facilities used for the storage of more than 50 waste tires, except as authorized by 27A O.S. ~~§ 2-11-413-§ 2-11-401.7.~~

(b) **Sludge.** Solid waste disposal facilities used for the beneficial use, transport, disposal, or storage of sludge that is not subject to the direct jurisdiction of any other environmental regulatory agency of the State of Oklahoma shall obtain a permit in accordance with OAC 252:515-3-41.

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## PART 3. PERMIT APPLICATIONS AND MODIFICATIONS

### 252:515-3-39.1. Tire storage permit applications

(a) Permit applications for tire storage permits shall include all information required by OAC 252:4.the Rules of Practice and Procedure, Subchapter 7, Environmental Permit Process, and the following:

(1) a disclosure statement completed in accordance with OAC 252:515-3-31(g):

(2) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of:

(A) the proposed permit boundary; and

(B) the proposed waste processing and/or disposal areas.

(3) latitude and longitude of all corners of the permit boundary and the facility entrance;

(4) the location of the site from the nearest town or city;

(5) a description of all processing, storage and disposal operations and units;

(6) establishment of financial assurance in accordance with Subchapter 27 of this Chapter;

(7) how the tires will be visually screened, including the planting of trees and other vegetation;

(8) methods appropriate for the protection of human health and the environment to control on-site populations of rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans;

(9) the use of mosquito monitoring devices to determine the mosquito population, a determination of whether or not control action is warranted, and plans to implement control measures as necessary;

(10) a fire protection plan that includes:

(A) how the facility will respond to a fire and with what equipment;

(B) the criteria for calling the fire department;

(C) accessibility to a fire hydrant with sufficient water pressure to meet the facility's fire protection needs;

(D) how to control surface water run-off resulting from fire extinguishing efforts; and

(E) other relevant information;

(11) documentation from the local governmental entity responsible for supplying fire protection for the facility, approving the facility's fire protection plan;

(12) plans for surface water run-off controls around tire piles and processed tire piles to prevent surface water runoff. Engineering plans shall also address discharge of run-off under an OPDES permit or diversion of collected runoff into a POTW or an evaporation pond; and

(13) plans for a storage area that shall not contain more than 250,000 whole tires.

(b) **Information not identified.** The DEQ may require the applicant to submit additional data, revise design specifications or propose environmental safeguards as necessary to meet DEQ rules for the protection of human health and the environment.

(c) **Permit modification applications.** An applicant requesting a modification to an existing permit shall submit information identified in this Part related to the proposed modification.

## SUBCHAPTER 21. WASTE TIRE PROCESSING, CERTIFICATION, PERMITS AND COMPENSATION

### PART 1. GENERAL PROVISIONS

#### **252:515-21-2. Definitions**

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

**Act**" means the Oklahoma Waste Tire Recycling Act, 27A O.S. § 2-11-401 *et seq.*

**"Erosion Control Installer"** or **"ECI"** means a person, corporation or other legal entity who has obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District to provide services for erosion control projects.

**"Fund"** means the Oklahoma Waste Tire Recycling Indemnity Fund managed by the OTC.

**"OTC"** means the Oklahoma Tax Commission.

**"PCL"** means Priority Cleanup List as defined at 27A O.S. § 2-11-402.

**"Processing"** or **"waste tire processing"** means the definition found at 27A O.S. § 2-11-402. However, in an erosion control, bank stabilization or other waste tire conservation project, it means the proper installation of waste tires obtained from priority cleanup list sites in the project or structure in accordance with the conditions of the permit or other authorization from the United States Army Corps of Engineers or a local Conservation District.

**"Recycling"** means, in the context of waste tires:

(A) the incorporation of waste tires into agricultural uses recognized by the Oklahoma Department of Agriculture, Food, and Forestry;

(B) the incorporation of waste tires into civil engineering structures or the creation of new products or saleable by-products from tire materials, with prior approval of such projects by the DEQ; ~~or~~

(C) the use of processed tires for energy or fuel recovery; ~~;~~ ~~or~~

(D) the use of waste tires by permitted facilities in accordance with the Act, these rules and the facility's permit.

**"Used tire"** means a tire removed from a vehicle's rim which cannot be described as new but which is structurally intact and has a tread depth greater than 2/32" for automobile tires and 4/32" for truck tires. This tire can be remounted onto another vehicle's rim without repair.

**"Waste tire source"** means a waste tire dump site or a generator of waste tires, such as a tire dealer.

**252:515-21-3. Priority cleanup list**

(a) **Investigation and prioritization.** When the DEQ receives notification of or information about the existence of an unauthorized waste tire dump, a dump survey shall be conducted to determine landowner information, cleanup feasibility, and an estimate of the number of tires present. The resulting data shall be used to prioritize tire dumps on the priority cleanup list (PCL).

(b) **Priority listing.** ~~The resulting data shall be used to prioritize tire dumps on the PCL.~~

(1) ~~For each tire dump on the list, the PCL will include the name and number assigned to the dump site and the estimated total number of tires contained.~~

(2) ~~Tire dumps will be prioritized where the landowner was a victim of illegal dumping.~~

(3) ~~Tire dumps may be placed on the PCL when the DEQ has exhausted the administrative enforcement process. Tire dumps will be placed on the PCL when the landowner was the victim of illegal dumping or the DEQ has exhausted the administrative enforcement process.~~

(c) **Submittal.** The DEQ shall submit the PCL monthly to the ~~OTC~~ Oklahoma Tax Commission (OTC).

(d) **Number authorized for compensation.** The PCL shall include the name and number assigned to each tire dump on the list and the estimated total number of tires contained therein. For each waste tire dump on the PCL, the total number of waste tires authorized for compensation from the fund shall not exceed the number of waste tires identified.

(e) **PCL updates.** For each waste tire dump on the PCL, if the total number of waste tires identified on the PCL is removed from that dump and there are waste tires remaining, the DEQ may update the PCL to reflect the remaining number of waste tires.

**252:515-21-5. Special collection efforts**

(a) **Waste tire facility selection.** For special collection efforts identified in OAC 252:515-21-4, the DEQ will contact waste tire facilities, tire derived fuel facilities (TDF) and entities that install erosion control projects, [hereinafter referred to as "qualified applicants for collection and transportation", (QACT)] on a rotating basis and identify the location of the waste tires, the number of tires present, and a contact name and phone number.

(b) **Timeline for collection.** The QACT shall provide the DEQ with documentation to demonstrate whether or not the county in which the tires are located has physically been serviced in that quarter. The QACT shall collect the tires at the location identified and otherwise service that county, as follows:

(1) prior to the end of the quarter, if the county has not been physically serviced during that calendar quarter; or

(2) prior to the end of the next calendar quarter, if the previous quarter's service is current.

(c) **Special pickup.** Upon the request of the Executive Director, the DEQ may notify the QACT to collect certain tires within seven (7) days or report the status of the special pickup back to the DEQ.

**PART 3. WASTE TIRE FACILITIES**

**252:515-21-31. Special collection efforts [REVOKED]**

~~(a) **Waste tire facility selection.** For special collection efforts identified in OAC 252:515-21-4, the DEQ will contact waste tire facilities on a rotating basis and identify the location of the waste tires, the number of tires present, and a contact name and phone number.~~

~~(b) **Timeline for collection.** The waste tire facility contacted shall provide the DEQ with documentation to demonstrate whether or not the county in which the tires are located has physically been serviced by the waste tire facility in that quarter.~~

~~(1) If the county has not been physically serviced by the waste tire facility during that quarter, the waste tire facility shall collect the tires at the location identified, and otherwise service that county, prior to the end of the calendar quarter.~~

~~(2) If the county has been physically serviced by the waste tire facility during that quarter, the waste tire facility shall collect the tires at the location identified, and otherwise service that county, prior to the end of the following calendar quarter.~~

**252:515-21-32. Facility operation requirements**

(a) **General.** Waste tire facilities are subject to the requirements of Part 3 of OAC 252:515-19, except 19-33.

(b) **Acceptable wastes.** Only waste tires shall be accepted at a waste tire facility.

(c) **Maximum storage.**

(1) **Waste tires.** The number of waste tires stored at any time shall not exceed 250,000 or the maximum number authorized by the permit, whichever is less.

(2) **Processed tires.** The amount of processed tire material stored at any time shall not exceed the amount accumulated from three years of operation or the amount for which financial assurance has been provided, whichever is less.

(d) **Tires awaiting processing.** Waste tires stored on the ground while awaiting processing shall be placed in orderly piles, as follows:

- (1) the base shall not exceed 200 feet by 150 feet;
- (2) the height of the pile shall not exceed seven feet and
- (3) side slopes shall not be greater than two horizontal to one vertical slope.

(e) **Processed material storage.** If processed tire material is stored in piles, the piles shall meet the following:

- (1) the base shall not exceed 200 feet by 150 feet;
- (2) the height of the pile shall not exceed 20 feet; and
- (3) stable side slopes shall be maintained.

(f) **Tire dumps.** ~~Over the life of the facility—~~Annually, at least ~~10%—5%~~ of the waste tires processed must be collected from tire dumps identified on the PCL or through DEQ approved community-wide clean-up events in the State of Oklahoma.

(g) **Restricted areas.**

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- (1) **Fire lane.** An unobstructed fire lane at least 50 feet in width shall be maintained around the perimeter of each tire pile and each processed tire material pile located outdoors.
- (2) **Buffer zone.** A clean buffer zone of at least 75 feet shall be maintained between tire piles or processed tire materials and adjacent properties.
- (h) **Weighing processed materials.** Each load of processed tire material shall be weighed on scales tested and certified in accordance with the requirements of the state Board of Agriculture.
- (1) Each truck and/or trailer shall be weighed full and empty.
- (2) Gross and tare weights shall be imprinted on the same weight ticket.
- (3) Stored tare weights shall not be used.
- (i) **Daily log.** A daily log shall be maintained for each load of waste tires received. The daily log shall accurately reflect:
- (1) the name and address of the hauler;
- (2) the counted number of tires from each waste tire source;
- (3) the name and address of each waste tire source;
- (4) the number of tires processed each day; and
- (5) the use and destination of each daily outbound load of processed tire material.
- (j) **Monthly reports.** No later than the 10th day of each month, a report shall be submitted to the DEQ that includes the following information for the previous month:
- (1) the number of tires received at the facility;
- (2) the number of tires that came from DEQ approved community wide cleanup events;
- (3) the number of tires that came from dumps on DEQ's priority cleanup list;
- (4) a summary of the destinations and intended uses of outgoing shipments of processed tire materials, including the number of tons of processed tire materials per market category; and
- (5) the amount of processed tires provided to entities identified in OAC 252:515-21-71(3) that were not in ready to use condition when received by such entities.
- (k) **Quarterly reports.** No later than the 10th day following each calendar quarter, a report shall be submitted to the DEQ for the previous quarter that documents:
- (1) statewide collection efforts; and
- (2) that the scales were inspected by the Oklahoma Department of Agriculture, Food, and Forestry or an approved independent contractor and that the scales were accurate.

### **252:515-21-32.1. TDF facility operation requirements**

If a tire derived fuel facility chooses to collect and transport waste tires to its facility, it must comply with the following operations requirements:

- (1) 27A O.S. § 2-11-401.4 (C)(2)(d);
- (2) 252:515-21-32 except subsections (b) and (h);
- (3) 252:515-21-35; and
- (4) 252:515-21-36.

### **252:515-21-36. Recordkeeping and reporting**

- (a) **Monthly reports.** No later than the 10th day of each month, each facility shall submit a report to the DEQ that includes the following information for the previous month:
- (1) the number of tires received at the facility;
- (2) the number of tires that came from DEQ approved community wide cleanup events;
- (3) the number of tires that came from dumps on DEQ's priority cleanup list;
- (4) a summary of the destinations and intended uses of outgoing shipments of processed tire materials, including the number of tons of processed tire materials per market category; and
- (5) the amount of processed tires provided to entities identified in OAC 252:515-21-71(a)(3) that were not in ready-to-use condition when received by such entities.
- (b) **Quarterly reports.** No later than the 10th day following each calendar quarter, each facility shall submit a report to the DEQ that documents statewide collection efforts for the previous quarter.
- (c) **Annual reports.** No later than the 10th day of January each year, each facility shall submit a report to the DEQ that its scales have been tested and certified as accurate by the Oklahoma Department of Agriculture, Food and Forestry.

## **PART 7. COMPENSATION FROM THE WASTE TIRE INDEMNITY FUND**

### **252:515-21-71. Eligibility requirements**

- (a) **Processing.** The following are eligible to receive compensation from the fund only for the processing or recycling of those waste tires listed by the Oklahoma Tax Commission OTC in OAC 710:95-5:
- (1) waste tire facilities;
- (2) ~~persons—Erosion Control Installers~~ who, as a landowner or on behalf of a landowner, have obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District for the use of waste tires for erosion control, river bank stabilization, or other conservation projects on the property of the landowner; and
- (3) ~~businesses located in Oklahoma using processed tires for energy or fuel recovery~~ tire derived fuel facilities; and
- (4) units of local or county governments who have a DEQ approved plan to bale waste tires for use in engineering projects.
- (b) **Collection and transportation.** QACT are eligible to receive compensation from the fund only for the collection and transportation of the waste tires listed by the OTC in OAC 710:95-5.

### **252:515-21-72. Ineligible for compensation**

- (a) **Previous compensation.** Any person that has received compensation from the fund for projects identified in Part 9 or 11 of this Subchapter shall not be eligible to receive other

compensation from the fund for collection, transportation or delivery of waste tires in conjunction with the same project.

(b) **Certain waste tires.** The following waste tires are not eligible for compensation from the fund:

- (1) waste tires not installed in the approved project by ~~persons~~ Erosion Control Installers identified in OAC ~~252:515-21-71(2)~~ 252:515-21-71(a)(2);
- (2) waste tires processed for ~~businesses~~ TDF facilities identified in OAC ~~252:515-21-71(3)~~ 252:515-21-71(a)(3) but are not in ready-to-use condition when received by such ~~businesses~~ facilities;
- (3) waste tires not used in the approved project by ~~entities~~ units of local or county governments identified in OAC ~~252:515-21-71(4)~~ 252:515-21-71(a)(4);
- (4) processed or recycled waste tires listed by the OTC in OAC 710:95-5 as being ineligible for compensation; and
- (5) processed or recycled waste tires that originated outside the borders of the State of Oklahoma.

**252:515-21-73. Certification for compensation**

(a) **Compliance.** An applicant requesting certification for compensation from the fund must be in substantial compliance with:

- (1) the Act;
- (2) the requirements of this Chapter;
- (3) any permits issued by the DEQ, if applicable;
- (4) applicable rules of the OTC; and
- (5) other applicable authorizations issued by the United States Army Corps of Engineers or local Conservation District.

(b) **Required forms.** Applicants eligible for compensation from the fund shall complete the required forms provided by the OTC and submit them to OTC with a copy to the DEQ.

(c) **OTC requirements.** The OTC may have additional requirements at OAC 710:95-5.

**PART 9. EROSION CONTROL, RIVER BANK STABILIZATION AND OTHER CONSERVATION PROJECTS**

**252:515-21-91. Permit**

Permits or other authorizations for the use of waste tires in erosion control, river bank stabilization or other conservation projects may be obtained from the United States Army Corps of Engineers or a local Conservation District ~~in accordance with 27A O.S. § 2-11-407.1.~~

**252:515-21-92. Eligibility requirements**

(a) **Use of proper tires.** ~~For each project~~ Annually, at least ~~10%~~ 5% of the waste tires for which compensation will be requested must come from tire dumps identified on the PCL or from community-wide cleanup events in the state of Oklahoma and installed in accordance with this Part and the permit or other authorization from the United States Army Corps of Engineers or a local Conservation District.

(b) **Waste tire collection.**

~~(1) Rim diameter greater than 17 1/2 inches.~~ Entities requesting compensation shall provide for statewide collection and transportation of waste tires with a rim diameter of greater than 17 1/2 inches at no cost to the waste tire generator.

~~(2) Rim diameter less than 17 1/2 inches.~~ Entities shall receive compensation for waste tires with a rim diameter less than 17 1/2 inches only for those tires obtained from tire dumps identified on the PCL or from community-wide cleanup events in the State of Oklahoma. The Erosion Control Installer (ECI) shall comply with 27A O.S. § 2-11-401.4(C)(3)(b).

(c) **Project completion report.** Upon completion of the project, the ~~applicant~~ ECI shall submit a project completion report to the DEQ, certifying the project was completed in accordance with the approved design plans. The report shall include the following:

- (1) the name, address and telephone number of the applicant;
- (2) the tire dump from which tires came, if any, and DEQ identification number;
- (3) identification of the community-wide cleanup event from which tires came, if any;
- (4) quantity of tires removed from the tire dump or community-wide cleanup event, by tire type;
- (5) name and location of the approved project;
- (6) quantity and type of tires delivered to and installed at the project;
- (7) a copy of the permit or other authorization issued by the United States Army Corps of Engineers or local Conservation District;
- (8) a copy of the planting plan developed in conjunction with and approved by the Division of Forestry of the Oklahoma Department of Agriculture, Food, and Forestry;
- (9) verification the landowner agrees to complete the planting plan described in (8) of this Subsection;
- ~~(10) documentation to verify compliance with (b)(1) of this Section;~~
- ~~(11) documentation to verify compliance with (d) of this Section, if applicable; and~~
- ~~(12) other information required by the DEQ.~~

(d) **Proper disposal.** The ~~applicant~~ ECI shall dispose of any waste tires not needed for the project at a permitted waste tire processing or other waste tire recycling facility, or a permitted solid waste disposal facility.

(e) **DEQ inspection.** After submittal of the project completion report, the DEQ shall inspect the project and the project file to determine compliance with the Act, the rules in this Subchapter, and project plans.

(f) **Project complete.** If the project is complete, the DEQ shall notify the ~~applicant~~ ECI in writing, with copies to the OTC, the Oklahoma Department of Agriculture, Food, and Forestry, and the United States Army Corps of Engineers or local Conservation District, as appropriate.

(g) **Project incomplete.** If any aspect of the project is not complete, the DEQ shall give written notification of the deficiencies to the ~~applicant~~ ECI, who shall respond accordingly.

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In such cases, partial compensation may be authorized in accordance with OAC 252:515-21-74.

(h) **Recordkeeping.** Records required by this Part shall be maintained by the applicant ECI for a period of ~~three~~ five years after completion of the project.

[OAR Docket #06-862; filed 5-9-06]

**TITLE 252. DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
CHAPTER 515. MANAGEMENT OF SOLID  
WASTE**

[OAR Docket #06-863]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Appendix H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [REVOKED]  
Appendix H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [NEW]  
Appendix I. Procedure for Calculating Post-closure Cost Estimates for Financial Assurance [REVOKED]  
Appendix I. Procedure for Calculating Post-closure Cost Estimates for Financial Assurance [NEW]

**AUTHORITY:**  
Environmental Quality Board and Solid Waste Management Advisory Council powers and duties: 27A O.S. §§ 2-2-101, 2-2-201 and 2-10-101 *et seq.*  
**DATES:**

**Comment period:**  
October 17, 2005 through November 17, 2005 and February 24, 2006

**Public hearing:**  
November 17, 2005 before the Solid Waste Management Advisory Council  
February 24, 2006 before the Environmental Quality Board

**Adoption:**  
February 24, 2006

**Submitted to Governor:**  
March 3, 2006  
**Submitted to House:**  
March 3, 2006  
**Submitted to Senate:**  
March 3, 2006  
**Gubernatorial approval:**  
April 17, 2006  
**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006  
**Final adoption:**  
April 28, 2006  
**Effective:**  
June 15, 2006  
**SUPERSEDED EMERGENCY ACTIONS:**  
None  
**INCORPORATIONS BY REFERENCE:**  
None  
**ANALYSIS:**

The solid waste rules, specifically OAC 252:515-27-4, requires revision of closure and post-closure cost data in Appendices H and I every five years. The cost estimates included in Appendices H and I have been updated to reflect current cost estimates for financial assurance. These rules are not "fee" rules. The costs are mandated by statute to ensure certain facilities have sufficient financial resources to properly close and provide post-closure care for those facilities. Facilities provide a financial assurance mechanism as required by statute (27A O.S. § 2-10-701). These rules simply implement that law.

**CONTACT PERSON:**  
Dee Ready, Land Protection Division, Solid Waste Management Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at dee.ready@deq.state.ok.us, phone 405-702-5100, or fax 405-702-5101.

**PURSUANT TO THE ACTION DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JUNE 15, 2006:**

**APPENDIX H. PROCEDURE FOR CALCULATING CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [REVOKED]**

**APPENDIX H. PROCEDURE FOR CALCULATING CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [NEW]**

This Appendix presents the worksheet for calculating final closure cost estimates. The tasks and services included in this worksheet are based on the more complex closure requirements for MSWLFs. Some tasks and services may not be required for construction/demolition and non-hazardous industrial waste landfills, nor for other types of solid waste facilities requiring financial assurance. Owners/operators will be able to input site-specific information to calculate the necessary financial assurance.

**Table H.1**

All site data necessary to calculate estimates of closure and post-closure costs can be gathered by completing Table H.1. Data from Table H.1 should be inserted into Table H.2 of this Appendix and Table I.1 of Appendix I to complete calculations.

**Table H.1      Site Data**

**FACILITY NAME:**

**PERMIT NUMBER:**

DESCRIPTION	QUANTITY	UNITS
Total Permitted Area		acres
Active Portion		
Composite Lined		acres
Soil Lined		acres
Area of Largest Cell/Phase Requiring Final Cap		
Composite Lined		acres

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Soil Lined		acres
Perimeter Fencing		linear feet
Groundwater Monitoring Wells		VLF
Methane Gas Probes		VLF
Terraces		linear feet
Letdown Channels		linear feet
<b>Perimeter Drainage Ditches</b>		linear feet
Average Daily Flow		tons/day
Landfill Disposal Cost		\$/ ton

VLF = Vertical linear feet. The sum of the depths of all monitoring wells.

### Table H.2

Table H.2 can be used to calculate closure cost estimates for landfills for which site specific data are available. The table is designed to be executed as a computer spreadsheet, but will work equally as well using hand calculations.

- Input site-specific quantities from Table H.1 into Table H.2, making sure the requisite units are used. Some quantities are already given by the table.
- For each line of Task/Service items 1 through 4, multiply the value input for quantity by the multiplier and unit cost given by the table, and enter the resultant value in the Subtotal column.

**NOTE:** Unit costs provided are as of April 1, 2005. Users of this chart shall adjust these unit costs for inflation as of April 1<sup>st</sup> of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

- For line 5, identify each task required by the Closure Plan that is not identified in

Table H.2. Calculate cost estimates in accordance with OAC 252:515-27-51(d), and input total in the Subtotal column.

- For line 6, add Subtotals for Task/Service items 1 through 5.
- Lines 7, 8, and 9. Compute Administrative Services, Technical and Professional Services and Closure Contingency costs by multiplying Line 6 by the multiplier for each respective Item. Enter the resultant values.
- Line 10. Add lines 6 through 9.

**Table H.2 Closure Cost Estimate**

**FACILITY NAME:**

**PERMIT NUMBER:**

	Task/Service	Quantity	Units	Multiplier	Unit Cost	Subtotal
<b>1</b>	<b>PRELIMINARY SITE WORK</b>					
1.1	Conduct Site Evaluation	1	lump sum	1	\$2952.93	\$2952.93
1.2	Dispose Final Wastes					
	Average Daily Flow	c <sup>c</sup>	tons/day			
	Disposal Cost	d <sup>d</sup>	tons/day	5 (5 days of waste)	e <sup>e</sup>	
1.3	Remove Temporary Building(s)	1	lump sum	1	\$2707.89	\$2707.89
1.4	Remove Equipment	1	lump sum	1	\$2210.43	\$2210.43
1.5	Repair/Replace		linear feet	0.25 (25% of fencing)	\$2.90	
1.6	Clean Leachate Line(s)	1	lump sum	1	\$1337.50	\$1337.50
<b>2</b>	<b>MONITORING EQUIPMENT</b>					

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2.1	Rework/Replace Monitoring Well(s)		VLF	0.25 (25% of wells)	\$62.10	
2.2	Plug Abandoned Monitoring Well(s)		VLF	0.25 (25% of wells)	\$24.85	
2.3	Rework/Replace Methane Probe(s)		VLF	0.25 (25% of probes)	\$53.62	
2.4	Plug Abandoned Methane Probe(s)		VLF	0.25 (25% of probes)	\$19.60	
2.5	Rework/Replace Remediation and/or Gas Control Equipment	1	lump sum	0.05 (5% of equipment capital cost)	f	
<b>3</b>	<b>CONSTRUCTION</b>					
3.1	Complete Site Grading to include on-and off-site borrow areas		acres	1	\$1170.78	
3.2	Construct Final Cap					
	Compacted On-Site Clay Cap or		cubic yards	1	\$4.22	
	Compacted Off-site Clay Cap or		cubic yards	1	\$6.82	
	Install Geosynthetic Clay Liner Cap		square feet	1	\$0.43	
3.3	Construct Landfill Gas Venting Layer					
	Place Sand or		acres	1	\$31305.44	
	Install Net and Geotextile		square feet	1	\$0.30	
3.4	Install Passive Landfill Gas Vents		acres	1	\$749.96	
3.5	Install Flexible Membrane Liner		square feet	1	\$0.33	
3.6	Drainage Layer					

	Place Sand or		acres	1	\$31305.44	
	Install Net and Geonet		square feet	1	\$0.30	
3.7	Place On-site Topsoil		cubic feet	1	\$1.81	
	Place Off-site Topsoil		cubic yards	1	\$14.45	
3.8	Establish Vegetative Cover, including on-and off-site borrow areas		acres	1	\$444.31	
<b>4</b>	<b>DRAINAGE/EROSION CONTROL</b>					
4.1	Construct Terraces		linear feet	1	\$7.56	
4.2	Construct Letdown Channels		linear feet	1	\$7.12	
4.3	Clean Perimeter Drainage Ditches		linear feet	0.50 (50% of ditches)	\$5.77	
<b>5</b>	<b>TASKS NOT IDENTIFIED</b>					
<b>6</b>	<b>SUBTOTAL</b>					
<b>7</b>	<b>ADMINISTRATIVE SERVICES</b>	1	lump sum	0.10 (10%)	g <sup>a</sup>	
<b>8</b>	<b>TECHNICAL AND PROFESSIONAL SERVICES</b>	1	lump sum	0.12 (12%)	g	
<b>9</b>	<b>CLOSURE CONTINGENCY</b>	1	lump sum	0.10 (10%)	g	
<b>10</b>	<b>TOTAL FINAL CLOSURE</b>					h <sup>b</sup>

a. Multipliers are determined from the *Solid Waste Financial Assurance Program Report*, December 22, 2000.

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- b. Unit costs provided are as of April 1, 2005. Users of this chart shall adjust these unit costs for inflation as of April 1<sup>st</sup> of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).
- c. New facilities: Insert the value for "W" in OAC 252:515-27-8(a)(2). Existing facilities: Insert reported total tonnage for the previous year, divided by 312 operating days per year (52 weeks per year x 6 operating days per week).
- d. Insert number of tons/day from above.
- e. Insert landfill disposal cost per ton of waste (\$/ton).
- f. Input capital cost for gas control/remediation equipment, if installed at the site.
- g. Input Subtotal from line 6.
- h. Add rows 6 through 9.

**APPENDIX I. PROCEDURE FOR CALCULATING POST-CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [REVOKED]**

**APPENDIX I. PROCEDURE FOR CALCULATING POST-CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [NEW]**

This Appendix presents the worksheet for calculating final post-closure cost estimates. The tasks and services included in this worksheet are based on the more complex closure requirements for MSWLFs. Some tasks and services may not be required for construction/demolition and non-hazardous industrial waste landfills, nor for other types of solid waste facilities requiring financial assurance. Owner/operators will be able to input site-specific information to calculate the necessary financial assurance.

**I.1 Calculating Post-closure Costs**

Table I.1 can be used to estimate Post-closure Costs. Table I.1 may be utilized in the same manner as Table H.2 of Appendix H.

- Input site-specific quantities from Table H.1 of Appendix H into Table I.1, making sure the requisite units are used. Some quantities are already given by the table.
- For each line of Task/Service items 1 through 5, multiply the value input for quantity by the multiplier and the unit cost given by the table, and enter the resultant value in the subtotal column.
- NOTE: Unit costs provided are as of April 1, 2005. Users of this chart shall adjust these unit costs for inflation as of April 1<sup>st</sup> of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).
- For line 6, identify each task required by the Post-closure Plan that is not identified in Table I2. Calculate cost estimates in accordance with OAC 252:515-27-51(d), and input total in the Subtotal column.
- For line 7, add Subtotals for Task/Service Items 1 through 6.
- Lines 8, 9, and 10. Compute Administrative Services, Technical and Professional Services and Post-closure contingency costs by multiplying Line7 by the multiplier for each respective Item. Enter the resultant values.
- Line 11. Add lines 7 through 10.

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**Table I.1 Post-closure Estimate**

**FACILITY NAME:**

**PERMIT NUMBER:**

	Task/Service	Quantity	Units	Multiplier <sup>a</sup>	Unit Cost <sup>b</sup>	Subtotal
<b>1</b>	<b>SITE MAINTENANCE</b>					
1.1	Site Inspections	4	per year	30 (30 yrs) 8 (8 yrs)	\$537.18	\$64461.60 \$17189.76
1.2	General Maintenance	1	per year	30 (30 yrs) 8 (8 yrs)	\$1,610.49	\$48314.70 \$12883.92
1.3	Remediation and/or Gas Control Equipment	1	lump sum	0.3 <sup>c</sup>	d <sup>d</sup>	
<b>2</b>	<b>MONITORING EQUIPMENT</b>					
2.1	Rework/Replace Monitoring Well(s)		VLF	0.25 (25% of wells)	\$62.50	
2.1	Plug Abandoned Well(s)		VLF	0.25 (25% of wells)	\$24.85	
2.2	Final Plugging of Monitor Wells		VLF	1	\$24.85	
2.3	Rework/Replace Methane Probe(s)		VLF	0.25 (25% of probes)	\$53.62	

2.4	Plug Abandoned Probe(s)		VLF	0.25 (25% of probes)	\$19.60	
2.5	Final Plugging of Methane Probes		VLF	1	\$19.60	
2.6	Final Plugging of Piezometer(s)		VLF	1	\$19.60	
<b>3</b>	<b>SAMPLING and ANALYSIS</b>					
3.1	Groundwater Monitoring Wells		wells	60 (2/yr x 30 yrs) 16 (2/yr x 8 yrs)	\$579.23 MSLWF & NHIW e° \$142.97 C&D	
3.2	Methane Gas Probes		probes	60 (2/yr x 30 yrs)	\$37.59	
3.3	Surface Water Monitoring Points		points	60 (2/yr x 30 yrs)	\$69.81	
3.4	Leachate		sample	60 (2/yr x 30 yrs)	\$112.48	
<b>4</b>	<b>FINAL COVER MAINTENANCE</b>					
4.1	Mow and Fertilize Vegetative Cover		acres	30 (30 yrs) 8 (8 yrs)	\$177.72	
4.2	Repair Erosion, Settlement, and Subsidence for On-site Soils		acres	60 (60 yrs) 16(16 yrs)	\$2.57	

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	Repair Erosion, Settlement, and Subsidence for Off-site Soils		acres	30 (30 yrs) 8 (8 yrs)	\$15.40	
4.3	Re-seed Vegetative Cover		acres	0.20 (20% reseeded over post-closure period)	\$444.30	
<b>5</b>	<b>LEACHATE MANAGEMENT</b>					
5.1	Clean Leachate Line(s)	1	per year	30 (30 yrs)	\$1377.47	\$40124.10
5.2	Maintain Leachate Collection System and Equipment	1	per year	30 (30 yrs)	\$2139.95	\$64198.50
5.3	Collect, Treat, Transport, and Dispose Leachate		gal/yr	30 (30 yrs)	\$0.27	
<b>6</b>	<b>TASKS NOT IDENTIFIED</b>					
<b>7</b>	<b>SUBTOTAL</b>					
<b>8</b>	<b>ADMINISTRATIVE SERVICES</b>	1	lump sum	0.06 (6%)	f <sup>1</sup>	
<b>9</b>	<b>TECHNICAL and PROFESSIONAL SERVICES</b>	1	lump sum	0.07 (7%)	f <sup>1</sup>	
<b>10</b>	<b>POST-CLOSURE CONTINGENCY</b>	1	lump sum	0.10 (10%)	f <sup>1</sup>	
<b>11</b>	<b>TOTAL POST CLOSURE</b>					g <sup>o</sup>

a. Multipliers are determined from the *Solid Waste Financial Assurance Program Report*, December 22, 2000.

- b. Unit costs provided are as of April 1, 2005. Users of this chart shall adjust these unit costs for inflation as of April 1<sup>st</sup> of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).
- c. 5 % of equipment capital cost, maintenance performed once per 5 yrs for 30 years.
- d. Input capital cost for gas control/remediation equipment, if installed at the site.
- e. If the approved groundwater monitoring plan requires monitoring for alternative constituents, unit costs shall be calculated in accordance with OAC 252:515-27-52(b) or (c).
- f. Input subtotal from line 7.
- g. Add lines 7 through 10.

*[OAR Docket #06-863; filed 5-9-06]*

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# Permanent Final Adoptions

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

[*OR Docket #06-864*]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction  
252:606-1-4. [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

December 1, 2005 through January 10, 2006

**Public hearing:**

January 10, 2006 and February 24, 2006

**Adoption:**

February 24, 2006

**Submitted to Governor:**

March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**

April 28, 2006

**Effective:**

June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Title 40 of the Code of Federal Regulations, as published on July 1, 2005

**Incorporating rules:**

252:606-1-4

**Availability:**

From the contact person listed below

**ANALYSIS:**

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2005.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

### SUBCHAPTER 1. INTRODUCTION

#### 252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, 2004-2005.

[*OR Docket #06-864; filed 5-9-06*]

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

[*OR Docket #06-865*]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
252:611-1-3. [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

December 1, 2005 through January 10, 2006

**Public hearing:**

January 10, 2006 and February 24, 2006

**Adoption:**

February 24, 2006

**Submitted to Governor:**

March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**

April 28, 2006

**Effective:**

June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Title 40 of the Code of Federal Regulations, Part 130 as published on July 1, 2005

**Incorporating rules:**

252:611-1-3

**Availability:**

From the contact person listed below

**ANALYSIS:**

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2005.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

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

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

252:611-1-3. Adoption and incorporation by reference
40 CFR Part 130 is adopted and incorporated by reference, as published on July 1, 2004-2005, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #06-865; filed 5-9-06]

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

[OAR Docket #06-866]

RULEMAKING ACTION: PERMANENT final adoption
RULES: Subchapter 3. Permit Procedures 252:616-3-1. [AMENDED]
AUTHORITY: Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 et seq.
DATES:
Comment period: December 1, 2005 through January 10, 2006
Public hearing: January 10, 2006 and February 24, 2006
Adoption: February 24, 2006
Submitted to Governor: March 3, 2006
Submitted to House: March 3, 2006
Submitted to Senate: March 3, 2006
Gubernatorial approval: April 17, 2006
Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006
Final adoption: April 28, 2006
Effective: June 15, 2006
SUPERSEDED EMERGENCY ACTIONS: None
INCORPORATIONS BY REFERENCE: None
ANALYSIS: The Department proposes to amend its rules concerning the conditions for sand and gravel mining operations to obtain a permit.
CONTACT PERSON: Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

SUBCHAPTER 3. PERMIT PROCEDURES

252:616-3-1. Requirement to obtain a permit
(a) Permits are required for the construction, installation, modification, operation and closure of any industrial wastewater system and are processed according to the Uniform Permitting Act, Title 27A § 2-14-101, and the Tier classifications listed in OAC 252:4-7. This Chapter contains the standards to be met. Industrial wastewater system requirements under this chapter-Chapter may be issued as components of discharge permits issued under OAC 252:606.
(b) Instream sand and gravel facilities using hydraulic dredging that have applied for a Section 404 permit pursuant to the Clean Water Act and other sand and gravel facilities that completely operate outside the wetted perimeter of a water body may seek coverage under only the DEQ's Multi-Sector General Permit for Industrial Activities, unless the sand and gravel operation:
(1) has a point source discharge of process water to waters of the state, in which case a discharge permit, pursuant to OAC 252:606, is also required, or
(2) utilizes surface impoundment(s) that store wastewater from processes other than the washing of sand and/or gravel, in which case a surface impoundment permit, pursuant to the requirements of this Chapter, is also required.

[OAR Docket #06-866; filed 5-9-06]

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

[OAR Docket #06-867]

RULEMAKING ACTION: PERMANENT final adoption
RULES: Subchapter 1. Introduction 252:631-1-3. [AMENDED]
AUTHORITY: Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 et seq.
DATES:
Comment period: December 1, 2005 through January 10, 2006
Public hearing: January 10, 2006 and February 24, 2006
Adoption: February 24, 2006
Submitted to Governor: March 3, 2006

# Permanent Final Adoptions

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**

April 28, 2006

**Effective:**

June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:****Incorporated standards:**

Title 40 of the Code of Federal Regulations, Parts 141 and 143 as they were published on July 1, 2005

**Incorporating rules:**

252:631-1-3

**Availability:**

From the contact person listed below

**ANALYSIS:**

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2005.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

## SUBCHAPTER 1. INTRODUCTION

### 252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2004~~—2005, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #06-867; filed 5-9-06]

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION

[OAR Docket #06-868]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction  
252:690-1-4. [AMENDED]

**AUTHORITY:**

Water Quality Standards Implementation Plan, 27A O.S. § 1-1-202; Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*

**DATES:****Comment period:**

December 1, 2005 through January 10, 2006

**Public hearing:**

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**Submitted to Governor:**

March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

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**Gubernatorial approval:**

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Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

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June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:****Incorporated Standards:**

40 CFR Part 260. Hazardous Waste Management System: General, except 260.20 through 260.22

40 CFR Part 261. Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State"

40 CFR 262.42(a)(2)(e)

40 CFR Part 263. Standards Applicable to Transporters of Hazardous Waste.

40 CFR Part 264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except: 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, and 40 CFR 264.301(l)

40 CFR Part 264. Appendix VI

40 CFR Part 265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except: 40 CFR 265.1(c)(4), 40 CFR 265.149, and 40 CFR 265.150

40 CFR Part 266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

40 CFR Part 268. Land Disposal Restrictions, except: 40 CFR 268.5, 40 CFR 268.6, 40 CFR 268.10 40 CFR 268.11, 40 CFR 268.12, 40 CFR 268.13, 40 CFR 268.42(b), 40 CFR 268.44(a) through (g), and 40 CFR 268.44(m) through (p)

40 CFR Part 270. Permit Programs, except 270.14(b)(18)

40 CFR Part 273. Universal Waste Rule

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

40 CFR Part 116 (Hazardous Substances List)

40 CFR Part 117 (Reportable Quantities for Hazardous Substances)

40 CFR 122.2 - (definitions)

40 CFR 122.24 - (concentrated aquatic animal production facilities)

40 CFR 122.25 - (aquaculture projects)

40 CFR 122.26 - (stormwater discharges)

40 CFR 122.27 - (silviculture)

40 CFR 122.28 (a) and (b) - (general permits)

40 CFR 122.29 - (new sources and new dischargers)

40 CFR 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

40 CFR 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

- 40 CFR 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
- 40 CFR 122.41 - (permit conditions)
- 40 CFR 122.42 - (conditions for specified categories of permits)
- 40 CFR 122.43 - (establishing permit conditions)
- 40 CFR 122.44 - (establishing permit limitations, standards and other conditions)
- 40 CFR 122.45 - (calculating permit conditions)
- 40 CFR 122.46 - (permit duration)
- 40 CFR 122.47 (a) - (schedules of compliance)
- 40 CFR 122.48 - (monitoring requirements)
- 40 CFR 122.50 - (disposal into wells)
- 40 CFR 122.61 - (permit transfer)
- 40 CFR 122.62 - (permit modification)
- 40 CFR 122.63 - (minor modifications of permits)
- 40 CFR 122.64 - (permit termination)
- 40 CFR Part 122 Appendices A through J
- 40 CFR PART 125 (criteria and standards for NPDES): Subpart A (technology-based treatment), Subpart B (criteria for aquaculture projects), Subpart D (fundamentally different factors), Subpart H (alternative effluent limitations), Subpart I (cooling water intakes), and Subpart L (disposal of sewage sludge under CWA 405)
- 40 CFR Part 129 (Toxic Pollutant Effluent Standards)
- 40 CFR Part 136 (testing and laboratory)
- 40 CFR Sections 401-471 (Effluent Guidelines 7 and Standards)
- 40 CFR Section 110.6 (notice of oil discharge)
- 40 CFR Part 302 (CERCLA exemption from NPDES permits)
- 40 CFR 503.1 (Purpose and applicability)
- 40 CFR 503.2 (Compliance period)
- 40 CFR 503.3 (Permits and direct enforceability)
- 40 CFR 503.4 (Relationship to other regulations)
- 40 CFR 503.5 (Additional or more stringent requirements)
- 40 CFR 503.6(a)-(e),(g)-(j) (Exclusions)
- 40 CFR 503.7 (Requirement for a person who prepares biosolids)
- 40 CFR 503.8 (Sampling and analysis)
- 40 CFR 503.9 (General definitions)
- 40 CFR 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
- 40 CFR 503.11 (Special definitions)
- 40 CFR 503.12 (General requirements)
- 40 CFR 503.13 (Pollutant limits)
- 40 CFR 503.14 (Management practices)
- 40 CFR 503.15 (Operational standards - pathogens and vector attraction reduction)
- 40 CFR 503.16(a) (Frequency of monitoring)
- 40 CFR 503.17(a) (Recordkeeping)
- 40 CFR 503.18 (Reporting)
- 40 CFR 503.30 (Scope)
- 40 CFR 503.31 (Special definitions)
- 40 CFR 503.32(a), (b) (Pathogens)
- 40 CFR 503.33(a), (b)(1)-(11) (Vector attraction reduction)
- 40 CFR 503.40 (Applicability)
- 40 CFR 503.41 (Special definitions)
- 40 CFR 503.42 (General requirements)
- 40 CFR 503.43 (Pollutant (Metal) limits)
- 40 CFR 503.44 (Operational standard - total hydrocarbons)
- 40 CFR 503.45 (Management practices)
- 40 CFR 503.46 (Frequency of monitoring)
- 40 CFR 503.47 (Recordkeeping)
- 40 CFR 503.48 (Reporting)
- 40 CFR Part 503 Appendices: Appendix A. (Procedure to determine the annual whole sludge application rate for a sludge); Appendix B (Pathogen treatment processes)
- 40 CFR Part 130 (Water Quality Planning and Management)
- 40 CFR Part 144 (Underground Injection Control Program)
- 40 CFR Part 145 (State UIC Program Requirements)
- 40 CFR Part 146 (Underground Injection Control Program: Criteria and Standards)
- 40 CFR Part 147 (State Underground Injection Control Programs)
- 40 CFR Part 148 (Hazardous Waste Injection Restrictions)

**Incorporating Rules:**

252:690-1-4

**Availability:**

From the contact person

**ANALYSIS:**

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2005.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

**SUBCHAPTER 1. INTRODUCTION**

**252:690-1-4. Incorporation of USEPA regulations by reference**

The following federal regulations at 40 CFR, as published on July 1, ~~2004~~ 2005, are incorporated by reference and applicable to this Chapter:

- (1) **OAC 252:205 (Hazardous Waste Management).** 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.
  - (A) **Part 260.** Hazardous Waste Management System: General, except 260.20 through 260.22.
  - (B) **Part 261.** Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".
  - (C) 262.42(a)(2)(e).
  - (D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.
  - (E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
    - (i) 264.1(f)
    - (ii) 264.149
    - (iii) 264.150
    - (iv) 264.301(l)
    - (v) Part 264 Appendix VI
  - (F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
    - (i) 265.1(c)(4)
    - (ii) 265.149
    - (iii) 265.150
  - (G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

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- (H) **Part 268.** Land Disposal Restrictions, except:
- (i) 268.5
  - (ii) 268.6
  - (iii) 268.10
  - (iv) 268.11
  - (v) 268.12
  - (vi) 268.13
  - (vii) 268.42(b)
  - (viii) 268.44(a) through (g)
  - (ix) 268.44(m) through (p).
- (I) **Part 270.** Permit Programs, except 270.14(b)(18).
- (J) **Part 273.** Universal Waste Rule.
- (K) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."
- (2) **OAC 252:606 (Discharge Standards)**
- (A) Part 116 (Hazardous Substances List)
- (B) Part 117 (Reportable Quantities for Hazardous Substances)
- (C) The following from PART 122 (NPDES PERMIT REGULATIONS):
- (i) 122.2 - (definitions)
  - (ii) 122.24 - (concentrated aquatic animal production facilities)
  - (iii) 122.25 - (aquaculture projects)
  - (iv) 122.26 - (stormwater discharges)
  - (v) 122.27 - (silviculture)
  - (vi) 122.28 (a) and (b) - (general permits)
  - (vii) 122.29 - (new sources and new dischargers)
  - (viii) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
  - (ix) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
  - (x) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
  - (xi) 122.41 - (permit conditions)
  - (xii) 122.42 - (conditions for specified categories of permits)
  - (xiii) 122.43 - (establishing permit conditions)
  - (xiv) 122.44 - (establishing permit limitations, standards and other conditions)
  - (xv) 122.45 - (calculating permit conditions)
  - (xvi) 122.46 - (permit duration)
  - (xvii) 122.47 (a) - (schedules of compliance)
  - (xviii) 122.48 - (monitoring requirements)
  - (xix) 122.50 - (disposal into wells)
  - (xx) 122.61 - (permit transfer)
  - (xxi) 122.62 - (permit modification)
  - (xxii) 122.63 - (minor modifications of permits)
  - (xxiii) 122.64 - (permit termination)
  - (xxiv) Appendices A through J
- (D) The following from PART 125 (criteria and standards for NPDES):
- (i) Subpart A (technology-based treatment),
  - (ii) Subpart B (criteria for aquaculture projects),
  - (iii) Subpart D (fundamentally different factors),
  - (iv) Subpart H (alternative effluent limitations),
  - (v) Subpart I (cooling water intakes), and
  - (vi) Subpart L (disposal of sewage sludge under CWA 405)
- (E) Part 129 (Toxic Pollutant Effluent Standards)
- (F) Part 136 (testing and laboratory)
- (G) Sections 401-471 (Effluent Guidelines 7 and Standards)
- (H) Section 110.6 (notice of oil discharge)
- (I) Part 302 (CERCLA exemption from NPDES permits)
- (J) The following Sections from Part 503, Subpart A (General Provisions):
- (i) 503.1 (Purpose and applicability)
  - (ii) 503.2 (Compliance period)
  - (iii) 503.3 (Permits and direct enforceability)
  - (iv) 503.4 (Relationship to other regulations)
  - (v) 503.5 (Additional or more stringent requirements)
  - (vi) 503.6(a)-(e),(g)-(j) (Exclusions)
  - (vii) 503.7 (Requirement for a person who prepares biosolids)
  - (viii) 503.8 (Sampling and analysis)
  - (ix) 503.9 (General definitions)
- (K) The following Sections from Part 503, Subpart B (Land Application):
- (i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
  - (ii) 503.11 (Special definitions)
  - (iii) 503.12 (General requirements)
  - (iv) 503.13 (Pollutant limits)
  - (v) 503.14 (Management practices)
  - (vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
  - (vii) 503.16(a) (Frequency of monitoring)
  - (viii) 503.17(a) (Recordkeeping)
  - (ix) 503.18 (Reporting)
- (L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
- (i) 503.30 (Scope)
  - (ii) 503.31 (Special definitions)
  - (iii) 503.32(a), (b) (Pathogens)
  - (iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)
- (M) The following Sections from Part 503 Subpart E (Incineration)
- (i) 503.40 (Applicability)
  - (ii) 503.41 (Special definitions)
  - (iii) 503.42 (General requirements)
  - (iv) 503.43 (Pollutant (Metal) limits)

- (v) 503.44 (Operational standard - total hydrocarbons)
- (vi) 503.45 (Management practices)
- (vii) 503.46 (Frequency of monitoring)
- (viii) 503.47 (Recordkeeping)
- (ix) 503.48 (Reporting)
- (N) The following Appendices from Part 503:
  - (i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
  - (ii) Appendix B (Pathogen treatment processes)
- (O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.
- (3) **OAC 252:611** (General Water Quality) Part 130 (Water Quality Planning and Management)
- (4) **OAC 252:652 (Underground Injection Control)**. The following apply in their entirety as they apply to the underground injection control program:
  - (A) Part 144 (Underground Injection Control Program)
  - (B) Part 145 (State UIC Program Requirements)
  - (C) Part 146 (Underground Injection Control Program: Criteria and Standards)
  - (D) Part 147 (State Underground Injection Control Programs)
  - (E) Part 148 (Hazardous Waste Injection Restrictions)
- (5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

[OAR Docket #06-868; filed 5-9-06]

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

[OAR Docket #06-869]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Certification  
252:710-3-31. [AMENDED]
- Subchapter 5. Duties and Responsibilities  
252:710-5-54. [AMENDED]  
252:710-5-59. [AMENDED]
- Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [REVOKED]
- Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [NEW]

**AUTHORITY:**

The Environmental Quality Board and the Waterworks and Wastewater Works Advisory Council; 27A O.S. §§ 2-2-101 and 2-2-201; 59 O.S. *et seq.*

**DATES:**

**Comment period:**

December 15, 2005 through January 20, 2006 and February 24, 2006

**Public hearing:**

January 20, 2006 and February 24, 2006

**Adoption:**

February 24, 2006

**Submitted to Governor:**

March 3, 2006

**Submitted to House:**

March 3, 2006

**Submitted to Senate:**

March 3, 2006

**Gubernatorial approval:**

April 17, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006

**Final adoption:**

April 28, 2006

**Effective:**

June 15, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATEDS BY REFERENCE:**

None

**ANALYSIS:**

This rulemaking is intended to clarify the current operator certification rule concerning the exception to the certification requirement for licensed plumbers and contractors, as well as to correct several typographical errors contained within the rules. The revised provisions include language intended to clarify the type of contractor covered by the exception.

**CONTACT PERSON:**

Contact Chris Wisniewski at [chris.wisniewski@deq.state.ok.us](mailto:chris.wisniewski@deq.state.ok.us) or (405) 702-8100 (phone) or 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:**

**SUBCHAPTER 3. CERTIFICATION**

**252:710-3-31. Certificate required**

(a) **General requirement.** The following shall hold certifications issued under the Act and this Chapter:

(1) All persons who make decisions regarding the daily operational activities of:

- (A) a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water, including a nontransient noncommunity water system; or
- (B) a wastewater system, wastewater treatment facility and/or collection system.

(2) All persons who program or maintain telemetry/SCADA systems and also make process control/system integrity decisions.

(3) All laboratory operators who are in general supervision of waterworks/wastewater works laboratory control tests.

(b) **Exceptions.** The following exceptions apply:

(1) **Plumbers and contractors.** Plumbers licensed by the Oklahoma State Department of Health and contractors working under the general supervision of such plumbers

are not required to obtain certification for construction, maintenance, or renovation of water/wastewater works systems. ~~Plumbers licensed by the Oklahoma State Department of Health~~ Such plumbers may also make connections to public water systems or lines or sewer systems or lines. All work performed shall be supervised and inspected by the responsible entity to ensure compliance with the Safe Drinking Water Act, OAC 252:626; and OAC 252:656 and 27A O.S. § 2-6-101 *et seq.*

(2) **Noncommunity and minor systems.** Noncommunity or minor systems as defined in Chapter 631 are not required to have certified operators.

(3) **Small public sewage systems.** Public sewage systems as defined in 27A O.S. § 2-6-101(12) are not required to have certified operators.

(4) **Populations of 1,500 or less.** Certification is not required for laboratory operators of distribution/collection systems or chlorinated groundwater systems serving populations of 1,500 or less where chlorination is used only for disinfection or total retention lagoons serving populations of less than 1,500. If the DEQ determines that additional tests which must be performed by a certified laboratory operator are necessary, the laboratory operator must obtain the applicable certification or use the services of an associated laboratory.

### SUBCHAPTER 5. DUTIES AND RESPONSIBILITIES

#### **252:710-5-54. Temporary operator**

A person holding a temporary certification may perform the duties of a certified operator under the ~~direction and~~ general supervision of an appropriately certified operator.

#### **252:710-5-59. Distribution and collection technician**

A person holding certification as a distribution and collection technician may perform all duties relating to the operation and maintenance of storage and distribution systems, including purchased-water systems and nontransient, noncommunity systems. A person holding certification as a distribution and collection technician may also perform all duties relating to the operation and maintenance of total retention lagoon systems and collection systems. All the duties must be performed under the ~~direction and~~ general supervision of an appropriately certified operator.

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [REVOKED]

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [NEW]

Classes	Laboratories	Waterworks	Wastewater works
Class A	Optional for laboratories using gas chromatography, mass spectrometry and atomic absorption or similar instrumentation plus requirements for Class B and C.	(1) Water treatment plants, distribution systems, or chlorinated groundwater systems serving populations greater than 50,000; and (2) All water treatment plants classified as an "A" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works serving populations greater than 50,000; and (2) All wastewater works classified as an "A" facility by complexity by the Operator Certification Section of the Department.
Class B	Required for supervision of bacteriological testing plus requirements for Class C.	(1) Water treatment plants, distribution systems or chlorinated groundwater systems serving populations between 15,000 and 50,000; and (2) All water treatment plants classified as a "B" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works serving populations between 15,000 and 50,000; and (2) All wastewater works classified as a "B" facility by complexity by the Operator Certification Section of the Department.
Class C	Required for supervision of process control testing. (1) Wastewater: BOD, TSS, pH, Residual Chlorine, COD, DO, Ammonia, Oil and Grease; (2) Water: pH, Residual Chlorine, Turbidity, Alkalinity, Hardness, Stability and Fluoride	(1) Water treatment plants, distribution systems, and chlorinated or nonchlorinated groundwater systems serving populations greater than 1,500 and less than 15,000; (2) Surface water treatment plants serving a population of 15,000 or less; and (3) Groundwater systems utilizing any form of chemical treatment other than chlorination for disinfection only; and (4) All water treatment plants classified as a "C" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works facilities serving populations between 1,500 and 15,000; and (2) Discharging wastewater facilities serving 15,000 or less; and (3) All wastewater works classified as a "C" facility by complexity by the Operator Certification Section of the Department.
Class D	None	Distribution systems or chlorinated groundwater systems serving populations of 1,500 or less.	Total retention lagoons serving populations of less than 1,500.

[OAR Docket #06-869; filed 5-9-06]

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

[OAR Docket #06-756]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-2. [AMENDED]

Part 3. Investigations

340:2-3-32. through 340:2-3-33. [AMENDED]

340:2-3-35. through 340:2-3-38. [AMENDED]

Part 5. Grievances

340:2-3-45. through 340:2-3-46. [AMENDED]

340:2-3-50. through 340:2-3-53. [AMENDED]

Part 7. Grievance and Abuse Review Committee

340:2-3-64. [AMENDED]

Part 9. Ombudsman Programs

340:2-3-71. [AMENDED]

(Reference APA WF # 05-26)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 10-101 through 10-111 of Title 43A of the Oklahoma Statutes; Section 175.20 of Title 10 of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 17, 2006 through February 16, 2006

#### Public hearing:

None requested

#### Adoption:

February 28, 2006

#### Submitted to Governor:

February 28, 2006

#### Submitted to House:

February 28, 2006

#### Submitted to Senate:

February 28, 2006

#### Gubernatorial approval:

April 13, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2006.

#### Final adoption:

April 26, 2006

#### Effective:

June 11, 2006

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

Proposed Office of Client Advocacy (OCA) permanent rule amendments: (1) clarify definitions; (2) clarify that OCA investigates abuse and neglect of minors by caretakers; (3) clarify that OCA investigates allegations regarding students attending certain institutions who may reside in the community; (4) clarify the criteria for a reportable incident; (5) provide for notifying OCA facility ombuds staff at state operated facilities; (6) explain when OCA uses the disposition no action required; (7) add a disposition that is currently in use; (8) provide for a designee for the advocate general; (9) clarify the "similar form" is a provider or agency form; (10) clarify the information included in an electronic exit notice in an investigation concerning a Hisson Class Member; (11) provide that an electronic exit notice is sent 30 days after assignment to an investigator; (12) require that summary statements be included in all investigative reports; (13) adopt definitions for investigative findings consistent with the Oklahoma Uniform Jury Instructions; (14) provide for when OCA defers a finding; (15) clarify dissemination of OCA reports after they are approved; (16) correct statute citations; (17) add the definition of business day or working day; (18) clarify the local grievance coordinator (LGC) process; (19) clarify there are no time limits for filing grievances for

individuals served by Developmental Disabilities Services Division (DDSD); (20) clarify requirements of grievance programs for providers; (21) clarify who may serve as an LGC; (22) change time frames for the grievance process; (23) add reference to new electronic OCA Grievance training; (24) clarify the first level respondent in a grievance procedure; (25) specify the use of an OKDHS form; (26) clarify the grievance material to be enclosed in a Grievance and Abuse Review Committee (GARC) proceeding; and (27) remove inaccurate, outdated, or unnecessary information, ambiguities, and reference to obsolete forms.

#### CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

### PART 1. ADMINISTRATION

#### 340:2-3-2. Definitions

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

"Abuse" means, with regard to:

- (A) minors and youth, the causing or permitting harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or
- (B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes.

"Administrator," including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

- (A) minors in Oklahoma Department of Human Services (OKDHS) custody living in a private residential facility, the chief administrative officer of the facility;
- (B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;
- (C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;
- (D) foster parents, the applicable OKDHS county director or area director, as appropriate;
- (E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities

- which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;
- (F) day treatment programs, the person charged with responsibility for administering the program;
- (G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;
- (H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;
- (I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and
- (J) residents of group homes for persons with developmental disabilities, the director of the group home.

"**Adult Protective Services**" or "**APS**" means the Adult Protective Services Unit of OKDHS.

"**Advocate**," also known as "ombudsman" or "ombuds," means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

"**Advocate general**" means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is \*OCA.advocategeneral@okdhs.org.

"**Authorized use of physical force**" by a caretaker of minors and youths residing outside their homes, other than minors and youth in foster care:

- (A) means the use of physical contact to control or contain a person when the caretaker reasonably considers that person to:
  - (i) pose a risk of inflicting harm to self or others; or
  - (ii) be in the process of leaving a facility without authorization.
- (B) When the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:
  - (i) the grounds for belief that force was necessary;
  - (ii) the age, gender, and strength of the parties involved;
  - (iii) the nature of the force employed;
  - (iv) the availability of alternative means of force or control; and

- (v) the extent of the harm inflicted.

"**Caretaker**" means, with regard to:

- (A) minors and youth, an agent or employee of:
  - (i) a public or private residential home, institution, or facility above the level of foster family care; or
  - (ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and
- (B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes.

"**Caretaker misconduct**":

- (A) means an act or omission that:
  - (i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;
  - (ii) is not found to be abuse or neglect; and
  - (iii) results in or creates the risk of harm to a minor or vulnerable adult.
- (B) includes, but is not limited to:
  - (i) acts or omissions that contribute to the delinquency of a minor;
  - (ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;
  - (iii) unintentionally causing mental anguish;
  - (iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; ~~and~~ or
  - (v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"**Case manager**" means the person assigned by DDSD who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"**Child placing agency**" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"**Client**" means, with regard to:

- (A) OCA's investigation services, those individuals listed in OAC 340:2-3-32(a)(2);
- (B) OCA's grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and
- (C) OCA's ombudsman program, those individuals listed in OAC 340:2-3-71(b).

"**Community services worker**" or "**CSW**" means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

"**Community Services Worker Registry**" or "**CSW Registry**" means the Community Services Worker Registry established by OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

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**"Day treatment program"** means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive services, psychiatric, or psychological treatment.

**"DDSD"** means the Developmental Disabilities Services Division of OKDHS.

**"DHS"** or **"Department"** or **"OKDHS"** means the Oklahoma Department of Human Services.

**"Disposition,"** with regard to OCA's intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

**"DMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

**"DRS"** means the Oklahoma Department of Rehabilitation Services.

**"E-mail"** means:

- (A) with regard to the advocate general, an e-mail sent to \*oca.advocategeneral@okdhs.org;
- (B) with regard to OCA grievance matters, an e-mail sent to \*oca.grievances@okdhs.org;
- (C) with regard to OCA investigation matters, an e-mail sent to \*oca.investigations@okdhs.org; and
- (D) with regard to OCA intake matters, \*oca.intake@okdhs.org.

**"Emergency"** means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

**"Excessive use of force"** by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

- (A) the grounds for belief that force was necessary;
- (B) the age, gender, and strength of the parties involved;
- (C) the nature of the force employed;
- (D) the availability of alternative means of force or control;
- (E) the extent of the harm inflicted; and
- (F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

**"Exploitation"** or **"exploit"** with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes.

**"Facility"** means:

- (A) a public or private agency, corporation, partnership, or other entity which:
  - (i) operates a residential child care center; or
  - (ii) contracts with or is licensed or funded by OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;
- (B) an OKDHS operated shelter;
- (C) an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;
- (D) a community-based youth services shelter or community intervention center;

(E) the J.D. McCarty Center;

(F) a day treatment program;

(G) a private psychiatric facility for minors;

(H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or

(I) SORC, NORCE, and Greer.

**"Foster care"** or **"foster care services"** means continuous 24-hour care and supportive services provided for a child in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

**"Foster child"** means a child placed in a foster family placement.

**"Foster parent"** means an individual maintaining a foster family home who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to a foster child.

**"GARC"** means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

**"Guardian"** means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

**"Guardian ad litem"** or **"GAL"** means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

**"Harm or threatened harm to the health, safety, or welfare"** includes but is not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) failure to provide protection from harm or threatened harm;
- (E) the unauthorized use of force; or
- (F) the use of excessive force.

**"Hissom class member"** means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound, et al. vs. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E.

**"Hotline"** means the statewide, toll free hotline, 1-800-522-3511, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

**"ICF/MR"** or **"Intermediate Care Facility for the Mentally Retarded,"** also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for

mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

**"Incapacitated person"** means:

(A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

**"Indecent exposure"** means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes.

**"In-home supports"** and **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS DDS, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430 of the Oklahoma Statutes.

**"Injury"** means any hurt, harm, appreciable physical pain, or mental anguish.

**"Maltreatment"** is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section.

**"Medicaid personal care assistant"** or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

**"Mental anguish"** means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

**"Minor"** means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

**"Minor physical injury"** means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, burn, or fracture), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

**"Neglect"** means, with regard to:

(A) minors and youth, the failure of a caretaker to provide:

(i) adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or

(ii) special care made necessary by the physical or mental condition of the minor or youth; or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

**"OCA"** means the Office of Client Advocacy of OKDHS.

**"OCA intake"** means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

**"OJA"** means the Oklahoma Office of Juvenile Affairs.

**"Ombudsman"** or **"ombuds"**,<sup>2</sup> means "advocate" as defined in this subsection.

**"Personal support team"** or **"team"**,<sup>2</sup> formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

**"Preponderance of the evidence"** means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

**"Problem resolution"** means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

**"Provider"** means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

**"Residential child care center"** means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

**"Self-neglect"** means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes.

**"Serious physical injury"** means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are

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present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, ~~that are unlikely to be the result of normal daily living activities that have no clear, known explanation.~~

**"Sexual abuse"** means, with regard to:

- (A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or
- (B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes.

**"Sexual exploitation"** means, with regard to:

- (A) minors and youth:
  - (i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or
  - (ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or
- (B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes.

**"Specialized foster care"** means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDS, is monitored by DDS, and is funded through the Home and Community-Based Waiver Services Program administered by DDS.

**"State office"** means the administrative offices of OKDHS in Oklahoma City.

**"State office administrator,"** including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

- (A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);
- (B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the director of the OKDHS Field Operations Division;
- (C) DDS clients, the director of DDS; and
- (D) other OKDHS clients, the appropriate chief oficer or division director.

**"Subpoena"** means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

**"Suspicious injury"** means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes but is not limited to an injury that:

- (i) appears inconsistent with the offered explanation(s) for the injury;
- (ii) is unusual;
- (iii) cannot be explained as the result of an accident, self-injurious behavior or normal activities of daily living;
- (iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and
- (v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, which are unlikely to be the result of normal daily living activities.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

**"Unauthorized use of force"** means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

**"Unexplained injury"** means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

**"Verbal abuse"** means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes.

**"Vulnerable adult"** means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.

**"Ward"** means a person over whom a guardianship has been given by the court.

**"Youth"** means, with regard to:

- (A) OCA's investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or
- (B) OCA's grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

### PART 3. INVESTIGATIONS

#### 340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

- (a) **Legal authority, scope, and purpose.**
  - (1) **Legal authority.**

(A) Section 7004-3.4(A)(2)(d) of Title 10 of the Oklahoma Statutes gives OCA the responsibility to investigate allegations of caretaker abuse and neglect of minors in the State of Oklahoma:

- (i) residing outside their own homes regardless of custody, other than minors in foster care;
- (ii) minors who are Developmental Disabilities Services Division (DDSD) service recipients receiving in-home supports, as defined in OAC 340:2-3-2; and
- (iii) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes.

(B) Section 7306-2.11 of Title 10 of the Oklahoma Statutes accords youthful offenders in the Office of Juvenile Affairs (OJA) custody the same rights and services available to minors in OJA custody. This includes maltreatment investigations conducted by OCA in facilities operated by or contracting with OJA. OCA also conducts maltreatment investigations involving youths in those facilities when the juvenile court has extended its jurisdiction and OJA custody until the youth reaches age 19.

(C) Section 10-105 of Title 43A of the Oklahoma Statutes gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve Hissom class members and residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), OKDHS operated facilities for persons with developmental disabilities.

(D) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of caretaker maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers which provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of minors by caretakers, and caretaker misconduct with regard to minors, in residential care above the level of foster care regardless of custody, including but not limited to:

- (i) minors in OKDHS operated or licensed shelters and group homes;
- (ii) minors and youth in facilities operated by, licensed by, or contracting with OJA;
- (iii) minors in community-based youth services shelters and community intervention centers which

contract with OJA pursuant to Section 7302-3.5 of Title 10 of the Oklahoma Statutes;

(iv) minors in facilities operated by or contracting with Department of Mental Health and Substance Abuse Services (DMHSAS);

(v) minors in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) minors residing in or attending educational classes at facilities operated by the Department of Rehabilitation Services (DRS): the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) minors receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes;

(B) abuse and neglect of, and caretaker misconduct with regard to, minors in day treatment programs as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, including sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker or a Medicaid personal care assistant, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, on request of the Adult Protective Services Unit of OKDHS.

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

- (A) protect clients from further maltreatment;
- (B) deter and prevent maltreatment;
- (C) provide relevant evidence in administrative and judicial proceedings;
- (D) rule out unfounded allegations; and
- (E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to, Section 7005-1.1 et seq. of Title 10 of the Oklahoma Statutes, Section 183 of Title 56 of the Oklahoma Statutes, and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records.

(1) **OCA investigations involving minors and youth.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving minors and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

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(A) Sections 7307-1.2 through 1.5 of Title 10 of the Oklahoma Statutes apply to OCA investigations involving minors and youth in OJA custody and in facilities that contract with OJA.

(B) Sections 7005-1.2 et seq., 7107, 7108, and 7109 of Title 10 of the Oklahoma Statutes apply to investigations involving minors, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 46 apply to OCA investigations involving minors in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

- (i) a district attorney or employees of the district attorney's office;
- (ii) the attorney representing an alleged victim in the matter under investigation;
- (iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;
- (iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;
- (v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;
- (vi) the provider for a vulnerable adult; and
- (vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under Section 10-110(A) of Title 43A of the Oklahoma Statutes and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives

requesting information on a specific case are referred to the advocate general, the OCA programs manager for investigations, or the OKDHS Office of Communications for a detailed explanation of OKDHS confidentiality rules.

### **340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation**

(a) **Reporting requirements and reportable incidents.**

(1) Persons having reason to believe that a minor is a victim of abuse or neglect are required by Section 7103 of Title 10 of the Oklahoma Statutes to promptly report it to the Oklahoma Department of Human Services (OKDHS).

(2) Persons having reason to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation are required by Section 10-104 of Title 43A of the Oklahoma Statutes to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.

(3) In addition, employees of OKDHS, Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), Office of Juvenile Affairs (OJA), and the J.D. McCarty Center who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, with regard to a client has occurred promptly report it to OCA intake. This reporting requirement also extends to employees of private facilities that contract with OKDHS, DRS, DMHSAS, and OJA to provide residential services to these clients.

(4) A person can have reason to believe that maltreatment has occurred based on information they have learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is reported to OCA intake. Persons unsure of what to report call OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.

(5) Knowledge of circumstances which may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.

(6) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, employees and agents of OKDHS, DRS, DMHSAS, OJA, the J.D. McCarty Center, facilities, and providers report to OCA events listed in (A) through (G) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2):

- (A) a violent death, whether apparently homicidal, suicidal, or accidental;
- (B) a death under suspicious, unusual, or unnatural circumstances;
- (C) the death of a resident of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer);
- (D) the death of a Hissom class member;

- (E) a serious physical injury, as defined in OAC 340:2-3-2, of a resident of NORCE, SORC, or Greer;
- (F) a serious any physical injury, as defined in OAC 340:2-3-2, if it is:
- (i) unexplained; ~~or~~ and
  - (ii) suspicious; ~~and~~ or
- (G) rape, sodomy, or other sexual activity prohibited by state law.
- (7) "Promptly" reporting as used in this Subchapter means the same day or the next working day.
- (8) The reporting obligations under this Section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person.
- (b) **Reporting responsibilities.**
- (1) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.
  - (2) **Minors and youth.** An OKDHS employee with knowledge of a reportable incident involving a minor or youth who is an OCA client, as defined in OAC 340:2-3-32(a)(2), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident involving an OCA client is required by law to make a prompt report to OCA intake, Child Welfare in an OKDHS local county office, or the statewide, toll free hotline (the "hotline"), 1-800-522-3511. Referrals to OCA intake are made in accordance with subsection (e) of this Section.
  - (3) **Vulnerable adults.** An OKDHS employee who has knowledge of a reportable incident involving a vulnerable adult who is an OCA client, as defined in OAC 340:2-3-32(a), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident is required by law to make a report as soon as possible to OCA intake, the office of the district attorney in the county in which the alleged incident happened, or the local municipal police or sheriff's department.
  - (4) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.
  - (5) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.
- (c) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. Section 10-104(C) of Title 43A and Section 7103(C) of Title 10 of the Oklahoma Statutes makes failure to report a misdemeanor, upon conviction. In addition, failure to report by an OKDHS employee may result in disciplinary action.
- (d) **False reporting.**
- (1) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a minor, or a report that the person knows lacks factual foundation, may be reported by OKDHS to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.
  - (2) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.
- (e) **Method of reporting.**
- (1) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, or exploitation of an OCA client, or caretaker misconduct towards an OCA client, contacts OCA intake in Oklahoma City by telephone at 1-405-525-4850 or 1-800-522-8014, between 8:00 a.m. and 5:00 p.m. on normal business days. At all other times, the Statewide Abuse Hotline, 1-800-522-3511 accepts referrals on behalf of OCA. Referrals also are made by completing Form OCA-1, Office of Client Advocacy Intake Referral, and transmitting it by fax 1-405-525-4855, to OCA, Attn: OCA intake, or sending the same information in an e-mail addressed to \*OCA.intake@okdhs.org.
  - (2) Allegations of exploitation of residents of SORC, NORCE, and Greer are reported to the person designated by the facility administrator to receive and investigate reports of those allegations.
  - (3) In lieu of contacting OCA intake, employees of SORC, NORCE, and Greer also have the option of contacting ~~OCA's ombuds staff assigned to those facilities or~~ the quality assurance staff at those facilities. In this event, the reporting staff also notifies the OCA facility ombuds staff assigned to the the facility. OCA employees and facility staff who receive information about a reportable incident promptly contact OCA intake to transmit that information.
- (f) **Confidentiality of reporting party's identity.** OCA keeps confidential the identity of a person who reports an incident involving a vulnerable adult in accordance with Section 10-105(2) of Title 43A of the Oklahoma Statutes, and of a person who reports an incident involving a minor or youth in accordance with Section 7005-1.2(G)(7) of Title 10 of the Oklahoma Statutes. OCA accepts anonymous referrals.
- (g) **Retaliation prohibited.** Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.
- (h) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting responsibilities detailed in this Section. Except for employees of a Developmental Disabilities Services Division (DDSD)

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provider, employees receive this training within 30 calendar days of initial employment and subsequent training annually. The training for employees of DDS providers is in accordance with OAC 340:100-3-38.

### **340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)**

(a) **Disposition options.** OCA intake records on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, the specifics of each referral received and makes an appropriate disposition regarding how the referral is to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action. The disposition options and criteria include, but are not limited to, the options described in (1) through (7) of this subsection.

(1) **OCA investigation.** This disposition means OCA opens an investigation of an allegation of caretaker maltreatment.

(2) **Assign for caretaker conduct review.** This disposition means the facility named in the referral is given responsibility to conduct an internal caretaker conduct review in accordance with OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. OCA intake documents the notification on Form OCA-1, or its electronic equivalent. This disposition does not apply to allegations involving Developmental Disabilities Services Division (DDSD) clients other than residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer).

(3) **Refer to advocate.** This disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE or Greer, and involves a concern which, based on the information provided, does not rise to the level of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by e-mail or telephone for appropriate follow-up inquiry. If the advocate knows or learns of facts which indicate a more appropriate disposition, the advocate immediately notifies OCA intake.

(4) **Refer to another administrative entity for handling.** This disposition means OCA intake forwards the information to another state agency or OKDHS division or office for handling. This disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the purview of OCA, but rather involves complaints about employee performance or allegations within the scope of another administrative entity. When this disposition is made, OCA intake makes the referral within one working day of receipt of the reported incident. These referrals are not assigned to OCA investigators for handling or intervention.

(5) **Refer to law enforcement.** This disposition is used when the referral involves possible criminal activity and it is not within OCA's investigative authority as described in OAC 340:2-3-32(a). This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency also is investigating the matter.

(6) **Refer for grievance.** When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form OCA-1, or its electronic equivalent. The referral is directed to the appropriate entity for handling as a grievance when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. If the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. Indicators that a referral is appropriate for handling as a grievance include complaints about:

- (A) conditions which do not endanger residents;
- (B) staff improprieties which do not constitute abuse, neglect, verbal abuse, caretaker misconduct, or exploitation; and
- (C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another disposition. This disposition is also made when an OCA investigation is not warranted in an Adult Protective Services substantiated case.

(8) **Refer to administration.** This disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency but is relevant to the operations of a facility or provider. When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral.

(9) Refer to DDS Quality Assurance (QA). This disposition is made when an allegation involves an alleged contract violation that does not involve caretaker maltreatment.

(b) **Notifying law enforcement.** If a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker, OCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents that information on Form OCA-1, or its electronic equivalent. If law enforcement has not been called or it is unclear if the matter has been reported to law enforcement, OCA intake requests the contact person at the facility or provider to notify law enforcement immediately. If acceptable assurances are not given that law enforcement has been or will be notified by the end of the business day, OCA intake notifies the appropriate law enforcement authority and notes the specifics on Form OCA-1, or its electronic equivalent.

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. Investigations involving Hissom class members are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately.

**340:2-3-36. Investigation procedures**

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator or designee to arrange for document production, site visits, and interviews.

(1) The administrator for the facility or provider who employed an accused caretaker at the time of the alleged incident informs that employee of:

- (A) the name and telephone number of the OCA investigator;
- (B) the investigative process described in this Section;
- (C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section, using Form OCA-4, Rights and Responsibilities of Accused OKDHS Employees, Form OCA-4-A, Rights and Responsibilities of Accused Caretakers, or a substantially similar provider or agency form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and
- (D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving caretakers subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The administrator or designee promptly completes Form DDS-59, Rights and Responsibilities of Accused Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, in accordance with OAC 340:100-3-39(d)(2)(C). The administrator or designee mails Form DDS-59 to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Access.** The applicable administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to

all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(c) **Interference prohibition.**

(1) Section 7103 of Title 10 of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding, ~~provided the person did not perpetrate or inflict the abuse or neglect at issue.~~

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for reporting an allegation; or
- (C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(d) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection. The rights and responsibilities of a community services worker are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

- (A) be advised by the administrator of the nature of the allegation(s) made against him or her in the referral;
- (B) be advised by OCA of the investigative process involving caretaker maltreatment;
- (C) be interviewed by the investigator and allowed to give his or her position regarding the referral;
- (D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;
- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
- (H) be notified in writing by his or her employer of the outcome of the investigation.

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- (2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:
- (A) prepare written statements and reports relevant to the investigation upon request;
  - (B) be available for interviews and accommodate the investigator in scheduling of interviews;
  - (C) refrain from any action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
  - (D) provide pertinent information and respond fully and truthfully to questions asked.
- (e) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.
- (1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.
  - (2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.
  - (3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.
- (f) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.
- (1) The administrator of the provider agency or facility where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.
  - (2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The administrator of the provider agency or facility where the alleged incident took place is responsible for protection of clients.
- (g) **Document collection and review.**
- (1) The investigator gathers and reviews relevant documents including, but not limited to:
    - (A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
    - (B) medical records;
    - (C) photos; and
    - (D) facility or provider logs, activity and tracking documents.
  - (2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.
  - (h) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator and the person being interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person being interviewed attends an interview only as a silent observer with prior permission of the advocate general or designee.
    - (i) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).
      - (1) **Tape recording of interviews.** OCA investigators tape record every interview. To maintain confidentiality of the information provided in an interview, no tape recording by the person being interviewed or by anyone else in attendance is permitted. Tape recordings of interviews remain with the OCA investigative file. OCA files and tape recordings are not public documents.
      - (2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.
      - (3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s) ~~and evidence learned during the investigative process.~~ In general, the investigator discloses only the nature ~~and substance~~ of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.
      - (4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA

investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information to which the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency who employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided in accordance with OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the administrator of the facility or provider that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the administrator of the facility or provider to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(j) **Exit notice.** Within 30 calendar days of ~~disposition assignment~~ of a referral to be investigated, the assigned OCA investigator contacts ~~in person, by e-mail, or by telephone,~~ the applicable administrator, ~~or the administrator's designee, or OKDHS long-term care nurse, whichever is applicable,~~ when the information gathering portion of the investigative process is completed.

~~(1) Except in cases involving Hisson class members or caretakers subject to the Community Services Worker (CSW) Registry, the~~ The investigator informs the administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

~~(2) In cases involving Hisson class members or caretakers subject to the CSW Registry, the investigator informs the administrator or the OKDHS long term care nurse, whichever is applicable, that the investigation process has concluded in accordance with OAC 340:2-3-36. When the investigation report has been approved in accordance with subsection (k) of this Section, the investigator notifies in writing the administrator or the OKDHS long term care nurse, whichever is applicable, of areas of concern identified during the investigation.~~

(k) **The written investigative report.** After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

- (1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries sustained by the alleged victim(s);
- (3) information regarding any involved law enforcement entities;
- (4) a recommendation for the district attorney whether to consider further investigation;
- (5) the applicable definition(s) of the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the finding(s) in accordance with subsection (l) of this Section;
- (7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;
- (8) the name, address, and telephone numbers of any interpreter used during the investigation;
- (9) an explanation of the basis for the finding(s);
- (10) ~~in cases involving a confirmed finding,~~ a summary of relevant information obtained during each interview conducted during the investigation;
- (11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect;
- (12) a list of relevant documents and records reviewed during the investigation;
- (13) a list of attachments to the report that are provided upon request; and
- (14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section.

(l) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a ~~preponderance greater weight~~ greater weight of the evidence standard. The finding options are:

- (1) **"confirmed"** means that the greater weight of the available evidence establishes that it is more likely than not that the alleged maltreatment occurred;

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- (2) **"not confirmed"** means ~~there was insufficient evidence to find that it is more likely than not the greater weight of the available evidence indicates that the alleged maltreatment occurred did not occur;~~ or
- (3) **"not confirmed/ruled out"** means ~~the available no evidence established that it is unlikely that was discovered that indicates the alleged maltreatment occurred.~~
- (4) **"defer"** means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.
- (m) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.
- (n) **Dissemination of the OCA investigative reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the ~~disposition—assignment~~ of a referral to be investigated, the OCA written investigative report is completed.
- (1) Except as provided in subsection (o) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.
  - (2) If the referral alleged abuse, verbal abuse, neglect, or exploitation, a copy also is sent to the applicable district attorney.
  - (3) A copy also is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of DRS, the director of DMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.
  - (4) When an administrator is named as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.
  - (5) A copy of OCA's report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.
  - (6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter which summarizes the allegation and states the OCA finding. If an accused caretaker is an OKDHS employee, the applicable OKDHS ~~Division Director~~ division director or designee is responsible for providing the employee with a letter which summarizes the allegation and states the OCA finding.
  - (7) If client maltreatment by a licensed nurse is confirmed, a copy of OCA's report is submitted to the Oklahoma State Board of Nursing.
  - (8) When appropriate in cases involving a vulnerable adult, a copy of OCA's report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to

OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending OSDH a copy of any report in which at least one of the accused caretakers is a certified nurse aide (CNA).

- (9) OCA distributes its investigation reports by United States mail, fax, or e-mail, whichever is appropriate.
- (o) **Dissemination of reports involving Hissom class members and caretakers subject to the Community Services Worker (CSW) Registry.**

(1) ~~Section 1025.2 of Title 56 of the Oklahoma Statutes requires OKDHS to establish a community services workers registry notating the final OKDHS investigative finding of abuse, neglect, verbal abuse, or exploitation, as defined in Section 10 103 of Title 43A of the Oklahoma Statutes, by a community services worker or a Medicaid personal care assistant. All OCA investigations involving a confirmed finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid Personal Care Services Provider are processed in accordance with OAC 340:100-3-39 and OAC 317:35-15.~~

(2) After the OCA investigation report has been ~~finalized~~ approved, an e-mail notice of the areas of concern in the report is sent to the administrator, ~~the Developmental Disabilities Services Division (DDSD) director,~~ the applicable DDSD area manager, and the OKDHS long-term care nurse, whichever are applicable.

(3) When the OCA finding does not confirm an allegation, OCA sends a copy of the report pursuant to Section 10-110(B) of Title 43A of the Oklahoma Statutes, to the administrator, the DDSD director or the APS programs manager, whichever is applicable, the assigned OKDHS long-term care nurse when applicable, and the applicable district attorney.

(4) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the administrator, the DDSD director, and the applicable district attorney.

(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a Medicaid personal care assistant, OCA submits a copy of the report to the DDSD director or the APS programs manager, whichever is applicable, and the applicable district attorney and processes the report in accordance with OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable administrator, ~~and the DDSD director or the APS programs manager, whichever is applicable,~~ and the assigned OKDHS long-term care nurse if applicable.

(6) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final.

(7) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(p) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 through 7005-1.4 and 7107 et seq. of Title 10, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

(q) **Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDSD receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days, the applicable division director notifies the advocate general in writing of:

- (A) any personnel action taken or to be taken with regard to each accused caretaker named in the report;
- (B) any corrective action taken or to be taken regarding areas of concern noted in the report; and
- (C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(r) **Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the ~~administrator~~ DDSD director or designee notifies the advocate general in writing:

- (A) if any personnel action has or will be taken with regard to each accused caretaker named in the report; and
- (B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session.

(s) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and applicable recorded tapes in locked file cabinets in accordance with the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests

by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general on a need to know basis.

**340:2-3-37. Caretaker conduct review (CCR)**

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) which OCA refers to a facility for an internal CCR in accordance with OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving maltreatment of a Hissom class member or person receiving Developmental Disabilities Services Division (DDSD) waiver services.

(b) **Assignment to a facility to conduct a CCR.**

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR if:

- (A) there is no injury or evidence that the client might have been exposed to a significant risk of harm;
- (B) there is a minor physical injury and it is not a suspicious injury;
- (C) there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; or
- (D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1), at Oklahoma Department of Human Services (OKDHS) operated facilities, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR if the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures described in OAC 340:2-3-36, with the exception of tape recording the interviews in OAC 340:2-3-36(i)(1), including:

- (1) reviewing pertinent documentation, records, and evidence collected;
- (2) viewing any injuries and photos of injuries, and obtaining photos of injuries;
- (3) obtaining written statements and conducting interviews with:
  - (A) each alleged victim;
  - (B) each eyewitness;
  - (C) other persons with knowledge relevant to the allegation; and
  - (D) each accused caretaker;
- (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
- (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and

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(6) determining the appropriate finding(s) in accordance with OAC 340:2-3-36(l).

(d) **Returning the investigation responsibility to OCA.** If at any time during the CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation in accordance with OAC 340:2-3-35(c).

(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting CCR prepares a written report. Facilities are encouraged, but not required, to use the applicable OCA format for CCR reports, Form OCA-7, Caretaker Conduct Review Report — ~~OKDHS Operated Facility, Form OCA 7 A, Caretaker Conduct Review Report — OJA Operated Facility, Form OCA 7 B, Caretaker Conduct Review Report — Residential Facilities~~. The written report contains:

- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
- (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
- (3) the finding(s), whether caretaker misconduct did or did not occur, in accordance with OAC 340:2-3-36(m);
- (4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;
- (5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;
- (6) an explanation of the basis for the finding(s);
- (7) a summary of pertinent information obtained in interviews conducted during the review;
- (8) a list of relevant documents and records reviewed;
- (9) a list of attachments to the report;
- (10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect; and
- (11) either on a cover memo or at the end of the report, the signature and date signed by the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to the advocate general. The advocate general or designee reviews the CCR report for completeness and appropriateness of the finding. If a report

is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Review by Developmental Disabilities Services Division (DDSD) director.** Within five working days of completion of a CCR report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the CCR. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies the advocate general in writing by e-mail or letter. The advocate general refers the matter to OCA's grievance coordinator to process for review by the DDSD director as a contested grievance in accordance with OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of that review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62 and 340:2-3-64.

(i) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to the paragraph (h) of this Section has expired and review has not been requested, or that review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

- (A) any personnel action taken or to be taken;
- (B) any corrective action taken or to be taken; and
- (C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

### **340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination**

(a) **Application.** This Section describes processes relating to allegations of retaliation and discrimination against a foster parent by an employee of the Oklahoma Department of Human Services (OKDHS) or a child placing agency. The Office of Client Advocacy (OCA) is designated by Sections ~~7003-3.4(D)~~ 7004-3.4(D) and 7204.1 of Title 10 of the Oklahoma Statutes to conduct administrative investigations into these allegations.

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

- (1) **"Administrator,"** with regard to a child placing agency, means the chief administrative officer of the agency.
- (2) **"Child placing agency"** means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements, and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 through 415]
- (3) **"Child Welfare division"** means the OKDHS Field Operations Division (FOD) and the Children and Family Services Division (CFSD).
- (4) **"Discrimination"** means knowing and willful application of a different standard to a particular foster parent which negatively affects the foster parent.
- (5) **"Harassment"** means a knowing and willful course of conduct, statements, or behaviors serving no legitimate purpose directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.
- (6) **"Retaliation"** means threatening a foster parent with removal of a child in the foster parent's care, harassing a foster parent, refusing or failing to place a child in a licensed or certified foster home, or disrupting a child placement in reprisal for the foster parent engaging in protected activity listed in (c)(2) of this Section.
- (7) **"State office administrator"** means the FOD director, CFSD director, or both, or their designees.
- (c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the providing of foster care services. OCA initiates investigations of allegations that:
  - (1) an employee of OKDHS or a child placing agency has:
    - (A) threatened a foster parent with removal of a child in the foster parent's care;
    - (B) harassed a foster parent;
    - (C) refused or failed to place a child in a licensed or approved foster home; or
    - (D) disrupted a child placement; and
  - (2) for the purpose of retaliation or discrimination against a foster parent who has:
    - (A) filed or attempted to file a grievance with OKDHS (see OAC 340:2-3-45) or with a child placing agency, whichever is applicable;
    - (B) provided information regarding foster care services to any state official or OKDHS employee; or
    - (C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against OKDHS or a child placing agency.
- (d) **Exclusions.** The provisions of this Section do not apply to:
  - (1) a complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by OKDHS or a child placing agency in conformity with the result of any such proceeding;
  - (2) allegations of acts of retaliation or discrimination that occurred more than one year prior to the date of the foster parent complaint; or
  - (3) allegations of a pattern of retaliation or discrimination the last incident of which occurred more than one year after the foster parent participated in protected activity.
- (e) **What is reportable.** Section 7204.1 of Title 10 of the Oklahoma Statutes provides that any foster parent who has reasonable cause to believe he or she has been improperly treated by an employee of OKDHS or a child placing agency, as outlined in subsection (c) of this Section, may file a complaint with OCA. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis of having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation may be subject to loss of foster parent approval or licensure status.
- (f) **Reporting procedure.** Foster parents may file complaints by contacting:
  - (1) the Foster Parent Hotline, 1-800-376-9729; or
  - (2) OCA's offices in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.
- (g) **Confidentiality.** At the request of the reporter, OCA maintains confidential the identity of the reporter until the advocate general reports the results of the investigation to the Commission for Human Services (Commission) in accordance with subsection (m) of this Section. OCA maintains written records regarding the reporting source to provide information to the extent known at the time the report is received, including:
  - (1) the names and addresses of the foster child and the person(s) responsible for the child's welfare;
  - (2) the nature of the complaint; and
  - (3) the names of the persons and agencies responsible for the allegations contained in the complaint.
- (h) **Interference prohibition.**
  - (1) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action for misconduct under OKDHS personnel policy relating to cause for disciplinary action if the employee attempts to intimidate a witness, foster parent, or other OKDHS employee, or threatens any of them with physical or mental harm.
  - (2) Interference includes, but is not limited to:
    - (A) intimidating, harassing, or threatening a party to the investigation;
    - (B) retaliation against an employee for cooperating during an OCA investigation;
    - (C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and
    - (D) causing or influencing another person to provide false information during the investigation.
- (i) **Initiation of OCA investigation.** Upon acceptance of a report of retaliation or discrimination against a foster parent, OCA assigns an investigator to investigate the allegations in accordance with this Section. OCA's investigation does not

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duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of OKDHS employees in an OCA foster parent investigation are listed in (1) through (7) of this subsection.

(1) Employees make themselves available for interviews and accommodate the investigator in scheduling interviews.

(2) Employees provide pertinent information and respond fully and truthfully to questions asked.

(3) In addition to being interviewed, employees may submit written statements relating to the events in question.

(4) Employees may seek advice concerning their rights and responsibilities from other parties within or outside OKDHS.

(5) Employees prepare written statements or reports relevant to the investigation upon request.

(6) Employees, who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions.

(7) Employees interviewed do not discuss their interviews with anyone outside of OCA.

(k) **Access.** OCA at all times is granted access to any foster home which is approved, authorized, or funded by OKDHS or a child placing agency.

(l) **Investigation procedures.** Investigations are conducted in accordance with OAC 340:2-3-36 unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned investigator notifies the applicable administrator or state office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or state office administrator who employed any accused employee at the time of an alleged incident promptly informs the accused employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (j) of this Section, using Form OCA-4-B, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, a copy of which is provided to the OCA investigator; and

(D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and state office administrators facilitate and cooperate with the OCA investigation by:

(A) providing access to requested information;

(B) producing relevant documents, files, and records, accompanying the investigator on foster home visits when requested by OCA; and

(C) providing access to accused employees and others who have knowledge of relevant information.

(3) **Document review and interviews.** The OCA investigator conducts a prompt investigation in accordance with OAC 340:2-3-36(g) through (i) unless otherwise provided in this Section.

(4) **Exit notice.** The OCA investigator provides an exit notice, either electronically or by telephone, to the applicable administrator or state office administrator when the information gathering portion of the investigative process is completed. The investigator informs the administrator or state office administrator that a written report is forthcoming. Preliminary findings are not required.

(5) **The written investigation report.** After completing the information gathering portion of the investigative process, the OCA investigator prepares a written report containing:

(A) the allegations investigated, including the date, time, and location of the alleged incidents, the date the allegation was reported to OCA, and the assigned OCA case number;

(B) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when and where;

(C) the applicable definition of the type of misconduct at issue, such as discrimination, retaliation, or both;

(D) whether the foster parent engaged in an activity listed in ~~(b)~~ (c)(2) in this Section and, if so, a description of the activity;

(E) the findings in accordance with OAC 340:2-3-36(l);

(F) an explanation of the basis for the finding;

(G) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(H) any areas of concern relating to the allegations that were identified during the investigation regarding practices or procedures of OKDHS or the child placing agency;

(I) a list of relevant documents and records reviewed during the investigation; and

(J) a list of attachments to the report.

(6) **Dissemination of the OCA investigative report.**

(A) In cases involving allegations against an OKDHS employee, the advocate general submits a copy of the final OCA investigation report to the OKDHS Director and the state office administrators.

(B) In cases involving an employee of a child placing agency, the advocate general sends a copy of the OCA report to the administrator of the agency and the appropriate state office administrator. If the administrator of the child placing agency is the subject of

the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused OKDHS employee a letter that summarizes the allegation and states OCA's finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 and 7107 of Title 10 and Section 10-110 of Title 43A of the Oklahoma Statutes.

(m) **OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20 calendar days of receipt of a final OCA investigative report, the OKDHS Director may request GARC to review the allegations and submit a report of its findings in accordance with OAC 340:2-3-63.

(n) **State office administrator's response to a confirmed finding.**

(1) When a state office administrator receives a copy of an OCA investigation report containing a finding that an OKDHS employee has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the OCA report the state office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, and any corrective action taken or to be taken regarding areas of concern noted in the OCA report.

(2) If the OKDHS Director has referred the matter for review by GARC in accordance with subsection (l) of this Section, the state office administrator's response is due within 45 calendar days of GARC's written report to the OKDHS Director.

(3) When an administrator of a child placing agency receives a copy of an OCA investigation report containing a finding that an employee of the child placing agency has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the report the administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to each employee named in the report as having engaged in misconduct, and the status of any areas of concerns noted in the report.

(4) The advocate general reports to the Commission confirmed allegations and corrective action taken.

**PART 5. GRIEVANCES**

**340:2-3-45. Grievance system protocols**

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of OKDHS regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local

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level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDS.

(3) **"Business day" or "working day"** means Monday through Friday, not including federal or state holidays.

(~~34~~) **"CFSD"** means the Children and Family Services Division of OKDHS.

(~~45~~) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(~~56~~) **"Contested grievance"** means a grievance that has not been resolved at the local level (first and second levels ~~one and two~~) and, at the request of the grievant or decision-maker, is submitted to a higher authority for response.

(~~67~~) **"Decisionmaker"** means the person who has authority to decide whether to accept any resolution proposed at each level of the grievance process. It typically is the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves (for example, young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, it might be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDS clients who are adults, it might be a guardian or the individual support team for the client.

(~~78~~) **"Due date"** means the date by which some response or action is required, for example, the date by when a respondent must respond to a grievance. In calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(~~89~~) **"E-mail"** communication with OCA or with the advocate general means an e-mail sent to the e-mail address: \*oca.grievances@okdhs.org.

(~~910~~) **"Facility grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of a facility as defined in OAC 340:2-3-2; or

(B) a decision, act, or omission of an employee, agent, or contractor of a facility.

(~~11~~) **"FOD"** means the Field Operations Division of OKDHS.

(~~12~~) **"Grievance"** is defined in subsection (c) of this Section.

(~~13~~) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(~~14~~) **"Local grievance coordinator" or "LGC"** means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

(C) DDS clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by OKDHS, the county director in the OKDHS county office where the grievant resides;

(E) DDS clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDS clients, the applicable DDS area manager or designee.

(~~15~~) **"OCA grievance coordinator"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances.

(~~16~~) **"OKDHS grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS (other than policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or

(B) a decision, act, or omission of an employee of OKDHS, including but not limited to a Child Welfare (CW) specialist, a case manager, and OKDHS county directors, but not including an employee of an OKDHS operated facility.

(~~17~~) **"Placement grievance"** means a complaint about a present or proposed placement of a minor in OKDHS custody.

(~~18~~) **"Respondent"** means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility

or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance is includes:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which contracts with OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance is includes:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee of OKDHS other than an employee in an OKDHS operated facility; this includes a case manager, a CW specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using Form OCA-GR-8, Notice of Summary Disposition of Grievance, OCA-GR-8-A, Notice of Summary Disposition of Grievance - DDS Clients, OCA-GR-8-B, Notice of Summary Disposition of Facility Grievance, or OCA-GR-8-C, Notice of Summary Disposition of DDS Provider Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form OCA-GR-1, Grievance Form, and then dates and signs the form. The grievance is logged on the grievance tracking log. The form used to notify the grievant along with a copy of the grievance form is sent within two business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance coordinator determines

the grievance was improperly given a summary disposition, the OCA grievance coordinator informs the LGC who immediately processes the grievance. If the OCA grievance coordinator concurs with the summary disposition, the OCA grievance coordinator informs the LGC in writing.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance. There are no time limits for filing grievances on behalf of individuals served by the OKDHS DDS.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem which is moot.** A moot problem is one that already has been decided or settled or one that has no practical resolution. For example, a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved pursuant to OAC 340:2-5-50.

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(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form OCA-GR-1 as received, and notes on the form the reason the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file. The LGC sends a copy of the Form OCA-GR-1 and a copy of the applicable Notice of Summary Disposition to the advocate general, or designee, for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2)

who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to this Part, OKDHS county office, and DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and e-mail address of their LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change by completing Form OCA-GR-10, Designation of Local Grievance Coordinators, Facility and Provider Agencies, and submitting it to the Office of Client Advocacy. OCA's advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

- (i) implements grievance policies and procedures;
- (ii) has experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) functions impartially and independently in the processing of grievances;
- (iv) reports directly to the administrator with regard to the LGC's grievance duties and functions;
- (v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course ~~when online training is available or substantially equivalent training that provides the LGC with a working knowledge of applicable grievance policies, forms, procedures, time frames, and the LGC's responsibilities under this Subchapter, and yearly training thereafter from OCA;~~ and
- (vi) ensures that client requests regarding how to file a grievance are responded to within two business days.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDS area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form OCA-GR-9, Grievance Poster - Child Welfare Contracted Facilities, Form OCA-GR-9-A, Grievance Poster-OKDHS County Offices, or Form OCA-GR-9-B, Grievance Poster - DDS Providers, whichever is applicable.

(2) **Advocate general review of grievance programs.**

The grievance system operated by each facility and provider subject to this Part is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies, ~~and~~ procedures, forms, and any revisions which are adopted, along with proof that the policies or revisions have been

approved by the applicable approving authority. Revised policies are submitted to the advocate general for approval within 30 days of the provider or facility adopting the revised policy.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution procedures using Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody, OCA-GR-2-A, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form OCA-GR-3, Notice of Grievance Rights - DDS Clients (General), Form OCA-GR-3-A, Notice of Grievance Rights - Hisson Class Members, or Form OCA-GR-4, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hisson class members are provided notice in accordance with OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-525-4850 or 1-800-522-8014, fax at 1-405-525-4855, or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

- (i) any aspect of the care of a client that affects the quality of the client's life;
- (ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of OKDHS operated shelter or residential facility, or a facility or agency that contracts with OKDHS, or a placement provider; or
- (iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form OCA-GR-1, filling it out, and turning it in to the LGC or to any facility or OKDHS staff, who immediately transmits it to the LGC.

(1) LGCs obtain copies of this form from the OCA in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC coordinator or any other staff member.

(3) A grievance received on paper other than Form OCA-GR-1 is attached to a Form OCA-GR-1 filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC.

(1) The filing time and all other time periods contained in this Section are counted in business days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period. ~~If the last day of the time period is a Saturday, Sunday, or legal holiday, the period is extended to the next business day.~~

(2) If the LGC or any respondent fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within two business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct.

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If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDS clients are retained in accordance with OAC 340:100-3-40. OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form OCA-GR-5, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form OCA-GR-6, Quarterly Grievance Report. The quarterly report is transmitted to the advocate general no later than the 21<sup>st</sup> day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. When no grievance activity occurred or was pending during a particular calendar quarter, the LGC can inform the advocate general of this by e-mail in lieu of submitting Form OCA-GR-6. The e-mail address is: \*oca.grievances@okdhs.org.

(3) If a grievance becomes moot at any point during the processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form OCA-GR-1 and the tracking log, and sends a copy of Form OCA-GR-1 to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form OCA-GR-1, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form OCA-GR-1 is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form OCA-GR-1, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form OCA-GR-1, if the grievance has not

been resolved to the grievant's satisfaction, the LGC fills out Form OCA-GR-1-A, Local Grievance Coordinator Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the first level respondent ~~is~~ may be the supervisor of the grievant's Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the respondent is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable county director.

(D) If the minor also is a DDS client, this may be the DDS case manager supervisor.

(E) For adults receiving services from DDS, the first level respondent may be the DDS case manager supervisor.

(2) The LGC completes the first box in the first level section on Form OCA-GR-1-A, attaches the corresponding Form OCA-GR-1 and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form OCA-GR-1-A by completing the second box in the first level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant can contest the target date by taking the grievance to the next level of problem resolution.

(4) The LGC monitors the timely response by the first level respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately proceeds to the second level of problem resolution.

(5) Within ~~two~~ three business days of receipt of the first level response, the LGC or designee contacts the grievant to inform the grievant of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the grievant is satisfied with the proposed resolution. The first level respondent ~~might~~ may meet with the grievant ~~along~~ with or without the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution. The LGC is responsible for informing grievants that they have three business days in which to accept or to appeal the respondent's proposed resolution.

(6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form

OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level of problem resolution.

(8) If the grievant does not accept the proposed resolution and desires to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level of problem resolution in accordance with subsection (l) of this Section.

(l) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution pursuant to subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form OCA-GR-1-A, ensures the corresponding Form OCA-GR-1 and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For OKDHS grievances, the OKDHS county director or the DDS area manager, whichever is applicable, is the second level respondent. If the administrator, county director, or DDS area manager was the first level respondent, then the second level of problem resolution is skipped and the grievance is processed as a contested grievance pursuant to subsection (m) of this Section.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form OCA-GR-1-A by completing the applicable box in the second level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable area director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within ~~two~~ three business days of receipt of the second level response, the LGC contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant is satisfied with the proposed resolution. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days

within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(7) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the grievant does not accept the proposed resolution and indicates a desire to contest the response, a contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the grievant does not accept the proposed resolution, or the target date of the second level ~~decision making~~ proposed resolution, or both, a facility or provider grievance, ~~with the exception of grievances of Hisson class members~~, is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This section does not apply to grievances of Hisson class members. Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of learning that the grievant does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to hold a hearing to hear evidence or arguments. In the event the board determines that hearing evidence would assist it in resolving the grievance, the board has the option of holding a hearing. If it does so, the hearing does not require the formalities of a fair hearing.

(3) Within ten business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds to the grievant by submitting a written decision to the LGC.

(4) Within ~~two~~ three business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant of that decision and provides the grievant with a copy of the board's written decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance coordinator for processing

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as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by e-mail, using the e-mail address \*oca.grievances@okdhs.org.

(p) **Grievance training required.** LGCs are required to take the OCA online grievance training within 60 days of their appointments, and annually thereafter.

### 340:2-3-46. Contested grievances appealed to the state office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hisson class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant asks to appeal a grievance to the state office administrator, within ~~two~~ three business days of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance coordinator, Form OCA-GR-1-A, Local Grievance Coordinator Worksheet, attaching the corresponding Form OCA-GR-1, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form OCA-GR-1-A is submitted to OCA, it has attached:

- (1) the corresponding Form OCA-GR-1;
- (2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and
- (3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

(e) **OCA processing of grievance.** Within three business days of OCA's receipt of a contested grievance, OCA reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, OCA contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.

(f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(c)(2), OCA returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within two business days of receipt of OCA's letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to state office administrator.** Within three business days of OCA's receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form OCA-GR-7, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten business days. The advocate general may grant an extension when good cause is shown, such as the complexity of the issues. The state office administrator sends his or her response directly to the LGC after completing the middle portion of Form OCA-GR-7. A copy is sent to the advocate general. The state office administrator attaches his or her response to Form OCA-GR-7 and includes:

- (1) the proposed resolution and how it is to be implemented;
- (2) the person(s) responsible for implementing the proposed resolution;
- (3) the target date for the proposed resolution;
- (4) facts which support the appropriateness of the proposed resolution by the facility, including relevant documentation; and
- (5) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance and the proposed resolution.

(i) **Timely response required.** The OCA grievance coordinator monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance coordinator and an extension has not been granted, the OCA grievance coordinator immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event, OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee contacts the grievant within two business days of receipt by the LGC of the state office administrator's response. If the grievant accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form OCA-GR-7 and returns it to the OCA grievance coordinator within two business days. Upon receipt by OCA of Form OCA-GR-7, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

### 340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents with whom state agencies or child placing agencies contract.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-4, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

- (A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or
- (B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (F), the LGC informs the foster parent why the grievance is not being processed, using Form OCA-GR-8-D, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

- (A) a decision of a court;
- (B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;
- (C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-94;
- (D) disputes with other foster parents;
- (E) written plans of compliance. The foster parents provide their written input on the compliance documentation; and
- (F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC 340:75-1-12.6.

(3) **Grievances alleging retaliation.** Grievances alleging retaliation or discrimination, as those terms are defined in OAC ~~340:2-3-46(e)~~ 340:2-3-38(b), are processed in accordance with that Section.

(4) **Grievances alleging discrimination.** If a grievance alleges discrimination based on sex, age, national origin, religion, color or disability, the grievant is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator, and so informs the grievant.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

**340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer)**

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services (OKDHS) operated facilities listed in Sections 1406 and 1414.1 of Title 10 of the Oklahoma Statutes, the "residents," who want to file a grievance. Section 1415.1 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility for establishing an ombudsman program which includes a grievance system at each OKDHS operated facility for persons with developmental disabilities.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-3, Notice of Grievance Rights - DDSD Clients (General), is given by the Developmental Disabilities Services Division (DDSD) facility to a resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. This form is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs the form, a copy is given to the resident or to the resident's guardian, or close family member if the resident does not have a guardian, or both, and the original is maintained in the permanent record for the resident.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed in accordance with OAC 340:2-3-45(g) unless otherwise provided in this Section.

(1) The Office of Client Advocacy (OCA) maintains an ombuds office on campus at SORC and NORCE. OCA assigns advocates to its ombuds offices at the facilities who serve as the LGC at those facilities and Greer and provides assistance to residents, their guardians, and persons interested in their welfare who want to file a grievance. [OAC 340:2-3-71(h)(4)]

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- (2) The OCA advocates at a facility send a copy of a grievance to the guardian or guardian ad litem of the resident and to the parent, unless contraindicated.
- (3) If a grievance involves a decision of a resident's team, the first level respondent is the applicable unit coordinator, unless the unit coordinator is involved in the decision being grieved.
- (e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of residents.
- (f) **Second level problem resolution.** The facility director is the second level respondent.
- (g) **Contested grievances.** When a resident asks to contest the administrator's response to a grievance, the contested grievance is processed in accordance with OAC 340:2-3-46. The DDS/D director or designee is the state office administrator responsible for responding to contested grievances of residents.
- (h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests review by GARC of the DDS/D director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using a format prescribed by OCA which includes the information listed in subsection (i) of this Section.
- (i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to: the treatment of one or more residents; the substance, application, or interpretation of any policy, rule or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior, or action of an OKDHS employee, agent, or contractor, or of another resident.
- (1) An advocate formal inquiry is submitted directly to the facility director or any other OKDHS employee believed to have the knowledge to respond to the inquiry. The person to whom the inquiry is submitted has seven business days from receipt of the inquiry to respond in writing. The advocate general can grant an extension.
- (2) If the response does not resolve the concern which prompted the formal inquiry, or if a response is not timely received, the matter may be treated as a formal grievance and processed as a contested grievance pursuant to OAC 340:2-3-46.
- (3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.
- (j) **Advocate grievance.** An OCA advocate can file a grievance on behalf of a resident even when a grievance has not been filed by or on behalf of a resident.
- (1) At the discretion of the advocate general or designee, an advocate grievance is filed directly with the facility director. The facility director has seven business days to respond in writing. The advocate general can grant an extension for the facility director's response.
- (2) If the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

- (k) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the facility director or to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

### 340:2-3-52. Grievances of Hissom class members

- (a) **Application.** This Section describes processes relating to grievances of Hissom class members. The Oklahoma Department of Human Services (OKDHS) legal basis and authority for grievance policies and procedures for Hissom class members includes orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound, et al., vs. The Hissom Memorial Center*, Case No. 85-C-437-E.
- (b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-46(b) apply to this Section unless the context clearly indicates otherwise.
- (c) **Notice of grievance rights.** The Office of Client Advocacy (OCA) advocate assigned to a Hissom class member gives Form OCA-GR-3-A, Notice of Grievance Rights - Hissom Class Members, at least yearly to each class member or his or her guardian(s), close family members, and volunteer advocates. This form is used to identify the OCA advocate assigned to the class member and to explain the class member's right to grieve. After the class member, guardian(s), or both, sign the form, the advocate documents this in a contact sheet and provides copies to the client or the client's guardian, the assigned Developmental Disabilities Services Division (DDS/D) case manager, and the program coordinator of the applicable provider for placement in the client's home record. The original is maintained in OCA's record for the class member.
- (d) **Filing and processing of grievances.** Grievances of class members are processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.
- (1) OCA assigns an advocate to represent each class member. The assigned advocate serves as the grievance advisor for the class member and provides assistance to class members and persons interested in their welfare who want to file a provider or OKDHS grievance. [OAC 340:2-3-71(h)(4)] When an advocate files a provider or OKDHS grievance on behalf of a class member, the advocate contemporaneously provides a copy of the grievance to the DDS/D case manager assigned to the class member and to the DDS/D programs administrator for community services.
- (2) Class members, their guardians, volunteer advocates and other advocates, case managers, personal support team members, and persons interested in their welfare also can file an OKDHS grievance by submitting Form OCA-GR-1, Grievance Form, to the local grievance coordinator (LGC) in the appropriate DDS/D area office. When the LGC receives a grievance that has not been submitted by the OCA advocate representing the class member, the LGC promptly informs the advocate of the grievance by e-mail, fax, or telephone.

(3) If a grievance involves a decision of a class member's team, the first level respondent is the supervisor of the client's DDS case manager, unless the case manager is involved in the decision being grieved.

(e) **Provider grievances.**

(1) Each residential and vocational provider that contracts with DDS to provide services to Hissom class members has a grievance system for resolution of grievances. The provider's written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances are initiated by the class member, the assigned OCA advocate, or a person interested in the welfare of the class member by using Form OCA-GR-1 or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of a provider grievance by or on behalf of a Hissom class member by anyone other than the OCA advocate or the DDS case manager for the class member, the LGC promptly informs the DDS case manager and the advocate assigned to the class member by e-mail, fax, or phone. If an OKDHS employee initiates a grievance on behalf of a class member, at the time the grievance is filed the employee sends a copy to the DDS case manager and the OCA advocate assigned to the class member.

(3) If the subject matter of a grievance can be submitted for resolution as a provider grievance or an OKDHS grievance, the class member has the option to file it as a provider grievance, an OKDHS grievance, or both.

(f) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of Hissom class members.

(g) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(h) **Second level problem resolution.** The area manager of the appropriate DDS area office is the individual responsible for responding to an OKDHS grievance at the second level of problem resolution.

(i) **Contested grievances.** When the response to an OKDHS or provider grievance is contested by a class member or a grievant on behalf of a class member, the contested grievance is processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. The director of DDS is the state office administrator responsible for responding to contested grievances of class members.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a Hissom class member requests review by GARC of the DDS director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using the format prescribed by OCA that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information

relating to: the treatment of a client; the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior or action of an OKDHS employee, agent or contractor, or of another client.

(1) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate DDS area manager. An advocate general formal inquiry is submitted to the director of DDS. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(2) If the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(l) **Advocate grievances.** An OCA advocate may file a grievance on behalf of a class member even though a grievance has not been filed by or on behalf of the class member.

(1) At the discretion of the advocate general or designee, an advocate grievance is submitted directly to the administrator of a provider agency or the appropriate DDS area manager using Form OCA-GR-1-J, Grievance - Hissom Class Member.

(2) An advocate general grievance is submitted directly to the director of DDS or the administrator of the provider agency, whichever is applicable.

(3) The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(4) If the response to a grievance is not acceptable, or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(m) **Monitoring of grievance programs.** Providers submit their policies for review and approval by the advocate general. OCA provides training and technical assistance to providers, at their request, in the development of grievance forms and procedures. OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (h).

**340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services Division (DDS)**

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from the Developmental Disabilities Services Division (DDS) who are not residing in an Oklahoma Department of Human Services (OKDHS) operated facility and are not Hissom class members. This Section includes minors and adults in specialized foster care.

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(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The DDS case manager gives Form OCA-GR-3, Notice of Grievance Rights - DDS Clients (General), to the service recipient, or guardian if applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. If the service recipient does not have a DDS case manager, the provider gives Form OCA-GR-3 to the service recipient within 30 calendar days of service initiation and annually thereafter. Form OCA-GR-3 is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** Provider and OKDHS grievances are filed and processed in accordance with OAC 340:2-3-45. If a grievance involves a decision of a ~~resident's~~ an individual's team, the first level respondent is the supervisor of the client's case manager unless the case manager participated in making or approved the decision being grieved.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of these clients.

(f) **Contested grievances.** When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(g) **Monitoring grievance programs.** OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (m).

### PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

#### 340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances

(a) **Application.** GARC reviews unresolved contested grievances when the advocate general receives a proper request for GARC review in accordance with OAC 340:2-3-46(k).

(b) **The GARC worksheet.** If the grievance was filed by or on behalf of a Developmental Disabilities Services Division (DDSD) client who receives Office of Client Advocacy (OCA) ombuds services, including residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate prepares a GARC worksheet using a format prescribed by OCA which includes:

(1) the grievance number and the names of the resident, grievant, guardian, parent(s), case manager, and OCA advocate;

(2) ~~what efforts were made to resolve the problem by means of informal problem resolution~~ a summary of the grievance process, resolutions offered at each level and the decision makers' responses;

(3) the applicable statutes, policies, and other authorities;

(4) the resolution sought by the grievant;

(5) relevant documentation;

(6) the OCA advocacy position with regard to the subject of the grievance; and

(7) a copy of Form OCA-GR-1, Grievance Form, and Form OCA-GR-1-A, Local Grievance Coordinator's Worksheet.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the grievance.

(1) Within three business days of receiving a proper request for GARC review pursuant to OAC 340:2-3-46(k), the advocate general or designee informs the affected state office administrator and administrator of the date of the GARC meeting.

(2) The grievant, administrators, state office administrators, and their designees may attend the GARC meeting to answer questions. If a grievance involves a Hissom class member, the OCA programs administrator for the community ombuds program also attends.

(3) If the grievant wants to submit additional evidence not considered during the processing of the grievance, it is submitted to the advocate general contemporaneously with the request for GARC review. If the administrator or affected state office administrator wants to submit additional evidence not considered during the processing of the grievance, or when GARC review is the result of an untimely response in accordance with OAC 340:2-3-46(I), or for good cause shown, evidence can be submitted to the advocate general seven business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a grievance until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(d) **GARC report contents.** Within 15 business days of a GARC meeting to review an unresolved grievance, GARC prepares a report that includes:

(1) the subject matter of the grievance and identifying information about the grievant, the administrator, and the state office administrator;

(2) the procedural history of the grievance, identifying proposed resolutions and responses at each step in the grievance process prior to the GARC review;

(3) the resolution sought by the grievant and the resolution proposed by the state office administrator;

(4) GARC's recommended resolution of the grievance;

(5) the facts on which GARC bases its recommendation;

(6) the information GARC considered in making its recommendation; and

(7) areas of concern identified by GARC during its review of the case regarding facility or OKDHS practices or procedures.

(e) **Distribution of GARC report.** The advocate general forwards GARC's report to the applicable local grievance

coordinator (LGC). Within ~~two~~ three business days of receipt of GARC's report, the LGC contacts the grievant to inform the grievant of GARC's recommended resolution, and determines if the grievant is satisfied with it.

(1) If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(2) If the grievant is satisfied, the LGC notifies the advocate general, and the advocate general then notifies interested parties. An affected state office administrator has three business days from receipt of this notification to submit to the advocate general a written request for review by the Oklahoma Department of Human Services (OKDHS) Director.

(3) If the grievant is not satisfied with GARC's recommended resolution and desires to contest it, the LGC notifies the advocate general within four business days of receipt of the GARC report. The advocate general transmits the request and GARC's report for review by the OKDHS Director.

(f) **OKDHS Director's review of a GARC recommendation.** Upon receipt by the advocate general of a proper and timely written request for review by the OKDHS Director, pursuant subsection (e) of this Section, the advocate general or designee transmits the request and the GARC report to the OKDHS Director.

(1) Within 15 business days of receipt of GARC's report, the OKDHS Director decides whether to:

- (A) adopt GARC's recommended resolution;
- (B) adopt GARC's recommendation with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) direct another resolution of the grievance.

(2) If the OKDHS Director does not respond within 15 business days, the grievance is deemed resolved in accordance with GARC's recommended resolution.

(3) The advocate general notifies the grievant and other interested parties of the result of the OKDHS Director's review. The grievant is informed that this concludes the grievant's administrative remedies. If the grievant is a minor, a copy of the grievance and related materials are forwarded to the Office of Juvenile Systems Oversight in the Oklahoma Commission for Children and Youth.

(g) **Monitoring of resolution.** If the final resolution of the grievance involves an action to be taken by an OKDHS employee at a future date, the advocate general or designee identifies the target date and monitors compliance with that deadline. In the event of non-compliance, the advocate general notifies the OKDHS Director in writing.

**340:2-3-71. Advocacy services of the Office of Client Advocacy (OCA) in general**

(a) **Legal authority.**

(1) Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred this responsibility on the Office of Client Advocacy (OCA).

(2) Orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound et al. v. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E, require OKDHS and OCA to provide ombudsman and advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members.

(3) OKDHS also has conferred on OCA other advocacy responsibilities as outlined in this Part of this Subchapter.

(b) **Scope.** OCA provides advocacy services to clients of the OKDHS Developmental Disabilities Services Division (DDSD) listed in this subsection, who are collectively referred to as "clients" in this Part of this Subchapter.

(1) OCA's advocacy services for residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer) are outlined in greater detail in Section 72 of this Subchapter.

(2) OCA's advocacy services for former residents of SORC, NORCE, and Greer for whom the director of the facility is guardian ad litem (GAL) are outlined in greater detail in Section 73 of this Subchapter.

(3) OCA's advocacy services for Hissom class members are outlined in greater detail in Section 74 of this Subchapter.

(4) OCA provides advocacy services on a short-term or emergency basis for other DDSD clients who have a special advocacy need pursuant to Section 75 of this Subchapter.

(c) **Mission statement and guiding principles.**

(1) **Mission statement.** OCA's advocacy programs advance the capacity and recognition of individual choice, the realization of rights and responsibilities of citizenship, and the personal well-being of recipients of DDSD services.

(2) **Guiding principles.** In addition to those listed in ~~OAC 340:100-1-3-3.1~~ 340:100-1-3.1, the guiding principles for OCA's advocacy on behalf of clients are listed in (A) through (D) of this paragraph.

(A) **Self-determination.** Advocates promote the individual as the driving force of life choices and decisions.

(B) **Meaningful choice.** Advocates promote the development of meaningful choices for persons with developmental disabilities consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, and interests.

**PART 9. OMBUDSMAN PROGRAMS**

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- (C) **Active citizenry.** Advocates promote the inclusion and involvement of persons with developmental disabilities in the social and political structures of the community.
- (D) **Well-being.** Advocates promote access to physical and emotional supports necessary for a healthy life-style.
- (d) **Definitions.** In addition to the definitions in Section 2 of this Subchapter, the following words and terms when used in Sections 71 through 75 shall have the following meaning, unless the context clearly indicates otherwise:
- (1) **"Behavior Review Committee"** or **"BRC"** means the BRC established pursuant to OAC 340:100-3-5 and 100-3-5.1 and defined in OAC 340:100-1-2.
  - (2) **"Guardianship assessment"** means the process of determining an individual's capacity to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, in accordance with OAC 340:100-1-2.
  - (3) **"Human Rights Committee"** or **"HRC"** means the HRC created by OAC 340:100-3-6 and defined in OAC 340:100-1-2.
  - (4) **"Individual plan"** or **"IP"** or **"plan"** means an individual plan established pursuant to OAC 340:100-5-51.
  - (5) **"Informed consent"** means informed consent as defined in OAC 340:100-1-2.
  - (6) **"Program coordinator"** or **"PC"** means a program coordinator as defined in OAC 340:100-1-2.
  - (7) **"Qualified Mental Retardation Professional"** or **"QMRP"** means a QMRP as defined in OAC 340:100-1-2.
  - (8) **"Service review"** means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of the life of an individual at the time the review is completed.
  - (9) **"Unit coordinator"** means a team leader as defined in OAC 340:100-1-2.
- (e) **Confidentiality.** Information in OCA's records relating to advocacy services provided to the clients listed in subsection (b) of this Section is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records.
- (1) The confidentiality provisions of OAC 340:100-3-2 apply to OCA's client files.
  - (2) The confidentiality provisions of OAC ~~340:105-3-34~~ 340:5-1-5 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult as those terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes.
  - (3) A breach of confidentiality may result in a criminal prosecution. Violations by OKDHS employees can also result in personnel action.
- (f) **Training requirements for advocates.** New and tenured OCA advocates receive appropriate training consistent with their background and experience. This includes training on the rights of DDS clients under Oklahoma and federal law.
- (g) **Client representation.**
- (1) OCA maintains offices on campus at SORC and NORCE, and assigns advocates to represent residents of SORC, NORCE, and Greer.
  - (2) OCA assigns advocates, in accordance with this Part of this Subchapter, to represent specific DDS clients living in community residential settings, including Hissom class members living in Oklahoma and former residents of SORC, NORCE, and Greer for whom the facility director is the GAL.
  - (3) An OCA advocate is knowledgeable about the clients represented by him or her and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An advocate ascertains the preferences and choices of a client. An advocate becomes familiar with a client by:
    - (A) reviewing relevant client records and files;
    - (B) visits and other contacts with the client at home, at work, and in other contexts; and
    - (C) communication with the client's relatives, loved ones, guardians, program coordinator and other provider staff, case manager, and others in the client's circle of support.
- (h) **OCA ombuds and advocacy services.**
- (1) **Advocacy.** Advocacy is the function of assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination, and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and preferences, an advocate seeks to speak on behalf of the client. Advocacy services provided by OCA's advocates include:
    - (A) supporting the implementation of the least restrictive alternative in residential, vocational, therapeutic, and medical settings;
    - (B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;
    - (C) encouraging the development of natural supports, including friends, coworkers and neighbors in the community in which an individual lives; and
    - (D) advocating for those responsible for providing services for a client to fulfill their responsibilities by bringing performance issues to the attention of those who are responsible for correcting the situation.
  - (2) **Monitoring.** OCA monitors the well-being and provision of services to a client by means of: visits and other forms of contact with the client, staff, family members, and others who know the client; review of records, documentation, contracts, and financial agreements between clients and providers of services, incident reports, and professional assessments; and attendance at IP and other team meetings. OCA's advocates cooperate with and render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, in accordance with the laws and rules relating to client

confidentiality and release of information protocols. The monitoring role of an OCA advocate is to ensure that:

- (A) individual needs, preferences, and choices are identified and met appropriately and consistently;
  - (B) health, safety, and welfare standards and safeguards are maintained; and
  - (C) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.
- (3) **Informal problem resolution.** An advocate seeks to resolve issues and client concerns by means of informal problem resolution at the lowest level of administrative responsibility or decision-making. Informal problem resolution seeks to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally. An advocate uses the problem resolution activity consistent with the nature and imminence of the problem. An advocate assists a client in development of problem resolution skills and self-advocacy.
- (4) **Grievances.** As needed, an OCA advocate files grievances on behalf of clients in accordance with Part 5 of this Subchapter. OCA also advises clients and assists them with filing grievances on their own behalf when they so desire.
- (5) **Protection and safety.** OCA staff take appropriate action under the circumstances to protect the health, safety, and well-being of clients, including reporting allegations of abuse, neglect, maltreatment, and exploitation in accordance with Part 3 of this Subchapter.
- (A) OCA advocates assist OCA and Adult Protective Services investigators and law enforcement officers in obtaining information necessary for completion of investigations in which a client is an alleged victim.
  - (B) Advocates engage in appropriate follow-up activity in response to receiving a referral from OCA's intake unit in accordance with Section 35(a)(7) of this Subchapter.
  - (C) When an advocate has a concern related to a client's health, safety, well-being, or program implementation, the advocate advises the client's case manager or designated QMRP, as applicable, and others (for example, DDS staff, provider or facility staff, treatment staff, and health care professionals) as the circumstances warrant.
  - (D) Immediately upon becoming aware of any concerns regarding imminent risk of harm, an advocate advises the applicable residential or vocational provider as well as the client's case manager.
  - (E) An OCA advocate ensures that allegations of abuse, neglect, maltreatment, and exploitation of which the advocate becomes aware are reported to OCA intake in accordance with Section 33 of this Subchapter.
- (6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, through provision of

necessary information and assisting a client in understanding options and potential consequences of a decision. If a client is unable to make an informed choice, the advocate seeks to provide the client's legal guardian, GAL, volunteer advocate, and other representative(s) with access to information to make an informed decision on behalf of the client. The advocate general does not provide legal advice to clients, but may provide information about the law.

(7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An advocate takes appropriate steps to protect a client's rights, including ensuring those rights are considered in team decisions and in the manner with which team decisions are carried out. An advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving a client which might result in a rights restriction. When a rights restriction is absolutely necessary, OCA supports the least restriction necessary for the shortest period of time possible and a plan to remove the restriction as soon as possible.

(8) **Access to services.** An OCA advocate promotes client access to the full range of supports in accordance with the requirements of state and federal programs. Although an advocate takes a position with regard to services needed by a client, an advocate does not have authority to approve services.

(9) **Guardianship issues.** The Oklahoma Guardianship Act promotes the participation of persons as fully as possible in the decisions which affect them, development of maximum self-reliance and independence, and appointment of guardians and others only to the extent necessitated by the mental and adaptive limitations or other condition of individuals. [30 O.S. § 1-103] Because a full guardianship of the person and estate of a client is the most restrictive intrusion on an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship that is feasible under the circumstances, including but not limited to: limited guardianship; representative payee for financial benefits; volunteer advocate; supportive friends and family; health care proxy; durable power of attorney; and advance directives.

(10) **Promoting inclusion.** An advocate promotes the realization of active citizenship and inclusion in the community. This includes but is not limited to encouraging clients to: learn the rights and responsibilities of good citizenship, vote, take classes, participate in volunteer service organizations, attend religious services of the client's choice, attend recreational, cultural and social events, and join citizen advocacy organizations that promote inclusion in the community. An advocate encourages the development of friends who can serve as natural supports for a client. An advocate assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between the client and family members.

(11) **End-of-life issues.** End-of-life issues for an individual with a developmental disability do not differ from

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those of the community at large. Regardless of the medical circumstance which bring these issues to the forefront, an OCA advocate seeks to have physicians, guardians, and loved ones of a client adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing evidence of a client's wishes, an advocate presumes the client would choose life sustaining measures.

(i) **On-call advocate.** OCA advocates carry pagers or cell phones during office hours. If an advocate is not available during office hours, his or her supervisor serves as a back-up to the advocate and can be contacted. Information about the name of the advocate assigned to a client, the advocate's phone and pager numbers, and the name of the advocate's supervisor can be obtained from OCA's offices in Oklahoma City 1-405-525-4850, 1-800-522-8014 and Tulsa 918-732-7543. After hours, weekends, and holidays, an advocate is assigned to serve as the on-call advocate 24 hours a day. The on-call advocate can be contacted by cell phone 1-405-203-6056.

(j) **OCA access to client records and information.** OCA staff are provided access to all records, files, documents, and information needed to fulfill OCA's responsibilities regarding a client. DDS case managers and employees and staff of provider agencies send to the assigned OCA advocate a copy of documents and notices sent to the client.

*[OAR Docket #06-756; filed 4-26-06]*

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

*[OAR Docket #06-754]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 11. Finance  
Part 8. General Provisions  
340:2-11-79. [AMENDED]  
340:2-11-79.1. [NEW]  
340:2-11-80. through 340:2-11-84. [REVOKED]  
340:2-11-85. through 340:2-11-87. [AMENDED]  
340:2-11-88. through 340:2-11-90. [REVOKED]  
340:2-11-91. through 340:2-11-92. [AMENDED]  
340:2-11-93. through 340:2-11-96. [REVOKED]  
340:2-11-97. through 340:2-11-98. [AMENDED]  
340:2-11-99. [REVOKED]  
340:2-11-100. [AMENDED]  
Part 9 Travel Reimbursement  
340:2-11-115. through 340:2-11-117. [AMENDED]  
340:2-11-118. [REVOKED]  
340:2-11-119. [AMENDED]  
340:2-11-119.1. [NEW]  
340:2-11-120. [REVOKED]  
340:2-11-121. [AMENDED]  
340:2-11-122. through 340:2-11-124. [REVOKED]  
**(Reference APA WF 05-06)**

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 41.21, 89.2, and 203 of Title 62 of the Oklahoma Statutes; Section 24 of Title 56 of the Oklahoma Statutes; Sections

85, 500, and 840 of Title 74 of the Oklahoma Statutes; Title 31 of the United States Code; Sections 2011 through 2025, 271, and 3015 of Title 7 of the United States Code; and Section 218 of Title 2 of the Social Security Act.

**DATES:**

**Comment period:**

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**Public hearing:**

None requested

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February 28, 2006

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February 28, 2006

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February 28, 2006

**Gubernatorial approval:**

April 13, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2006.

**Final adoption:**

April 26, 2006

**Effective:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Finance Division proposed permanent rule amendments: (1) revoke rules that are no longer applicable; (2) clarify claims processing requirements; (3) establish reference to and use of Office of State Finance, Office of State Comptroller Procedures Manual; (4) eliminate definitions no longer applicable; (5) add new definitions; (6) consolidate general travel reimbursement rules; (7) consolidate transportation related reimbursement specific rules; (8) consolidate lodging related reimbursement specific rules; (9) clarify per diem related reimbursement specific rules; and (10) make stylistic and semantic improvements.

**CONTACT PERSON:**

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

### SUBCHAPTER 11. FINANCE

#### PART 8. GENERAL PROVISIONS

**340:2-11-79. Purpose**

~~The purpose of this Subchapter is to describe some of the responsibilities of the Department of Human Services Office of Finance. The Office of Finance Division is the performs centralized accounting, fiscal reporting, claims auditing, payroll, and budgeting unit functions for the Oklahoma Department of Human Services. The Office of Finance is responsible for the Department's fiscal management including controls for the receipt, custody and disbursement of all Department funds. The Office of Finance issues assistance and administrative warrants, and handles the disposition of~~

returned warrants. The Office of Finance prepares and monitors the Agency's annual budget work program and prepares and issues all Agency payrolls. The Division also audits and verifies the accuracy of claim vouchers submitted against all administrative funds. The Office of Finance provides data processing support for all its activities.

**340:2-11-79.1. Legal base**

The Oklahoma Department of Human Services operates its financial responsibilities in accordance with federal and state statutes and regulations listed in (1) through (10) of this subsection.

- (1) Title 31 of the United States Code (U.S.C.) as amended sets forth federal cash management requirements.
- (2) Title 62 of the Oklahoma Statutes (O.S.) as interpreted by the Procedures Manual of the Office of State Comptroller located in the Oklahoma Office of State Finance describes fiscal procedures.
  - (A) Section 41.21, paragraph B describes the pre-audit system and claims settlement procedures.
  - (B) Section 89.2 sets forth collateralization procedures.
  - (C) Section 203 establishes the Federal Disallowance Fund.
- (3) The United States Office of Management and Budget (OMB) Circular A-87 sets forth requirements for a schedule of federal financial assistance.
- (4) Sections 2011 and 2025 of Title 7 of U.S.C., interpreted by Sections 271 through 282 and 3015 of Title 7 of the Code of Federal Regulations provides for financial management of the Food Stamp Program.
- (5) Section 24 of Title 56 of O.S. sets forth state requirements regarding the Food Stamp Program.
- (6) Section 85 Title 74 et seq. otherwise known as the Oklahoma Central Purchasing Act describes procedures for procurement of supplies, services, and property.
- (7) OMB Circular A-128 outlines the requirements of the Single Audit Act.
- (8) Sections 500.1 through 500.20 of Title 74 of O.S. provide the statutory authorization and limitations for travel reimbursement.
- (9) Section 218 of Title II of the Federal Social Security Act provides for Social Security coverage for state and local employees.
- (10) Section 840 of Title 74 of O.S. otherwise known as the Oklahoma Personnel Act describes procedures regarding staff pay.

**340:2-11-80. Funds and accounts [REVOKED]**

Each year the State Legislature approves the allocation of State General Revenue funding that is used to support various agencies. Each month the Department of Human Services (DHS) receives an allocation of General Revenue funding deposited into a three digit fund number that begins with one and ends with the last two digits of the fiscal year. For example, Fund 198, is the State General Revenue Fund for 1998. At

the request of DHS the General Revenue funding is transferred into a disbursing fund, a spending fund, to be matched with federal revenue and other DHS receipts used to fund administrative and client support expenditures. Disbursing funds are sub-classified by accounts. The X in the fund number represents the last digit of the applicable Fiscal Year. The disbursing funds are:

- (1) Fund 200 Grants and Donations Fund;
- (2) Fund 220 DHS Federal Disallowance Fund;
- (3) Fund 230 Indigent Health Care;
- (4) Fund 245 Adaptive Grant Program—Mentally Retarded Fund;
- (5) Fund 32X Human Services Disbursing Fund;
- (6) Fund 340 Human Services Medical Assistance Fund;
- (7) Fund 905 Payroll Expenditure Fund; and
- (8) Fund 99X Payroll Withholding Fund.

**340:2-11-81. Appropriations [REVOKED]**

- (a) **Appropriations of state funds.** On or before June 1<sup>st</sup> of each year or as soon thereafter as possible, the Director of Human Services files with the Director of State Finance and the Legislative Fiscal Office a work program for the ensuing fiscal year. Work programs must include all funds made available to the Agency and set out allotments requested for the fiscal year. Prior to October 1<sup>st</sup> of each year, the Department of Human Services submits to the Director of State Finance a summary of the Department's financial needs for the next fiscal year. The Legislature appropriates the amount deemed necessary to meet the Department's needs for each fiscal year.
- (b) **Appropriations of federal funds.** Federal statutes establishing the various federally assisted programs administered by the Department of Human Services usually authorize spending by the funding federal agencies at specific levels. Funds may not be expended by those agencies in excess of amounts appropriated by the U.S. Congress.

**340:2-11-82. Agency budget [REVOKED]**

- (a) **Agency budget request.** The Agency's annual budget request is intended to reflect the Agency's financial operating needs for the following fiscal year. It is statutorily required to be submitted to the Office of State Finance no later than September 1 of each year.
  - (1) **Preparation.** The Office of Finance, Budget Unit delivers instructions, forms, and electronic request form files to each division administrator with a stated completion date. Designated personnel within each division complete the necessary forms for all request items and return them to the Office of Finance, Budget Unit where they are reviewed for completeness, accuracy, and conciseness.
  - (2) **Submission.** The Agency Request Summary is compiled by the Office of Finance, Budget Unit. It reflects all division requests and Agency wide needs. This information is transferred to prescribed forms, submitted to the Commission for Human Services for approval, and then submitted to the Office of State Finance by the statutory deadline date. A detailed request by division,

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reflecting the current needs, is prepared for each operating division.

(b) **Capital request.** The Department's capital request provides prioritized lists, cost estimates, and justification of capital needs for all the Department's facilities for the request year. It is reviewed and approved by the Director and Commission for Human Services.

(1) **Preparation.** The Office of Finance, Budget Unit prepares the request based on information provided by the Office Support Services Facilities, Management Unit in conjunction with input from division administrators. Division administrators are responsible for prioritizing all capital needs within their purview.

(2) **Submission.** After final prioritization and approval by the Director and the Commission for Human Services, the request is submitted to the State Bond Advisor's Office. The capital request for each fiscal year is statutorily required to be submitted by July 1, of the prior fiscal year.

(c) **Budget Work Program.** The Budget Work Program reflects the plan for Agency expenditures for the current fiscal year as approved in the Agency's Appropriation Bill. It is submitted by the Office of Finance, Budget Unit to the Office of State Finance by June 1, of each year, or as soon as possible thereafter after approval by the Commission for Human Services. The document is based on the expenditure levels stipulated in the Agency's Annual Appropriation Bill.

### 340:2-11-83. Budget Unit [REVOKED]

(a) **Scope and coordination.** The Budget Unit assures the coordination of the Agency's operating budget and expenditure transactions within the limits of the Budget Work Program and budget revisions. An automated system assures that each purchase is within the scope of applicable budgetary limitations prior to the issuance of a purchase authorization. Each division is allowed to revise purchase authorizations, also known as encumbrances, within the limitations of its work program. The Office of Finance, Budget Unit provides support services for system use, maintenance, and control. This unit also issues various periodic and specialized analytical reports from system transactions.

(1) **Training.** The Budget Control System training is provided by the Office of Finance, Budget Unit. Authorized personnel requesting access to the system must attend a Budget Control training session. Written requests for training are submitted to the Supervisor, Budget Unit. Classes are scheduled, and the prospective trainees notified. Trainees are instructed on operating the various aspects of the Budget Control System. Each trainee is given a system manual for additional reference.

(2) **Access.** To obtain access to the Budget Control System, the user must have a Finance Information System User identification number assigned by the Finance Systems Unit. A written request from the prospective user's supervisor to the Budget Unit supervisor is required to obtain system access. The request specifies the prospective user's full name, assigned identification number, the type of access needed, and the funds, accounts, and locations that the user needs to access.

(b) **Budget information.** Budgets are assigned to various operating units, program areas, or specific contracts by finance location codes. Each budget area is further subdivided into budget codes that correspond to groupings of object of expenditure codes. Budgets are also grouped according to the division or program areas to which they belong by Agency sub-account numbers.

(c) **Purchase authorizations or encumbrances.** A purchase authorization or encumbrance provides a mechanism which sets aside, or "encumbers", budget funds within a specific budget for anticipated expenditures. A purchase authorization number must be obtained in order for any Agency purchase to be processed.

(d) **Set purchase authorization numbers.** Encumbrances for established and ongoing purchase authorizations are established by the Budget Unit prior to the start of each fiscal year. These encumbrances are based on expenditure history for various types of recurring expenses. A complete listing of the "Set Purchase Authorization Numbers" is distributed to each Budget Control System user prior to the beginning of each fiscal year.

(e) **Budget codes.** A budget code is a three digit number that is used within the Budget Control System to classify similar object of expenditure codes within a major category. Restricted budget codes allow for control of a budget area for one or more purposes given in (1) - (3) of this subsection. The purpose of the restricted budget codes is:

(1) to assure that funds are not depleted in order to reserve funds for expenditures based on historical data.

(2) to comply with expenditure caps directed by the Office of State Finance.

(3) to monitor and control specific expenditures during a spending freeze.

(f) **Budget or encumbrance adjustments.** Budget encumbrances or adjustments are explained in (1) - (3) of this subsection.

(1) **Unrestricted budget areas.** The budget control system allows authorized users to transfer budget authority from one budget area to another provided that the transaction is within the same sub-account and does not affect a restricted finance location or budget code.

(2) **Restricted budget areas.** Requests to transfer funds within restricted budget areas are submitted on Form F S 203, Request for Change in Budget Information on File, and directed to the Budget Unit.

(3) **Adjustments.** The budget control system allows authorized users to increase, decrease, add a line, or cancel a purchase authorization encumbrance. There are no purchase authorization encumbrance adjustment restrictions, provided that there are adequate monies available within the budget area or the amount of a reduction is less than the expenditure(s) or the amount of the requisition.

(g) **Requesting new funding codes.** Procedures for requesting new funding codes are listed in (1) - (2) of this subsection.

(1) **Finance locations.** Written requests for a new series of finance locations are submitted at least six months prior to the beginning of a new fiscal year to the Budget

Unit. A brief description of the use and intent of the location series are included in the request. Implementation of the new location series coincides with the beginning of the new fiscal year.

(2) **Sub-accounts.** Written requests for new sub-account numbers are submitted at least six months prior to the beginning of a new fiscal year to the Budget Unit. A brief description of the use and intent of the new sub-account numbers is included with requests. Implementation of the new sub-account numbers coincide with the beginning of the new fiscal year.

**340:2-11-84. Authorized signatures [REVOKED]**

This Section describes the requirements for authorized signatures accepted by the Office of Finance.

(1) All executive staff and division administrators are responsible for authorizing signature authority within their respective areas.

(2) All divisions appoint a contact person who is responsible for securing signature cards, reviewing for accuracy, and notifying the Office of Finance, Claims Audit Unit of additions and deletions.

**340:2-11-85. Collecting funds**

(a) **Central collection point.** The Office of Finance, Revenue Processing Unit Division is responsible for collecting and initial disposition of all initially disposing remittances from all sources received by the Oklahoma Department of Human Services (OKDHS), with the exceptions of non-custody Child Support Enforcement collections. Child support collections received in local offices on behalf of clients in the custody of the Department are forwarded to the Office of Finance, Revenue Processing Unit immediately upon receipt. All collections from outside entities for the Department of Human Services, Office of Finance OKDHS remittances are directed to the Oklahoma Department of Human Services, Attn: Finance Division Revenue Processing Unit, P.O. Box 53306, Oklahoma City, Oklahoma 73152.

(1) Each remittance document on which the Department of Human Services is a named payee or holds an equitable interest, is directed to the Office of Finance for disposition. No An employee endorses may not endorse any remittance document on behalf of the Department of Human Services OKDHS without the specific authorization of the Chief Financial Officer OKDHS chief financial officer (CFO).

(2) Each non-collectible remittance document returned by the Department of Human Services for non-collectibility, for example, a check returned for insufficient funds, is held by the Office of Finance Division, Revenue Processing Unit until final disposition. The appropriate operating unit(s) is notified of the returned remittance document(s).

(b) **Institutional deposits.** State institutions administered by the Department of Human Services deposit local collections into Agency Clearing Account 1830 or Agency Special Accounts at local banks with the approval of the State Treasurer. The Revenue Processing Unit is notified of such

deposits by receipt of "Advice of Deposit" cards from the individual institutions. Each card contains the bank teller's deposit verification stamp, deposit amount, Agency account number, bank identification information, and receipt number. The Revenue Processing Unit delivers the deposit advice cards to the State Treasurer's Office twice daily with regular deposits.

(c) **Direct deposit to operating funds.** Remittances normally received by warrants issued by the State Treasurer or the U.S. Treasury are directly deposited to the applicable Agency operating funds and accounts, if disposition is known initially.

(db) **Client trust deposits.** Client trust accounts are maintained to manage and account for the financial assets of clients that who are placed in the OKDHS custody of the Department. Deposits typically arise from Social Security benefits, child support payments, and spending allowances provided by the Agency OKDHS. Social Security benefits are typically received through Federal Reserve electronic funds transfer transactions to the appropriate State Treasurer's account(s).

(ec) **Donated funds.** To encourage voluntary donations, the Department, insofar as possible, utilizes The CFO is authorized to accept gifts and bequests on behalf of OKDHS. OKDHS makes every effort to utilize gifts and bequests in accordance with donors' wishes in a manner which is highly visible to the general public and makes the contents of donated fund accounts available for public inspection.

(1) Upon notification of a gift or bequest, the Office of Finance, in coordination with the General Counsel and the Department of Human Services program component which the gift or bequest is intended to benefit, prepares an information memorandum for the Director of Human Services to present to the Commission for Human Services. These information memoranda identify the source of the funds, the amount, the intended use specifications by the donor, the deposit arrangements planned, the specific uses to which the funds are applied, and any problems foreseen in accounting for or utilizing the funds.

(2) The Department recognizes that gifts and bequests are not considered as normal income in the Department's budget processes nor in the State Equalization Board's revenue forecasting. Accordingly, donations are not transferred to operational funds, but rather deposited in interest-bearing Agency Special Accounts or designated State Treasury Funds from which donated monies are disbursed consistent with the Oklahoma Central Purchasing Act.

(3) All donations are continuously reviewed by the Office of Finance, in coordination with the Legal Division and the responsible program component, in order to ensure that the conditions or other legal requirements are fully met by the Department and that the specific intent of the donor is followed to the extent possible.

(4) The Office of Finance ensures that all accounting obligations to donors, and all other obligations of the Department, are discharged in a timely manner.

(5) All disbursements from donated funds are made at the request of the appropriate division administrator(s). Such requests are in writing to the Office of Finance and a copy of the correspondence forwarded to the Director

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of Human Services. The Office of Finance honors such requests for disbursement if in accord with all applicable state laws, or other legal requirements of the gift.

(6) The Office of Finance prepares a quarterly accounting of fund balances, disbursements, and receipts of all donated monies received pursuant to policy. This quarterly report is presented to the Director of Human Services. The report for the fourth quarter of each fiscal year contains a summary for the preceding 12 months and is forwarded to the Commission for Human Services for information and approval.

(7) The Chief Financial Officer is authorized to accept gifts and bequests on behalf of the Department.

(f) **Direction of remittances.** All remittances are immediately directed to the Office of Finance, Revenue Processing Unit by Agency operating units. If remittances are mistakenly misdirected to other units, the receiving units immediately direct them to the Office of Finance, Revenue Processing Unit. All remittances are deposited with the State Treasurer or in financial institutions specifically approved by the State Treasurer for the collection of such remittances.

(1) All employees are prohibited from participating in the deposit of any financial receipts arising from their employment with the Department of Human Services in any financial institution or account not approved by the State Treasurer, and in accord with this Section.

(2) The Departmental Services Mailroom, the Agency's initial point of mail receipts, holds all remittances in a fire proof safe pending receipt by the Office of Finance, Revenue Processing Unit. An authorized Revenue Processing Unit employee retrieves remittances from the mailroom twice daily.

(g) **Disposition.** Upon receipt of remittances in the Office of Finance, Revenue Processing Unit, all checks are restrictively endorsed and the remittances are sorted and totaled by receipt category. Each remittance, and its supporting documentation, is microfilmed and identified with a unique sequential number. This remittance number is used to track remittances throughout the system. Applicable data pertaining to each remittance is input into an electronic file residing on the Finance Information Systems Unit computer, and deposit slips are generated. The remittances and deposit slips are placed in a secure safe and delivered to the Office of the State Treasurer twice daily. Corresponding deposit receipts are delivered by the State Treasurer's Office to the Revenue Processing Unit, where they are permanently maintained, on the following day. Agency deposit records are reconciled monthly with corresponding records reported by the State Treasurer. Remittances drawn on accounts of the State Treasurer or the United States Treasury are deposited to the applicable disbursing funds. All other remittances are deposited to Agency Clearing Account 1830 or the appropriate State Treasury Revolving Fund. Clearing account deposits are transferred to the applicable disbursing funds at least once monthly.

(h) **Miscellaneous.** Miscellaneous receipts arise from the collection of duplicate claim payments to Agency vendors, commodity storage fees, rental collections, interest on investments, and other collections where the revenue source cannot

be readily identified upon receipt. Upon identification, the applicable funding data for each receipt is input to the Finance Information Systems Unit computer file used as the source for transferring remittances from Agency Clearing Account 1830 to Agency operational funds and accounts.

(i) **Collection reports.** The "Daily Transaction Report," issued by the Finance Information Systems Unit, is a detailed listing of all deposits, by category, for the current business day. Agency Clearing Account 1830 deposits that have not been transferred to disbursing funds appear on the "Daily Exception Report," also generated by the Finance Information Systems Unit. This report lists detailed data pertaining to remittances remaining in the Agency Clearing Account.

(j) **Transfers to disbursing funds.** Upon identification, Revenue Processing Unit personnel input the applicable disbursing fund number, internal Agency account number, and other applicable data elements to the record of each Agency Clearing Account 1830 deposit. The Data Services Division transmits this information, from data input by the Family Support Services Division, to the Finance Information Systems Unit computer for client overpayment collections. At least once monthly, a "Weekly Transfer Report," is generated by the Finance Information Systems Unit at the request of the Revenue Processing Unit. This report contains a listing of all remittances with funding information not included on a previous transfer report. After verification, the amounts are summarized by disbursing fund number, account number, receipt code, and other pertinent data. Agency Clearing Account 1830 vouchers payable to the State Treasurer are then issued to the State Treasurer to effect transfers of the remittances to the proper disbursing funds and Agency accounts. The vouchers are accompanied by corresponding deposit slips and delivered to the Office of the State Treasurer.

(k) **Client and vendor overpayments.** The Office of Finance, Revenue Processing Overpayments Unit maintains an accounts receivable system for Agency client and day care vendor overpayment collections. The system database resides on a mainframe computer operated by the Data Services Division.

(1) The Family Support Services Division determines client overpayment case data and enters it to the database. After it has been determined that an overpayment actually exists, the case file is forwarded to the Revenue Processing Overpayments Unit. The applicable federal fiscal period(s) for each overpayment is established along with the overpayment amount for each period, and this data is input to the database by Revenue Processing personnel. Computer software distributes the participation percent for each federal period.

(2) All supporting documentation for Agency Clearing Account overpayment collection deposits is delivered to the Revenue Processing Overpayment Unit. Payment posting to the accounts receivable database is supported by this documentation. The payments are allocated to the various categories, applicable operating programs, and incidents, specific overpayments for specific individuals, by an automated program. Money received as a collection of an overpayment account is credited to the proper account or, if more than one account, is credited in direct

proportion to the amount ineligibly expended for each account as it related to the total amount ineligibly expended for all accounts. Funds identified as overpayment collections that cannot be posted to the accounts receivable database because the applicable overpayments are not in "active" status are maintained in Agency Clearing Account 1830. Funds identified as overpayment collections that are posted to the accounts receivable database are transferred to the applicable disbursement funds.

(3) The Revenue Processing Overpayment Unit reconciles overpayment receipts monthly as recorded by the Data Services Division to corresponding data residing on the Finance Information Systems Unit computer. The Data Services Division creates the "Payment by Microfilm Number" report. The Finance Information Systems Unit creates a corresponding report as a prerequisite to transferring overpayment collections to the appropriate operating funds and accounts. The applicable funds and accounts for each overpayment receipt are electronically transferred to the Finance Information Systems Unit computer from data input by the Family Support Services Division.

(4) The Overpayment Unit obtains various quarterly reports from the accounts receivable database pertaining to Food Stamp and Temporary Assistance to Needy Families program collections or recoupment. These reports are delivered to the Office of Finance, Cost Accounting and Revenue Enhancement Unit where they are used in the preparation of program operation reports.

(l) **Agency clearing account vouchers.** All Agency clearing Account 1830 disbursements are made by vouchers prepared and processed by the Revenue Processing Unit. Each voucher is authorized by a voucher request accompanied by the appropriate supporting documentation. Voucher requests are prepared by designated Revenue Processing Unit personnel. After approval by the Supervisor of Finance Operations, the Revenue Processing Unit inputs the appropriate data pertaining to each voucher to the Finance Information Systems Unit computer. Voucher registers are printed by the State Treasurer's Office and delivered to the Revenue Processing Unit. Voucher information is transmitted to and printed at the State Treasurer's Office. Upon their return, on the following day, the Revenue Processing Unit collects them from the Electronic Benefits and Disbursements Unit and mails the vouchers to the designated payees. Funds are disbursed from the clearing account to accomplish the purposes in (1)–(3) of this subsection. Funds are disbursed to:

- (1) refund excessive or erroneous collections.
- (2) transfer collections to Agency disbursing funds and accounts.
- (3) remit sales tax collections to the Oklahoma Tax Commission.

(m) **Reporting.** Various reports completed by the Office of Finance are given in (1)–(6) of this subsection.

(1) The "Monthly Recap for Agency Clearing Account 1830" report discloses the month end cash balance of the account, and the cash balances of the individual Agency operating activities that comprise the total cash balance. It is prepared by the Revenue Processing Unit.

(2) Various reports of Agency revenue receipts are generated monthly by the Finance Information Systems Unit at the direction of the Revenue Processing Unit. These reports are used by the Supervisor of Finance Operations and the Cost Accounting and Revenue Enhancement Unit in the preparation of both Agency financial statements and operational reports for Agency administered programs.

(3) The Revenue Processing Unit prepares the monthly State Treasurer Form 10, Reconciliation of Official Depository Balance, as per Statement Rendered by the State Treasurer, for Agency Clearing Account 1830. This is a detailed transaction reconciliation of Agency deposit and disbursement records with the monthly Agency Clearing Account 1830 transaction statement produced by the State Treasurer's Office. This reconciliation report is completed and submitted to the State Treasurer's Office by the 10<sup>th</sup> day of the following month.

(4) OSF Form 11, Agency Clearing Account Report, is prepared monthly by the Revenue Processing Unit. It discloses total Agency Clearing Account 1830 deposits summarized by receipt codes, and total disbursements summarized by object of expenditure codes. It is accompanied by a listing of all clearing account vouchers issued during the applicable month. This report contains a summarized reconciliation of the Agency Clearing Account 1830 cash balance with the corresponding cash balance of the State Treasurer. The completed report is submitted to the Office of State Finance.

(5) A separate listing of deposits originating at each Agency institution is generated daily by the Finance Information Systems Unit and mailed to the respective institutions.

(6) The Revenue Processing Unit prepares and processes Form 941, Employers' Quarterly Federal Tax Return, for payments made to providers of Home Maintenance Aides Agency clients. The Data Services Division provides monthly listings of payments to these providers. For each payment the listing includes the payment warrant number, warrant date, payee name, payee Federal Identification Number, amount claimed, client co payment amount, FICA amount, and amount paid. The Revenue Processing Unit verifies the proper FICA withholdings from each claim, and prepares Form 941 for both the client employers' and the employee providers' FICA liabilities in the month following the month ending the quarter. FICA liability resulted from payments made to the providers issued and electronically deposited to the IRS on each payment date. The Revenue Processing Unit reconciles the Form 941 with Form W-2, Statement of Annual Earnings, issued to Home Maintenance Aide providers at the end of the calendar year.

(nd) **Accounts receivable.** The objective of the Office of Finance accounts receivable system is to manage Division manages and collect collects OKDHS accounts receivable belonging to the Department of Human Services.

(1) **Payments.** All payments in liquidation of accounts due the Department of Human Services Payments to OKDHS are directed to the Office of Finance, Revenue

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~~Processing Unit Division. Each payment is accompanied by sufficient documentation to must identify the individual applicable billing, or invoice, issued by the Department OKDHS. Failure to supply invoice identification information may result in a debtor not being properly credited for payment.~~

(2) ~~**Statements.** Monthly statements are generated by the Finance Information Systems Unit for each debtor with a balance due the Department of Human Services OKDHS.~~

~~(A) Each statement indicates the previous balance, current charges, payments received, and current balance due.~~

~~(B) Statements are mailed to debtors by the Revenue Processing Unit. All statements contain the message:~~

~~(C) "All payments Payments are due to the Oklahoma Department of Human Services shall be forwarded within 90 days of the invoice date which appears on this statement."~~

~~(D) Each debtor who has not made payment or has not made other satisfactory payment arrangements within 90 days is notified in writing that the account may be referred for legal resolution, if full payment is not made within five days of receipt of the notice.~~

~~(3) **Reporting.** Authorized operating unit personnel have on line access to applicable billing and payment data. Special hard copy reports are available upon request. Special report requests are directed to the Office of Finance, Revenue Processing Unit supervisor.~~

~~(4) **Collection enforcement.** Additional collection efforts are commenced with each debtor not responding to a monthly statement within 90 days.~~

~~(A) Each debtor who has not made payment, or made other satisfactory payment arrangements, within 90 days is notified: "The Oklahoma Department of Human Services has afforded you the opportunity to make full restitution on this matter. As we have not received payment this matter will be presented to our legal staff for resolution. To avoid any further legal proceedings please issue full payment within five days."~~

~~(B) At the end of the five day period, copies of all documents are delivered to the Legal Unit in the Office of General Counsel. A tickler file is established and reviewed monthly. The Legal Unit is advised monthly of each delinquent non-resolved debt. A record of each notification is placed in the respective debtor files.~~

~~(5) **Cash Management Improvement Act.** In order to assist the Office of State Finance in complying with the agreement between the State of Oklahoma and the U.S. Treasurer implementing the Cash Management Improvement Act (CMIA) of 1990, Public Law 101-453, the Office of Finance, Revenue Processing Unit monitors the receipt of certain federal funds.~~

~~(A) Schedules of individual federal program receipts are made available to the Revenue Processing~~

~~Unit by the Cost Accounting and Revenue Enhancement Unit. Each scheduled receipt is identified by a Catalog of Federal Domestic Assistance (CFDA) number corresponding with the applicable federal program. The Revenue Processing Unit records the daily schedule of federal receipt amounts and other applicable data.~~

~~(B) The Revenue Processing Unit verifies daily, actual amounts received with the State Treasurer and maintains corresponding records on the applicable Finance Information Systems Unit computer file as part of the original remittance receipt data entry process.~~

~~(C) Receipts for any of the federal funds qualified as CMIA items not received on scheduled dates are reviewed by the Revenue Processing Unit, then confirmed by the Cost Accounting and Revenue Enhancement Unit. Those receipts are reported to the Office of State Finance by month, by CFDA number, and by funding techniques as specified by the Office of State Finance.~~

### 340:2-11-86. State Treasury Revolving Funds 700 Series

~~(a) **Operations.** The Office of Finance Division, Revenue Processing and Trust Account Units process processes deposits and provide provides accounting and claims processing functions for several of the Department's State Treasury Revolving Funds 700 Series. The Trust Account Unit assures that all transactions are in accord with the approved applications for the respective State Treasury Revolving Funds 700 Series. State Treasury Revolving Fund 700 is primarily used to maintain, account for, and manage funds belonging to clients in the custody of the Oklahoma Department of Human Services (OKDHS) or residents in facilities administered by OKDHS. This account is also used to finance auxiliary activities managed by both clients and staff for the benefit of clients at OKDHS facilities. A separate accounting is maintained for each client and each auxiliary activity.~~

~~(1) **Disbursements.** Client trust fund disbursements are pre audited by the Trust Account Unit. Each disbursement voucher is authorized by either an invoice or a disbursement request which is signed by an approved authorizing Agency official. For State Treasury Revolving Fund 700 the disbursement authorization is signed by the client owner of the funds.~~

~~(2) **State Treasury Revolving Fund 700.** State Treasury Revolving Fund 700 is primarily used to maintain, account for, and manage funds belonging to clients in the custody of the Department or residents in state institutions belonging to the Department. This account is also used to finance auxiliary activities managed by both clients and staff for the benefit of clients at institutions. A separate accounting is maintained for each client and each auxiliary activity.~~

~~(A) **Deposits.** Each deposit is posted to the appropriate account immediately upon receipt within the Agency. Primary receipt sources are Social Security~~

benefits, client allowances paid by the Agency, interest on investments, and receipts from private sources. Deposit transactions are posted by the receiving institutional business offices or the Trust Account Unit. Reports of daily deposits are delivered to the respective institutions, or other Agency operating entities, having custody of the individual clients.

(B) **Disbursements.** Disbursements from State Treasury Revolving Fund 700 are typically made to accomplish the purposes given in (i)–(v) of this subparagraph. Disbursements are:

- (i) purchases from private entities made by, or on behalf of, clients;
- (ii) purchases by clients from institutional canteens;
- (iii) requests by clients for funds;
- (iv) reimbursements to the Agency for services rendered to clients; and
- (v) expenditures for approved auxiliary activities in accord with the purpose of the individual activities.

(3) **State Treasury Revolving Fund 700 and Fund 715.** Sales receipts by canteens at institutions directed by the Department of Human Services are deposited into and disbursed to pay for merchandise sold through State Treasury Revolving Fund 715. Excess funds are disbursed to benefit institutionalized clients at the direction of the individual institution superintendents. A separate accounting is maintained for each institutional canteen operation. Canteens are operated at the Northern Oklahoma Resource Center of Enid and Southern Oklahoma Resource Center of Pauls Valley.

(A) **Deposits.** Canteen receipts are deposited daily into accounts prescribed by the State Treasurer at local banks at the direction of individual institution business managers. Institution business office personnel prepare both the applicable deposit slip and the advice of deposit card, identifying the applicable bank account number, State Treasury Revolving Fund 715, the deposit date, and deposit amount. Upon bank teller certification, the original and one copy of each advice of deposit card are submitted to the Trust Account Unit by the business offices. The Trust Account Unit delivers the advice of deposit cards to the State Treasurer with corresponding deposit slips daily upon receipt. Deposits are made by the Trust Account Unit for canteen purchases made by clients from State Treasury Revolving Fund 700. Standard data elements for each deposit are input to the Finance Information Systems Unit computer by the Trust Accounts Unit. A report of each institution's canteen deposits is generated daily and delivered to the individual institution business managers.

(B) **Disbursements.** Each invoice or disbursement request must bear the approval signature of the applicable institution business manager, superintendent, or a designee of the business manager or superintendent. Disbursements typically are made for the

payment of items purchased for resale, canteen operational equipment, and client recreational activities. Disbursements are also made to the Needy Pupil accounts maintained in State Treasury Revolving Fund 700.

(4) **State Treasury Revolving Fund 720.** Monthly allowances to juveniles in the Department's custody who reside in group homes are funded through State Treasury Revolving Fund 720.

(A) **Deposits.** Deposits to State Treasury Revolving Fund 720 consist of state warrants drawn on administrative budgetary funds. The supporting claims are authorized by the applicable operating unit(s), and are processed by the Office of Finance, Claims Audit Unit. Upon warrant receipt within the Trust Accounts Unit, a deposit receipt is prepared and the warrant(s) and deposit slip are delivered to the State Treasurer's office. A record of each deposit is input to the Finance Information Systems computer.

(B) **Disbursements.** Claims supporting juvenile allowance expenditures must bear the authorizing signature of an employee designated by the Division Administrator, Division of Children and Family Services.

(5) **Agency Special Account 1830T.** Child support collections from absent parents for custodial parents, are deposited in, and disbursed from, Agency Special Account 1830T.

(A) **Deposits.** Deposits are remitted to the Revenue Processing Unit by the Child Support Enforcement Division. Each deposit is delivered to the State Treasurer with a corresponding deposit slip on the date of receipt. Deposits are recorded by the Revenue Processing Unit on a file maintained on the mainframe computer residing in the Data Services Division.

(B) **Disbursements.** Disbursements are authorized and initiated by the Child Support Enforcement Division. Disbursement vouchers are printed and machine signed by the Data Services Division, and delivered to the Office of Finance, Electronic Benefits and Disbursements Unit with corresponding warrant registers for mailing.

(6) **State Treasury Revolving Fund 725.** Collections and disbursements arising from local office fund raising activities and donations for the benefit of clients and potential clients are deposited into and disbursed from State Treasury Revolving Fund 725.

(A) **Deposits.** All collections arising from fund raising activities, donations to individual offices, vending operations administered by employees of the Department of Human Services, and all other nonrestricted cash and cash equivalent items received by employees from activities arising from their employment with the Department of Human Services are deposited into State Treasury Revolving Fund 725. Such deposit is made at local banking institutions approved by the State Treasurer. Each

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deposit is recorded on the Office of Finance computer by designated local office staff.

~~(B) **Disbursements.** Purchases are limited acquisitions for local office clients and potential clients where such purchases are not otherwise paid for from appropriated funds. Purchases are administered by local office staff directed by the appropriate division administrator. Disbursements are by pre-numbered voucher payable directly to vendor payees. Each disbursement is recorded on the Office of Finance computer by designated local office staff.~~

~~(7) **State Treasury Revolving Fund 710.** Monies received from controlled sale of food coupons or any other card or device authorizing participation in the Food Stamp Program by agents of the Oklahoma Department of Human Services, Office of the Inspector General; monies received from the sale of property seized during the course of a food stamp investigation and court ordered restitution for successfully convicted violators for the Food Stamp Program are deposited into and disbursed to purchase evidence items, paying fees to cooperating individuals or employees, and other expenses, including the purchase of equipment and supplies, necessary to apprehend violators of state laws regulating the Food Stamp Program through State Treasury Revolving Fund 710.~~

~~(A) **Deposits.** Receipts are remitted to the Revenue Processing Unit by the Office of the Inspector General agents or by Department of Corrections Restitution Unit. Each deposit is delivered to the State Treasurer with a corresponding deposit slip on the date of receipt. A record of each deposit is input to the Finance Information Systems computer.~~

~~(B) **Disbursements.** Each disbursement request must bear the approval signature of the Division Administrator, Office of the Inspector General, or in his or her absence, the Program Supervisor, Fraud and Technical Investigations Unit. No other signatures are accepted. Disbursement warrants are typed by the Revenue Processing Unit staff and personally picked up by the agent in charge after necessary signatures are secured.~~

~~(b) **Special provisions for institutions.** Special provisions for institutional funds are provided in this subsection.~~

~~(1) Institution business managers deposit local collections daily in the designated local bank accounts that are authorized by the State Treasurer.~~

~~(2) All supporting documents for State Treasury Revolving Funds 700 Series are maintained in the business office. The original invoice and one copy are submitted to the Revenue Processing Trust Account Unit for payment processing.~~

~~(3) Business office personnel are responsible for the pre-input of locally generated deposit and disbursement data to the Finance System Unit computer trust account system.~~

~~(4b) **Unexpended cash.** Unexpended cash from client trust fund withdrawals for shopping, meals, recreation, and other similar activities, are re-deposited to the respective client trust~~

accounts within State Treasury Revolving Fund 700. Each institution facility is responsible for the safety of and accounting for all client trust fund cash that is handled by staff, and maintains for maintaining detailed documentation that clearly demonstrate the integrity of such cash-handling activities.

~~(5) Each institution and the Oklahoma County Juvenile Shelter contract yearly with the Department of Education for participation in the National School Lunch Program. Each contract is on file with the Department of Human Services Contracts Division.~~

### 340:2-11-87. Investments

~~(a) **Scope.** The purpose of this Section is to identify policies that allow the Department of Human Services to enter into investments that yield the highest return on the safest investments. Investments are made from the disbursing funds and State Treasury Revolving Funds 700 Series given in (1)–(5) of this subsection. These funds are All investments are:~~

~~(1) Fund 200 Grants and Donations Fund made through, and with the approval of the State Treasurer; and~~

~~(2) Fund 220 DHS Federal Disallowance Fund; transacted to yield the highest return in the safest manner.~~

~~(3) Client Custody Fund State Treasury Revolving Fund 700;~~

~~(4) Child Support Enforcement State Treasury Revolving Fund 1830F; and~~

~~(5) other funds and accounts with the specific authorization of the State Treasurer.~~

~~(b) **Authority.** The Oklahoma Department of Human Services (OKDHS) is directed to engage in investing activity through legislation, federal regulations, or stipulations in bequests as may be instructed by a donation or bequest.~~

~~(1) Donations and bequests A donation or bequest received by the Agency OKDHS are is invested to achieve compliance with the various respective bequests and to supplement current donations benefactor's stipulations.~~

~~(2) The Federal Disallowance Fund was established by Section 203 of Title 62 of the Oklahoma Statutes establishes the Federal Disallowance Fund to pay potential federal disallowances and interest penalties.~~

~~(3) The Child Support Enforcement funds are required by federal regulations to be invested, with the federal government sharing in the interest earned.~~

~~(c) **Investment objectives.** All of the The objectives of the investment practices are listed in (1)–(3) of this subsection.:~~

~~(1) Safety safety of principal is the foremost objective of the Department.:~~

~~(2) A a reasonable rate of return as compared to current market conditions is earned. with consideration of the prudent investor rule; and~~

~~(3) The investment must remain sufficiently liquid as sufficient liquidity to enable all Agency operating expenses to be met meet specific fund objectives.~~

~~(d) **Investment instruments.** Investment instruments authorized for purchase by the Department OKDHS are limited to:~~

~~(1) obligations of the United States Government, commonly known as Treasury Bills and Treasury Notes;~~

(2) collateralized or insured certificates of deposit at banks, savings banks, savings and loan associations, and credit unions located in this state. Collateralization procedures are in accordance with Section 89.2 of Title 62 of the Oklahoma Statutes Oklahoma;

(3) overnight repurchase and reverse repurchase agreements of the Child Support Enforcement Fund. These agreements are entered into if said instruments are 100% collateralized by acceptable securities in the safekeeping of the State Treasurer; and or

(4) certificates of deposit from insured financial institutions, when the Department acts apart from the State Treasurer as instructed by a donation or bequest.

(e) **Prudence.** The Department of Human Services adheres to the guidance provided by the prudent provider rule which obligates a fiduciary to ensure that: "... investments shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived."

(f) **Internal controls.** The Department of Human Services establishes a system of internal controls, which are documented in writing. The controls are designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the state. Controls deemed most important include:

- (1) control of collusion;
- (2) separation of duties;
- (3) separating transaction authority from accounting and record keeping;
- (4) custodial safekeeping;
- (5) clear delegation of authority;
- (6) written confirmation of telephone transactions;
- (7) minimizing the number of authorized investment officials; and
- (8) documentation of transaction strategies.

(g) **Safekeeping and custody.** To protect against potential fraud, the investments of the Department of Human Services are held in the State Treasurer's vault or secured through third-party custody and safekeeping procedures. Alternately, these investments are held in a secured location within the Department of Human Services, Office of Finance.

(h) **Other investment considerations.** All investments are made through, and with the approval of the State Treasurer. The only deviation is in instances whereby terms of bequests direct the Department to manage specific monies.

(1) When investing funds apart from the State Treasurer, the Department invests only in financial institutions approved by the Commission for Human Services, with preference given to financial institutions based in the State of Oklahoma. Furthermore, the Department limits an individual investment in a single financial institution to the maximum amount of Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLIC), or Credit Union National Association

(CUNA) insurance coverage. These insurers may be dissolved or otherwise cease business, in which case the Department uses financial institutions with similar government backed and sponsored insurance. Financial institutions without the aforementioned insurance are not considered.

(2) The Department's Federal Disallowance Fund consists, in part, of state funds which have been diverted for the purpose of earning interest to be applied to the payment of federal allowances. Some monies within the Federal Disallowance Fund are eventually transferred to operational funds. If the federal disallowance is upheld, the monies may replace federal revenue and if the disallowance is not sustained, the funds become normal state operating income.

**340:2-11-88. Cost accounting and revenue enhancement [REVOKED]**

(a) **Scope.** The federal government, through certain of its executive agencies, shares in some of the costs of programs operated and administered by the Department of Human Services. Federal funds are available from these agencies at various matching formulae to reimburse the state for expenses incurred in carrying out the provisions of its approved state plans for the eligible programs or its project grants. Federal matching rates are set by the federal legislation authorizing federal financial participation. State statutes specifically authorize the Department of Human Services to apply for, receive, and spend funds for operating some federal programs while the authority to apply for funds for other programs is authorized by the broad statutory mandate that the Department seek the most federal and state funding pattern available.

(b) **Accounting responsibility.** The Office of Finance, Cost Accounting and Revenue Enhancement Unit is responsible for the accounting for revenues and expenditures of approximately 40 federal programs and grants administered by the Department of Human Services.

(c) **Federal expenditure reporting.** The applicable expenditure reports for each program are prepared per the instructions and guidelines of the responsible federal agency. The accumulation of expenditure information may occur by various means.

(1) For many programs, the Cost Accounting and Revenue Enhancement Unit receives monthly warrant registers, which list expenditure information for the individual programs, from the Finance Information Systems Unit or the Data Services Division. This information is accumulated and reported as program expenditures on a quarterly basis.

(2) For most programs, administrative expenditures are accumulated through the administrative cost allocation process. Administrative costs consist of all costs incurred by the Department except direct payments to program recipients, medical vendor payments, and payments for services purchased directly for program recipients. The Cost Accounting and Revenue Enhancement Unit receives monthly administrative warrant registers from the Finance Information Systems Unit. At the end of

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a particular quarter, the expenditures are allocated or distributed to the various programs as described in the Administrative Cost Allocation Plan, after all required adjustments have been made and by using data necessary for the allocations and generally accepted accounting procedures.

(d) **Federal expenditure levels.** Federal expenditure levels are discussed in (1)–(3) of this subsection.

(1) **Requesting federal funds.** In many instances, the expenditure information is the basis for estimating future period expenditure levels. This occurs primarily with "entitlement" programs. For these programs, the applicable federal agencies reimburse the state for a portion of all expenditures made on behalf of eligible program clients. The expenditure estimates prepared by the Cost Accounting and Revenue Enhancement Unit are the basis for grant awards received by the Department. The Department normally receives grant awards at the beginning of each quarter. The federal government's policy requires that cash advances to a recipient organization are limited to the minimum amounts needed and are timed to be in accord with the actual, immediate cash requirements. Based on this policy the Cost Accounting and Revenue Enhancement Unit basically uses two procedures to request federal funds.

(A) For entitlement programs, the dollar amount of program expenditures becomes apparent approximately three weeks after the end of a given quarter. Therefore, the requests for federal funds are based on expenditure estimates submitted to the federal agencies and the grant awards received. The funds requests are normally one third of the applicable quarterly grant awards, or less. After the end of the quarter, the federal agencies compare the estimated expenditures with the corresponding actual expenditures and adjust the grant awards accordingly. There are no fixed federal expenditure limitations for entitlement programs. The applicable federal agencies match state expenditures at a rate that varies for each program, unless there are federal budgetary shortfalls.

(B) For programs and grants that have fixed budgets, federal funds normally are not requested until expenditure claims are paid by the Department. Applicable warrant registers are reviewed monthly, and expenditure data is accumulated through the administrative allocation process, to derive program expenditure levels that form the basis for federal funds requests.

(2) **Federal funding limitations.** All program expenditures above maximum authorized limitations are financed by state funds.

(3) **Federal program budgets.** The Office of Finance, Cost Accounting and Revenue Enhancement Unit staff assists operating program personnel with the preparation of federal program budgets.

(e) **Schedule of Federal Financial Assistance.** The Office of Finance, Cost Accounting and Revenue Enhancement Unit

is responsible for the completion of a Schedule of Federal Financial Assistance as required by the Office of Management and Budget (OMB) Circular A 133. OMB Circular A 133 requires that state and local governments identify in their accounts all federal funds received and expended and the programs under which they are received. This includes funds received directly from federal agencies and those passed through from other state and local governments or other entities. The Schedule of Federal Financial Assistance must show total expenditures for each federal financial assistance as identified in the "Catalog of Federal Domestic Assistance."

(f) **Billings.** The Office of Finance, Cost Accounting and Revenue Enhancement Unit also prepares billings, or billing rates, used in acquiring funds from the federal government and other state entities.

### 340:2-11-89. Authorization and disbursement of payments [REVOKED]

The State Treasurer is the official authorized to receive, have custody of, and pay federal and state funds for public assistance, medical assistance, and other claims against the Department of Human Services. All payments made by the State Treasurer from the funds of the Department of Human Services are approved and certified by the Director of Human Services under authority of the Commission for Human Services and subject to ratification by the Chairman. Certification is based on all facts in hand relating to conditions of eligibility, validity of claims, and in accordance with the rules and regulations of the Oklahoma Social Security Act and, where applicable, federal and state regulations and other policies and rules adopted by the Commission for Human Services.

(1) **Payments.** Payments are made by state warrants signed by the State Treasurer and redeemable at par.

(2) **Availability of funds.** Prior to the issuance of all warrants, the Office of Finance must determine that adequate funds are on hand for payment of the warrants.

(3) **Office of State Finance notification.** A "Statement of Warrants Issued" is submitted to the Office of State Finance, listing by fund number and fiscal year the total amount of expenditures on public assistance, medical, and other warrants issued in accord with the encumbrance and preaudit system for the Department of Human Services authorized by Section 41.21, paragraph D of Title 62 of the Oklahoma Statutes.

(4) **Assistance payments.** Monthly financial assistance payments, Old Age Assistance, Aid to the Blind, Temporary Assistance for Needy Families, Day Care, and others are authorized based on the case record information prepared in county offices certifying that clients have met eligibility requirements and specifying the amounts of the individual grants. Payments are authorized for Energy Assistance and Work Training expenses at county offices based on established eligibility standards. Computer edits ensure the accuracy of the case record information. The Family Support Services Division personnel at the State Office audits, approves, and processes these payments.

except for payments for day care services which are audited, approved, and processed by the Office of Finance, Claims Audit Unit.

(5) **Food Stamp Program.** The Office of Finance is responsible for receiving, storing, and mailing food coupons to those eligible recipients who receive their coupons by mail. Where county commissioners have elected to operate their own issuance offices rather than rely on services provided by the Department of Human Services (DHS), the counties submit bills to the Department for recoupment of 50% of the operating cost for issuance facilities. Those counties contribute their 50% by bearing one half of the facility operating costs. Other counties which use DHS Electronic Benefits and Disbursements Unit services are billed on a quarterly basis for coupon issuance and Authorization to Purchase issuance and redemption. The billing rates are established annually based on calculations made by the Office of Finance, Operations Unit.

(6) **Miscellaneous administrative and provider claims.** All claims for administration including claims for non-medical vendors and providers, day care services, home maintenance aide services, education and training, area wide agencies on aging, and specially approved medical services are approved by the persons administratively responsible for the units where the costs are incurred, and processed by the Office of Finance, Claims Audit Unit. Processed claims together with computer tapes of those claims are submitted to the Office of State Finance for pre audit, edit, and preparation of warrants. Prepared warrants are signed by the State Treasurer and returned to the Office of Finance, Electronic Benefits and Disbursements Unit for mailing.

**340:2-11-90. Food stamp issuance [REVOKED]**

The Food Stamp Program in Oklahoma is authorized and administered in accordance with the USC 7 Section 2011 and 2025 as interpreted by CFR 7 Sections 271 to 282 and 3015, as well as Section 24 of Title 56 of the Oklahoma Statutes as interpreted by the Department of Human Services. The Office of Finance, Electronic Benefits and Disbursements Unit is responsible for all direct mail of food stamps to eligible households in the State of Oklahoma that choose to have food stamps mailed to their residences.

(1) **Types of issuances.** Food stamp issuances are made monthly for ongoing certifications on "Regular Roll," or on a daily basis for new certifications or recertification on "Daily Run." Regular roll issuances are segregated into four mailings by category.

- (A) Old Age Recipient allotments are issued on the first day of each month.
- (B) Temporary Assistance to Needy Families allotments are issued on the fifth day of each month.
- (C) Aid to the Blind and Aid to the Disabled allotments are issued on the tenth of each month.
- (D) Non-Public Assistance households receive their allotments on the fifteenth of each month.

(2) **Issuance process.** The issuance process begins with the receipt of an "Authorization to Mail," Form FSP 14, from the Data Services Division. These forms are generated from computer entries made by local county personnel under the direction of the Family Support Services Division, Food Stamp Unit. An accompanying issuance card contains data that instructs the Electronic Benefits and Disbursements Unit computerized inserting machine as to the exact dollar amount and denomination make up of the allotments themselves. The issuance machine compiles the allotments and stores control data as the issuance process progresses. The allotments are mechanically inserted into mailing envelopes and postage is affixed at the prescribed mailing date. Daily runs are issued and mailed using the same procedure as regular roll, but they are released to the U.S. Postal Service as they are completed.

(3) **Returned food stamps.** Occasionally food stamp allotments, or a portion thereof, are returned to be replaced because of booklet mutilation or because of booklet defects. These booklets are replaced, if warranted, and the replacement booklets are sent to the applicable local offices and receipted. The receipts are returned to the Electronic Benefits and Disbursements Unit. Mutilated or defective booklets are destroyed. Destroyed booklet data and explanations are included with the monthly reports to the Regional Office of the United States Department of Agriculture.

(4) **Security.** The State Agency is financially accountable for all food stamps transported to the state for use in issuance activities. Food stamp booklets used for mail issuance are stored with an independent security firm under contract with the Department of Human Services. The Electronic Benefits and Disbursements Unit maintains a perpetual inventory of all booklets used in issuance activities. A daily physical inventory is taken to assure control of all booklets in the Electronic Benefits and Disbursements Unit, and a monthly physical count is made of the booklets stored at the bulk storage facility at the security firm. The total inventory is reported monthly to the United States Department of Agriculture (USDA) regional office. Issued food stamp booklets that are returned by the U.S. Postal Service are returned to the usable inventory, and are reused as needed for future allotments mailed to households. Occasionally, unusable food stamp booklets or partial booklets are returned. They are destroyed after recording the applicable data, and the data is included in the monthly reports to the United States Department of Agriculture regional office.

(5) **Reports.** The Office of Finance, Electronic Benefits and Disbursements Unit compiles, prepares, and issues two major federal reports of activities. The unit also issues a set of state reports.

(A) The "Food Coupon Book Report," Form FNS 250, is received by the USDA regional office within 45 days after the end of the reporting month. It is an inventory control report, as well as an analysis of the

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actual issuance activity versus the authorized or documented issuance activity. The report form is used to document the receipt of food stamp booklets for use in issuance activity as well as the transfers in or out to other issuance points within the area. The report is monitored by the regional office as well as the Department of Human Services, Food and Nutrition Unit to assure an adequate supply of each booklet denomination for uninterrupted issuance activity. The report is also used by federal authorities to monitor nationwide activities, and to assure that adequate funding is available to maintain the nation's food stamp programs.

(B) The "Coupon Account and Destruction Report," Form FNS 471, is submitted monthly in two separate parts:

(i) The first Form FNS 471 report documents the destruction of all food stamp booklets received in a condition that renders them unusable. The food stamp booklets are returned by the recipients themselves or by other means. This report is submitted with, and is actually an attachment to, the FNS 250 Report.

(ii) The second Form FNS 471 report is completed to document food stamp coupons or booklets received from recipients to be applied against, or satisfy, claims against the recipients themselves. These reports are maintained by the Office of Finance, Cost Accounting and Revenue Enhancement Unit.

(C) The state reports consist of the monthly State Treasurer Form 10, "Reconciliation of Official Depository Balance As Per Statement Rendered By The State Treasurer," and OSF Form 11A, "State Treasury Revolving Fund Report." These reports reconcile the State Treasurer's statement for State Treasury Revolving Fund 705, County Commissioners' Clearing Account with the accounting records for this account maintained by the Electronic Benefits and Disbursements Unit. Monies are periodically drawn on this account to reimburse the Department of Human Services for costs incurred in the operation of the Food Stamp Program.

(6) **Audits.** The overall activity of the Electronic Benefits and Disbursements Unit is monitored by state and federal audit and review teams to assure compliance with all applicable federal and state laws, regulations, policies, and procedures.

### 340:2-11-91. Claims Audit audit

Oklahoma Department of Human Services (OKDHS), Finance Division pre-audits and prepares for payment all claims paid from administrative funds. These claims are also pre-audited by the Office of State Finance (OSF). Payment warrants are generated by the Office of State Treasurer. Finance Division also pre-audits and processes several claim types where the payment warrants are generated within OKDHS with the approval of OSF.

#### (1) Major claim classifications.

(A) **Encumbered.** Encumbered claims are submitted for the purchase of goods, wares, and merchandise, or contractual services, and must be charged against an encumbrance document.

(B) **Unencumbered.** Unencumbered claims are submitted for travel reimbursement, refunds, indemnity payments, loans, interest and principal, and other like payments, the nature of which is not payment for the purchase of goods, wares, merchandise, or services.

#### (2) Types of claims processed.

(A) **Administrative.** Administrative claims processed include those for the acquisition of various goods and services, such as food purchases, rental contracts, repairs and janitorial services, workers' compensation, unemployment compensation, and other miscellaneous goods and services that are encumbered on authorization for purchase (AFP) orders. Many administrative acquisitions are encumbered on contracts.

(B) **Telephone and utilities.** Payment claims are processed for telephone and utility services at OKDHS facilities. These acquisitions are encumbered on authority orders.

(C) **Gasoline.** Claims are processed for purchases of automobile gasoline in state owned vehicles operated by OKDHS employees.

(D) **Allowances.** Claims are processed that provide spending allowances to clients in OKDHS custody.

(E) **Travel reimbursement.** Upon proper approval, travel reimbursement claims are processed pursuant to the Oklahoma Travel Reimbursement Act. Payments are made to employees, non-employees, and clients.

(F) **Bus transportation.** Payments are made for public transportation of clients on trips approved by OKDHS. Public transportation is typically used to enable clients to obtain medical services and to enable clients in OKDHS custody to visit relatives.

(G) **Foster care.** Payments are made to foster parents for services provided to OKDHS clients.

(i) The services and payments are supported by contracts with the providers and the provider contracts are on file with the Children and Family Services Division (CFSD) and OKDHS Office Support Services Division (OSSD) Contracts and Purchasing Unit. The Contracts and Purchasing Unit approves the contract via issuance of a unique contract number assigned by the Finance Division automated system upon review of the contract.

(ii) Warrants are issued within OKDHS. Payment information is reported daily to OSF in accordance with Section 41.21 of Title 62 of the Oklahoma Statutes.

(H) **Adoption subsidies.** Financial subsidies are paid to parents of certain adopted children.

- (i) The services and payments are supported by contracts with the providers and the provider contracts are on file with the Children and Family Services Division (CFSD). The OSSD Contracts and Purchasing Unit approves the contract via issuance of a unique contract number assigned by the Finance Division automated system upon review.
  - (ii) Warrants are written within OKDHS. Payment information is reported daily to OSF in accordance with Section 41.21 of Title 62 of the Oklahoma Statutes.
- (I) **Food stamp job search.** Payments are made to eligible food stamp recipients to assist them in finding gainful employment. These recipients are not eligible for Temporary Assistance for Needy Families. Client recipient expectations and OKDHS payment obligations are specified in client participation agreements on file in county offices. Warrants are issued within OKDHS. Payment information is reported daily to OSF.
- (J) **Litigation related.** Payments are made to individual third parties as a result of actual or threatened litigation.
- (i) **Court ordered payments.** Payments are made to individual claimants in accordance with the direct orders of courts of competent jurisdiction.
  - (ii) **Settlement agreements.** The resolution of a dispute between OKDHS and a vendor, typically regarding the delivery of goods or services to OKDHS, may result in an individual agreement whereby OKDHS compensates the vendor. Each agreement is documented and approved by the Legal Division.
- (3) **Encumbrances.** State statutes require that all agreements entered into by an agency for the purchase of goods, wares, merchandise, or contractual services are evidenced by written contracts or purchase orders and transmitted to OSF. In the case of Department of Central Services (DCS), Central Purchasing Division issued contracts or purchase orders, requisitions for the written contracts or purchase orders are submitted to the Central Purchasing Division; the contract or purchase order information is subsequently electronically transmitted to OSF.
- (A) **Payment authorization.** The Director of State Finance never authorizes payment of claims for such purchases unless the claim is supported by one of the encumbrance documents. Supporting encumbrance documents are:
- (i) contracts or purchase orders issued by DCS.
  - (ii) institutional or departmental purchase orders or contracts, sometimes called agency issued orders.
  - (iii) authorizations for purchases, sometimes called AFPs, or authority orders.

- (iv) agreements on file in OKDHS Contracts and Purchasing Unit, valid for contractual services of a professional nature provided by a governmental agency.
- (B) **Special encumbrances provisions for OKDHS.** Section 41.21(D) of Title 62 of the Oklahoma Statutes authorizes OKDHS to maintain an encumbrance and pre-audit system for settlement of claims relating to public assistance, social service benefits, and medical benefits to or for persons eligible under applicable federal laws and regulations, Oklahoma statutes, and policies established by the Oklahoma Commission for Human Services. Each type of payment made under this procedure is approved by the Director of State Finance. The Director of State Finance is provided a daily report of the dollar amount of claims settled and checks or warrants written, the dollar amount of checks or warrants canceled, and the dollar amount of checks or warrants canceled by statute. Encumbrance and pre-audit provisions do not exempt OKDHS from the Central Purchasing Act mandates for a current contract between the two parties.
- (C) **Encumbrance documents.**
- (i) **Purchase orders.** All contractual services, supplies, equipment, or materials that are acquired through requisitions submitted to DCS, Central Purchasing Division, are encumbered by purchase orders prepared by DCS. These purchase orders are also delivered to OKDHS.
  - (ii) **OKDHS issued purchase orders.** OKDHS issued purchase orders are submitted directly to OSF on OSF Form 3C. Acquisitions on these orders are exempt from the Central Purchasing Act, or the type of acquisition is exempt from the Act, or written authorization is obtained from DCS, Central Purchasing Division for these orders to be directly submitted to OSF. Payments arising from litigation are encumbered through this mechanism. Professional services provided by other governmental agencies are supported by signed, inter-agency contractual agreements on file in OKDHS Contracts and Purchasing Unit.
  - (iii) **Authorization for purchase.** An authorization for purchase document is also known as an AFP or an authority order. Acquisitions are encumbered on OSF Form 3C. When approved and encumbered by the Director of State Finance, these encumbrance documents permit an agency to make types of purchases which are:
    - (I) exempt from the Central Purchasing Act;
    - (II) not subject to the Competitive Bid Act;
    - (III) permitted under grant of authority from DCS; and
    - (IV) not subject to competitive bid requirements.

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(iv) **DCS orders.** Contracts are entered into by DCS with business and nonprofit entities through the various approved contract methods. If appropriate, encumbrances are established at OSF upon award by DCS. Other methods are fixed rate, sole source, statutory authority, and similar methods. Also, non budget awards are not encumbered individually at OSF upon award.

(v) **Non-encumbered contracts.** An agreement between OKDHS and a vendor, whereby the vendor agrees to sell to OKDHS during a fixed period of time an undetermined quantity of goods or services at a fixed unit price is known as a non-encumbered contract. These contracts do not guarantee the vendor a certain dollar volume of business from OKDHS. They are established by OKDHS, Contracts and Purchasing Unit. Encumbrances are established using CP Form 2 requisitioning purchases through the DCS, Central Purchasing Division, or by submitting OSF Form 3C to OSF for exempt purchases at the direction of OKDHS, Contracts and Purchasing Unit.

(vi) **Non-binding encumbered contracts.** Non-binding term contracts are also known as term contracts. They are encumbered based on estimates of the quantity of goods, or volume of services, to be purchased during the contract period. Requests for increases require justification documentation. Encumbrances are submitted directly to OSF using OSF Form 3C.

### (4) Requirements.

(A) **Data entry responsibility.** All pertinent data for each claim that meets payment requirements is input to the Finance Information Systems Unit computer either by Data Entry Unit personnel, or the claims processor or reviewer that pre-audited the claim.

(B) **Requirements for OSF submissions.** For each claim submitted to OSF for additional pre-audit, a facsimile of OSF Form 15A, Claim Jacket Form, is computer generated. Submitted documentation includes supporting invoices and approvals. Submitted documentation may also include OSF Form 3, Notarized Claim Form, OSF Form 9, Imprest Cash Form, or OSF Form 19, Travel Voucher, when appropriate.

(C) **Approvals.** All claims or invoices processed by OKDHS, Finance Division must bear the approval signature of a person authorized to approve the corresponding payments. Family Support Services Division child care payments and invoices for utility and telephone services at locations administered by OKDHS are approved within the Finance Division.

(D) **Items purchased.** Each claim or invoice submitted to Finance Division for payment must clearly identify the goods or services purchased, the prices and extended prices of the items, the total amount to

be paid, and the delivery date of the items. The authorizing contract number is also referenced, if appropriate. Prices charged must conform to contracted prices. Acquisitions must conform to all terms of the corresponding contract or agreement. Missing information may cause non-payment or payment delays.

### (E) Vendor Required information.

(A) Each claim or invoice submitted to Finance Division for payment must bear the applicable vendor name, address, and the address to which payment is mailed. Finance Division must have the applicable vendor name, address, and the address to which payment is to be mailed. Finance Division must have the applicable The vendor federal identification number (FIN) must be on file before a claim is processed for payment. The FIN is disclosed with the submitted vendor invoice or claim, or alternately, it is obtained from the claim referenced authorization contract if the claim is made pursuant to a written contract.

(B) Before an invoice is paid, information regarding the purchase must be submitted to the Finance Division, including:

- (i) invoice date;
- (ii) service or delivery date; and
- (iii) an itemized list of:
  - (I) goods or services;
  - (II) quantity;
  - (III) description;
  - (IV) price; and
  - (V) contract number, if applicable.

(F) **Employee reimbursement.** OKDHS employees and officials are reimbursed for miscellaneous emergency purchases as defined in OAC 340:2-13-53.

(i) Each reimbursement request is submitted to Finance Division on a completed Form ADM 12, Claim Form, signed by the employee, approving official, and notarized. In all cases the employee first attempts to have the vendor invoice OKDHS. If this proves to be impossible and the employee must make payment, the declaration statement must appear on the Form ADM 12: "I certify that an emergency existed and that the vendor was unable to invoice the Oklahoma Department of Human Services." Payments for client birth certificates need not have the declaration. Employees are not reimbursed for items purchased during non-emergency situations unless prior authorization is issued by Finance Division.

(ii) Proof of payment is attached to the reimbursement Form ADM 12. Proof of payment is evidenced by:

- (I) cash payment on the sales receipt;
- (II) the employee's canceled check;
- (III) amount charged to the employee's or official's credit card, charge card impressed receipt; or
- (IV) an annotation from the vendor indicating that the acquisition has been paid for in full.

(iii) Each request for reimbursement exceeding \$100 is accompanied by a justification memorandum signed by the appropriate division administrator.

(5) ~~**Warrant generation.** Applicable data elements for each claim are input to the Finance Information Systems Unit computer. The Finance Information Systems Unit generates numbered claims jackets for each claim destined to be processed through OSF. The claims and supporting documentation are microfilmed, bundled, and delivered to OSF with a magnetic tape containing the applicable data entry information. Payment warrants are delivered to OKDHS, Finance Division, Electronic Benefits and Disbursements Unit from the Office of State Treasurer. Warrants generated within OKDHS are delivered to the Electronic Benefits and Disbursements Unit.~~

(62) ~~**Lapsed funds Timely submission of claims.** Legislative mandates typically require that the OKDHS annual appropriation lapses 30 months from the effective date of the appropriation. Therefore, all claims Claims against appropriated funds, including vendor claims for goods or services, must be are submitted within 90 days of service and cannot be paid after processed within 30 months of from the effective appropriation date of the fiscal appropriation to which the goods or services are to be charged.~~

(3) ~~**Precluded payments.** OKDHS does not pay Oklahoma state sales tax, interest, or late charges except pursuant to Section 41.4 of Title 62 of the Oklahoma Statutes.~~

**340:2-11-92. Warrant control**

(a) ~~The Oklahoma Department of Human Services (OKDHS), Office of Finance Division, Electronic Benefits and Disbursements Unit;~~

(1) ~~oversees the mailing of all warrants generated through the Department of Human Services OKDHS;~~

(2) ~~makes proper disposition of returned warrants;~~

(3) ~~processes the issuance of replacement warrants.~~

(1) ~~**Administrative warrants.** Administrative warrants are printed and signed by the State Treasurer's office and normally delivered once daily to the Office of Finance, Electronic Benefits and Disbursements Unit. A record is made of the number of warrants, warrant issue dates, and the dates these warrants are mailed to recipients. The Finance Information Systems Unit generates accompanying remittance from the originating data entry information stored in the Finance Information Systems Unit computer. The remittance advises are separated, folded, matched with applicable warrants, and placed in envelopes with the matching warrants for mailing. Warrants without matching remittance advises are referred to the Office of Finance, Claims Audit Unit for disposition. Unmatched warrants are either mailed after verification, or they are canceled. Warrants that require special handling are identified to the Electronic Benefits and Disbursements Unit by a "Flagged Claim Request," form generated by the Office of Finance, Claims Audit Unit.~~

The Electronic Benefits and Disbursements Unit pulls the identified warrants and arranges for proper disposition.

(2) ~~**Assistance warrants.** The pre-approving, generating, and reporting processes for assistance warrants are described in (A) - (C) of this paragraph.~~

(A) ~~**Pre-approval process.** Sufficient funding must be available for warrant redemption before the warrants are issued. The Data Services Division generates a control form, summarizing the total dollar amounts of each warrant batch processed in accord with the special encumbrance procedures for the Department. [62 O.S. § 41.21] Control form approval by the Finance Operations Unit, after assuring funding availability for warrant redemption, is a prerequisite to warrant generation.~~

(B) ~~**Warrants generated by the Data Services Division.** Warrants generated by the Data Services Division are described in (i) - (ii) of this subparagraph.~~

(i) ~~**Daily warrant generation.** Warrants for initial certifications and retroactive payments for Old Age Assistance, Aid to the Blind, Aid to Disabled, Temporary Assistance for Needy Families, and Refugee Assistance programs are printed daily by the Data Services Division, and delivered to the Electronic Benefits and Disbursements Unit. The warrants are accompanied by detailed warrant registers summarized by program payment categories and a corresponding CI039 "County Totals for Weekly," listing. The warrants and the corresponding CI039 listing are transported, in a locked box, to the check room. The CI039 listing consists of a warrant register summary by county and by program payment category. A designated Electronic Benefits and Disbursements Unit employee pulls warrants specified by the Family Support Services Division, if any, for special handling. A copy of the document directing the special handling is given to the Departmental Services Check Signing Unit. After stuffing, the check room notifies the Electronic Benefits and Disbursements Unit of the applicable control number and the quantity of warrants stuffed. This count is reconciled with the previously recorded number of warrants issued.~~

(ii) ~~**Warrants generated by the State Treasurer.** Foster Care, Adoption Subsidy, Daycare, Home Maintenance Aid, Areawide Aging Services, and some Child Support warrants are generated by the State Treasurer. The warrants are returned to the Electronic Benefits and Disbursements Unit or delivered to the Departmental Services Unit with copies of the pulled warrants for mailing. The warrant registers list the number of persons, recipients, and amounts for the program categories. The Electronic Benefits and Disbursements Unit also maintains ledgers~~

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~~with entries summarizing each group of issued warrants.~~

~~(C) **Reporting.** Detailed warrant registers for each program category are generated with each group of issued warrants. These warrant registers are maintained by the Electronic Benefits and Disbursements Unit and distributed to other units as needed. The total number of warrants, adults, and dollar amounts is recorded on ledgers daily for each group of issued warrants.~~

~~(i) The Electronic Benefits and Disbursements Unit maintains a ledger used to create a "Statement of Warrants Issued." Data elements include program payment category, control number, dates, and dollar amounts expended.~~

~~(ii) The Electronic Benefits and Disbursements Unit maintains a ledger recording the number of warrants, number of persons, and dollar amounts by program category. Entries on this ledger classify warrants by daily new certifications and retroactive payments. This ledger is used to prepare monthly summaries, by program category, of warrants issued. These summaries are delivered to the Office of Finance, Cost Accounting and Revenue Enhancement Unit.~~

~~(iii) The Electronic Benefits and Disbursements Unit inputs daily warrant register totals for each payment category to the cashbook file maintained on the Finance Information Systems Unit computer.~~

~~(iv) A daily "Statement of Warrants Issued," is submitted to the Office of State Finance (OSF) listing, by fund number, fiscal year, and OSF account and object of expenditure code, the dollar amounts of expenditures via warrants issued for entitlement and medical programs in accord with statutory requirements pertaining to special encumbrance provisions for the Department of Human Services. This statement is compiled from a manual ledger that lists the applicable data and other items. A copy of the statement is delivered to the Office of Finance, Operations Unit and Cost Accounting and Revenue Enhancement Unit.~~

~~(v) Detailed source data for the "Canceled Warrants Register," is input to the mainframe computer residing in the Data Services Division by the Electronic Benefits and Disbursements Unit. This monthly report reflects for each program category the number of canceled warrants, issue dates, number of children, number of adults, and dollar amounts of canceled warrants. This report is used to compile the "Statement of Warrants Canceled," listing canceled warrant data by fiscal year, Office of State Finance account numbers, and object of expenditure codes. This statement is delivered to the Office of State Finance, and the Office of Finance, Operations Unit and Cost Accounting and Revenue Enhancement Unit. Additional data is~~

~~also prepared and provided to the Cost Accounting and Revenue Enhancement Unit.~~

~~(3) **Mailing administrative warrants.** Administrative warrants are printed and signed by the State Treasurer's office and normally delivered once daily to the Office of Finance, Electronic Benefits and Disbursements Unit. The Electronic Benefits and Disbursements Unit records the number of warrants, warrant issue dates, and the dates the warrants are mailed to the recipients. The Finance Systems Information Unit generates accompanying remittance advises from the corresponding originating data entry information residing on the Finance Information Systems Unit computer. The remittance advises are separated, folded, matched with applicable warrants, and placed in envelopes with applicable warrants for mailing. Warrants without matching remittance advises are referred to the Office of Finance, Claims Audit Unit for disposition. Unmatched warrants are either mailed after verification, or they are canceled. Warrants that require special handling are identified to the Electronic Benefits and Disbursements Unit by a "Flagged Claims Request," form generated by the Office of Finance, Claims Audit Unit. The Electronic Benefits and Disbursements Unit then pulls the identified warrants and arranges for proper disposition.~~

~~(4) **Mailing child support warrants.** Child support enforcement warrants are generated by the Data Services Division and delivered daily to the Electronic Benefits and Disbursements Unit with corresponding warrant registers. The warrants and warrant registers are maintained in a locked safe. The Child Support Enforcement Division notifies the Electronic Benefits and Disbursements Unit by sending a fax with a list of warrants to be pulled for special handling. The Electronic Benefits and Disbursements Unit documents the special handled warrants, and delivers all other warrants to the Departmental Services Unit, with applicable control numbers, for mailing.~~

~~(5b) **Warrants canceled by statute of limitations.** All state State warrants are automatically canceled by statute of limitations if they are not presented to the State Treasurer's Office for redemption within 90 days of the issue date. Warrants canceled by statute of limitations are reissued upon receipt in the Office of Finance, Electronic Benefits and Disbursements Unit of the canceled warrants and accompanying affidavits requesting replacement. Reissuance of public and medical assistance warrants originally issued on or after February 1, 1992, is limited to within three years of the respective warrant cancellation dates. Refer to OAC 340:65-5-15 for rules regarding reissuance of a warrant issued but not received and OAC 340:65-5-19 for reissuance of a warrant when it is not redeemed within 90 days of the issue date.~~

~~(6) **Returned warrants.** All returned warrants and vouchers are delivered to the Office of Finance, Electronic Benefits and Disbursements Unit. They are kept in a locked safe pending final disposition.~~

~~(A) **Returned administrative, child support, and other miscellaneous warrants.** All other returned~~

warrants outside of the entitlement programs are returned to Electronic Benefits and Disbursements Unit and various different divisions throughout the state are notified through the AS400 System. On the Finance System there is an option on the menu titled "Returned Warrant Tracking System." When Electronic Benefits and Disbursements Unit personnel select this option, they are required to enter the returned warrant number, date, and amount. If the warrant information is in the Finance System AS400, the computer retrieves this information and displays it for verification by the user. The user then marks a "R" for returned on the appropriate line and taps the enter key. This information is instantaneously available to anyone with access to the Finance System computer. The appropriate division responds by selecting an option on the menu which allows the warrant to be either remailed or canceled. Electronic Benefits and Disbursements Unit personnel then enters an option to either print the remail slip or cancel. If the warrant is to be remailed the insert and warrant are put into an envelope and mailed. The canceled warrants are held in a locked drawer until the last week of the month. They are then processed for actual canceling.

(B) **Returned entitlement warrants.** Procedures for handling returned entitlement warrants are described in (i) – (iv) of this subparagraph.

(i) **Originating office notification.** Identification data pertaining to returned entitlement warrants is input to the Data Services Division main frame computer to notify the applicable originating units of warrant return. Information entered includes case number, warrant number, document type, date returned, dollar amount, and reason for return. The input entry is coded in a manner to allow authorized personnel throughout the Agency to be notified of warrant return. The payment originating counties are provided a detailed listing of returned warrants.

(ii) **Disposition notification.** Authorized county personnel instruct the Electronic Benefits and Disbursements Unit as to the disposition of each warrant. The Electronic Benefits and Disbursements Unit receives computer generated reports with disposition instructions for returned entitlement warrants.

(I) If a returned warrant is to be remailed, a corrected address document and the warrant is mailed to the recipient.

(II) Warrants destined for cancellation are held in a locked safe until the last week of the month. They are then processed for cancellation.

(iii) **Division notification.** The last date for county personnel to process transactions affecting monthly entitlement warrants occurs between the 18<sup>th</sup> and the 23<sup>rd</sup> of each month. If the Electronic Benefits and Disbursements Unit has not received

disposition instructions for a returned warrant by the cutoff date, the Family Support Services Division is notified with sufficient information to suspend the applicable client case, thereby preventing the generation of additional warrants.

(iv) **Reports.** The Data Services Division delivers the Electronic Benefits and Disbursements Unit, a daily report listing returned warrants and their disposition. Similar monthly and annual reports are maintained by the Electronic Benefits and Disbursements Unit.

(C) **Replacement warrants.** When a payee fails to receive a warrant or the warrant is lost, canceled by statute, stolen, or mutilated after receipt, the payee files for a replacement warrant. Prior to the issuance of a replacement warrant, the payee is statutorily required to file an affidavit setting forth the facts as to the loss or destruction of the original warrant. DHS Form ADM 44, "AFFIDAVIT OF LOST OR DESTROYED WARRANT," is used for this purpose.

(i) **Replacement of outstanding warrants.** The Electronic Benefits and Disbursements Unit obtains verification of the original warrant's payment status from the State Treasurer's Office. If it is determined that the warrant has not cleared for payment, Form ADM 44 is submitted to the State Treasurer's Office with a request for stop payment action on the original warrant.

(I) If the original warrant was generated by the Office of State Finance, payroll and administrative claim warrants, the replacement warrant is also generated by the Office of State Finance and forwarded to the Electronic Benefits and Disbursements Unit for mailing.

(II) If the original warrant was generated within the Department of Human Services, the replacement warrant is issued through the miscellaneous warrant system after receipt of the stop payment verification from the State Treasurer's Office.

(ii) **Replacement of paid warrants.** If the State Treasurer's Office advises the Electronic Benefits and Disbursements Unit that the original warrant has been cashed, a copy thereof is requested so the payee may examine the endorsement. If the endorsement is determined to be a forgery, the payee is, in addition to the Form ADM 44, required to file an Affidavit of Forgery. The payee is further requested to complete an inquiry form for the U.S. Postal Service if mail tampering is a possible reason for the warrant loss. Upon receipt of the required documents, the Electronic Benefits and Disbursements Unit submits the original forged warrant, Affidavit of Forgery, and the Form ADM 44 to the State Treasurer's Office with a request that the warrant be returned to the second endorser for collection. When the State Treasurer receives reimbursement,

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a replacement warrant is issued to the payee via the Electronic Benefits and Disbursements Unit.

(iii) ~~Replacement of warrants canceled by statute.~~ All state warrants are canceled by statute of limitation if they are not presented for payment at the State Treasurer's Office within 90 days of the issue date. Such canceled warrants are reissued to the original payee or the current holder upon submission of the original warrant or, if it is not available for submission, a notarized affidavit requesting replacement.

### 340:2-11-93. Cashbook [REVOKED]

The Department of Human Services "Cashbook" is a file maintained on the Finance Information Systems Unit computer that records summaries of transactions processed through the Office of Finance via a chart of accounts. It is based on a single entry bookkeeping system. Transactions are recorded at the account level within a limited number of funds. State funding is traced by the fund number while expenditures and receipts are recorded at the fund and account levels. Separate revenue accounts are maintained for federal receipts and a limited number of other revenue sources. Expenditure refund receipts are posted to the original expenditure funds and accounts. Receipts and expenditures are posted to the cashbook at the time of receipt and claim input, respectively. Cashbook transactions and computed balances are therefore more current than the records maintained by the Office of State Finance. The cashbook plays a key role in the daily management of the Agency's cash.

(1) ~~Fund structure.~~ The cashbook fund account structure parallels that of the Office of State Finance (OSF). Fund numbers are the same on both systems, while the cashbook account structure utilizes a sub account grouping that accumulates to each OSF account. This provides revenue and expenditure data at a lower level of detail for internal reporting and tracking purposes. The fund number can represent a revolving or continuing fund, but in most cases it represents a fiscal year appropriation whose remaining balance will lapse 30 months after the original appropriation.

(2) ~~Expenditure posting.~~ Procedures for expenditure posting are described in (A) —(B) in this paragraph.

(A) ~~Administrative expenditures.~~ Payments for administrative claims are processed through the State's central accounting agency, the Office of State Finance, for preparation of payment warrants by the State Treasurer. Daily claim input is batch processed, and fund and account totals are posted to the cashbook. Detailed claim data is maintained in separate files on the Finance Information Systems Unit computer. This process is used to process primarily administrative expenditures, and capture the cost of operating the Agency.

(B) ~~Assistance and medical expenditures.~~ Assistance and medical expenditures to, and on behalf of, Agency clients are processed in accord with special

encumbrance provisions for the Department of Human Services. [62 O.S. § 41.21 (D)]

(i) ~~Cashbook entries for expenditures processed on the mainframe computer residing at the Data Services Division are manually input by the Office of Finance, Electronic Benefits and Disbursements Unit. Warrants are generated at Data Services Division and the Oklahoma State Treasurer's Office.~~

(ii) ~~Claims for certain support payment categories are processed by the Office of Finance, Claims Audit Unit, and the warrants are generated by the Finance Information Systems Unit. Daily cashbook entries are automatically posted for each category total. Warrants and electronic fund transfers are generated by the Oklahoma State Treasurer's Office.~~

(3) ~~Receipt posting.~~ Detailed data recording receipts deposited with the State Treasurer are recorded on the cashbook by the Department of Human Services Office of Finance, Revenue Processing Unit.

### 340:2-11-94. Financial reporting [REVOKED]

(a) ~~DHS Financial Report.~~ The Department of Human Services Office of Finance is responsible for preparing and publishing the agency's monthly financial report. The report is submitted to the agency's governing board, the Commission for Human Services. This report is the primary financial document used by management to determine the financial position of the Department. The monthly financial report begins with cash transactions processed by the Office of Finance, and supplements this data with calculations of liabilities and revenues. Therefore, the report is based on a modified accrual basis of financial reporting.

(b) ~~Annual State of Oklahoma Financial Report.~~ To provide an auditable financial report for the State of Oklahoma, the Office of State Finance obtains supplemental financial data in the form of closing packages from all state agencies. The Department of Human Services Office of Finance is responsible for coordinating and providing these closing packages of accounting related data.

### 340:2-11-95. Audit of financial records [REVOKED]

(a) The State Auditor and Inspector conducts an annual audit of the agency's financial records in accord with the Single Audit Act (OMB Circular A-128). This audit is intended to review all federal program operations for compliance and study the Department's internal control systems. The State Auditor and Inspector also issues a report based on the annual audit. The DHS Office of Finance is responsible for reviewing the report and responding to the findings. Corrective action and audit follow up for the entire Department rests with the Office of Finance. In addition, various federal principal operating components perform periodic financial reviews which are conducted on a periodic basis and may be general in nature or target certain areas of concern.

(b) The State Auditor and Inspector may conduct special audits which examine certain areas within the Department of Human Services. These reviews are generally made at the request of the Legislature or other state officials.

(c) The DHS Office of Inspector General is responsible for conducting special vendor subrecipient and/or institutional audits.

**340:2-11-96. Maintenance and retention of records [REVOKED]**

Following the end of each month, financial transactions are reconciled with records maintained by the State Treasurer's Office and the Office of State Finance. Computer generated reports of detailed expenditures are created for the preceding month as the basis for accounting and reporting of expenditures. A record of all transactions and reports is retained by the Office of Finance for a minimum of two years and thereafter archived indefinitely.

**340:2-11-97. Cost allocation**

(a) ~~Cost allocation plan.~~ The Oklahoma Department of Human Services maintains on record file with the Department of Health and Human Services, Division of Cost Allocation, Region VI, an a current, approved plan for the allocation of all administrative costs of the Department of Human Services, a state administered "umbrella agency." This plan conforms to all state and federal requirements for cost allocation plans.

(b) ~~Cost allocation responsibilities.~~ The cost allocation responsibilities are described in (1)–(3) of this subsection.

(1) The Office of Finance, Cost Accounting and Revenue Enhancement Unit is responsible for coordinating the preparation and revision of the cost allocation plan, the accumulation of all administrative costs, overseeing the collection of data necessary for allocations and distribution, using generally accepted accounting procedures, of costs as described in the plan.

(2) Division administrators are responsible for informing the Office of Finance, Cost Accounting and Revenue Enhancement Unit of program or procedural changes that may affect the distribution of administrative costs. Where joint costs are involved in a division or unit, that division or unit is responsible for preparing and forwarding to the Office of Finance reports necessary to distribute administrative costs in accordance with the cost allocation plan.

(3) Each division administrator affected by cost allocation plan amendments reviews the amendments for:

- (A) consistency with organizational responsibilities;
- (B) consistency with approved state plans for public assistance; and
- (C) adherence to state and federal statutes and regulations.

(c) ~~Contents of cost allocation plan.~~ The cost allocation plan includes:

(1) the organization chart of the Oklahoma Department of Human Services;

(2) a listing of all units and divisions that constitute cost centers for the purpose of the plan;

(3) a description of all activities performed by each organizational unit or division representing a cost center;

(4) a listing of all federal and non-federal programs administered;

(5) the procedures used to identify, measure, and allocate costs to all federal and non-federal programs; and

(6) all certifications and additional content that are required by federal regulations or State statute.

(d) ~~Approval and amendments.~~ The approval and amendments are described in (1)–(4) of this subsection.

(1) ~~Annual certification.~~ If amendments have not been made to the cost allocation plan during any fiscal year, the Oklahoma Department of Human Services submits to the U.S. Department of Health and Human Services, Division of Cost Allocation, Region VI, a letter certifying that the existing cost allocation plan is still correct and remains in effect.

(2) ~~Conditions requiring amendments.~~ The cost allocation plan is amended promptly upon:

- (A) procedures becoming outdated due to organizational or procedural changes within the Department.
- (B) changes made in federal regulations that affect the validity or appropriateness of procedures.
- (C) discovery of a material defect in the plan.
- (D) changes in a state plan for public assistance that affect the cost allocation plan.
- (E) any other changes made that make procedures invalid.

(3) ~~Effective dates of amendments.~~ Amendments are effective the first day of the calendar quarter following the date the amendment became necessary. The exceptions are included in (A)–(C) of this paragraph.

(A) An earlier date is needed to avoid inequity to the state or federal government.

(B) A defect is discovered in the plan, and is correctable at an earlier date, in which case the effective date of the amendment is the same as the effective date of the original defective material.

(C) It is impractical for the state to implement the amendment on the required date and an agreement is made with the Department of Health and Human Services, Division of Cost Allocation to implement the amendment at a later date.

(4) ~~Submission and approval.~~ Submission and approval procedures are listed in (A)–(C) of this paragraph.

(A) All cost allocation plan material is submitted by the Chief Financial Officer to the Director of Human Services for approval.

(B) Upon approval by the Director of Human Services, correspondence including the new plan material, reason for change, and any anticipated effect of costs allocated to federal programs, is prepared and forwarded to the Director of the Department of Health and Human Services, Division of Cost Allocation, Region VI.

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(C) Submitted plan material, when approved by the Regional Division of Cost Allocation, remains in effect until such time it is necessary to submit a new plan or amendment covering the same material.

### 340:2-11-98. Information systems system

(a) The Finance Information Systems Unit (FISU) is responsible for providing information technology services for the Finance Division and fiscal information for the Oklahoma Department of Human Services (OKDHS). These responsibilities include the:

- (1) development and support of:
  - (A) claims processing;
  - (B) fiscal accounting;
  - (C) revenue tracking;
  - (D) cost allocating;
  - (E) budget controlling; and
  - (F) time and leave accounting; and
- (2) support of information technology needs associated with:
  - (A) OKDHS purchases;
  - (B) consumable supply inventory;
  - (C) fixed asset management; and
  - (D) construction project tracking.

(b) All Data residing on the Finance Division AS400 computer information system, with the exception of client specific records, is public information. [51 O.S. § 24A.1 et seq. and OAC 340:25-5-66] All OKDHS employees are responsible for protecting the integrity and security of data.

### 340:2-11-99. Finance Information Systems Unit Disaster Recovery Plan [REVOKED]

(a) **Purpose.** The purpose of the Finance Information Systems Unit (FISU) Disaster Recovery Plan is to ensure an orderly plan for continuing operation of the Finance Division AS400 computer system in the event of a major disaster. Emphasis is placed on:

- (1) system backup and recovery of data;
- (2) establishment of a temporary data processing center for emergency operation;
- (3) repair or procurement of new equipment; and
- (4) re-establishment of a permanent data processing site.

(b) **Scope.** For planning purposes, complete destruction of the Finance Division AS400 computer system is considered. Anything less than complete destruction requires implementation of only that portion of the Disaster Recovery Plan that is necessary to return to operation.

(c) **Disaster Recovery Plan.** The Disaster Recovery Plan manual is maintained in FISU and a copy is kept in a secured site away from the Sequoyah Building.

### 340:2-11-100. State Bureau of Social Security, (O.A.S.I. Old Age Survivors Insurance)

The State Agency Oklahoma Department of Human Services is authorized to administer procedures which that

enable the employees of the State and its governmental sub-divisions to take advantage of Social Security coverage. This coverage is available on a group basis and is accomplished by an agreement between the State and the Federal Commissioner of Health and Human Services Social Security.

## PART 9. TRAVEL REIMBURSEMENT

### 340:2-11-115. Purpose and authority

~~The purpose of this Part is to specify the conditions under which~~ When conducting appropriately authorized state business, travel reimbursement is paid to employees and non-employees by the Oklahoma Department of Human Services (OKDHS). Travel reimbursement is authorized by Sections 500.1 - through 500.20 of Title 74 of the Oklahoma Statutes, provide the statutory authorization and limitations for this Part and is clarified for implementation by the Oklahoma Office of State Finance, Office of State Comptroller Procedures Manual and the Division of Central Accounting and Reporting (DCAR) Newsletter. Employees and non-employees filing for travel reimbursement may refer to the Office of State Comptroller Procedures Manual and DCAR Newsletter for situations not covered in this part.

### 340:2-11-116. Definitions

The following words or terms when used in this Part shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise:

**"Carrier"** ~~means any common carrier registered and approved by the Oklahoma Corporation Commission.~~

**"Map mileage"** means the distance between areas designated in Oklahoma by the Oklahoma Department of Transportation and in other states by the Rand McNally Road Atlas. Non-employees may use an official Oklahoma state map for this purpose. Distances between towns are generally the shortest distance by public roads from the center of one town to the center of the other town.

**"Overnight travel period"** ~~means a trip requiring absence for a minimum period which lasts substantially longer than an ordinary days work and during which the employee's duties require them to get necessary sleep or rest to meet the demands of their work. The absence must be of such duration and distance that the employee cannot reasonably leave and return home after each day's work. The standard for purposes of requesting overnight reimbursement is that the non-employee or employee must be is in travel status for more than ~~eighteen~~ (18) hours, ~~must does~~ not live or have their official duty station within ~~sixty~~ (60) map miles of destination, and ~~must have stayed overnight~~ it is reasonable for the employee or non-employee to get necessary sleep and rest to complete work. Any exemption requires advance approval from the Office of Finance, or if an emergency situation, a formal justification is sent with the Travel Reimbursement Claim. An Associate Director or Division Administrator may be more restrictive in approving overnight lodging.~~

**"Per diem"** means reimbursable charges for meals while in overnight travel status.

"Permanent transfer" means a transfer from one duty station to another of duration in excess of twenty one (21) weeks.

"Subsistence" means reimbursable charges for lodging while in overnight travel status.

"Travel status" means the absence of an employee from the official station or non-employee from his or her home or official station area while performing assigned official duties.

"Vicinity travel" means any travel made for official purposes not included in the calculation for map mileage.

**340:2-11-117. General regulations rules**

(a) ~~Officials, employees, and non-employees of the state, traveling on authorized state business, may be reimbursed for expenses incurred in such travel in accordance with the provisions of Sections 500.2-500.20 of Title 74 of Oklahoma Statutes and with DHS Policy. Persons who are not state employees, but who are performing substantial and necessary services to the state which have been directed or approved by the appropriate DHS official also abides by the same laws and policy as DHS employees. Travel expenses incurred by a person during the course of seeking employment with the Oklahoma Department of Human Services (OKDHS), unless such travel is performed at the request of OKDHS, are is not considered expenses incurred in performing substantial and necessary business to the state and are is not reimbursed under the provisions of this act. g-1~~

(b) ~~Policies regarding reimbursement~~ Reimbursement is made for meals and lodging, incurred while traveling on official business for DHS, are defined as absence from the officer's or employee's home area or official station area while performing assigned official duties when an employee or non-employee is in overnight travel status. Provided however, employees An employee whose duties are normally mobile and statewide or multi-county in nature are is not deemed to have an official station. For purposes of reimbursement when away from headquarters, the such employee's hotel or other commercial facility is considered both the abode and point of official business.

(c) An employee or non-employee, authorized to travel, is responsible for planning in such a way that expenses for transportation and subsistence are kept to a minimum. This includes, but is not limited to, sharing rooms, and car pooling, and similar cost effective planning when ever possible. An employee or non-employee whose job assignment entails field travel is responsible for making maximum use of all travel time. This means that travel is planned and work so-organized as to produce the greatest possible benefit to the State for the travel time involved.

(d) Each employee or non-employee who incurs ~~expense for travel, files his or her own~~ expenses is held liable under possible penalty of law for any falsified expense or misstatement of claim for reimbursement and must keep a copy of Form Adm-6 for income tax purposes. Employees and non-employees are to allow forty five (45) days for reimbursement as stated in Section 840.14 of Title 74 of the Oklahoma Statutes.

(e) When an employee or non-employee is authorized to attend a meeting or training and the meeting or training include

facilities that have been designated for the purpose of lodging participants, actual lodging expenses are claimed.

(f) An employee or non-employee may be reimbursed for actual and necessary travel and lodging expenses under circumstances described in 1 through 3 of this subsection.

(1) With the approval of the OKDHS Director, an employee or non-employee required to attend hearings or meetings of any congressional committee or subcommittee or of any federal agency, board, or commission on behalf of OKDHS is reimbursed for actual and necessary travel and lodging expenses.

(2) An employee of the Legal Division while representing OKDHS, an official, or an employee, at any proceeding, including depositions, is reimbursed the actual and necessary expenses of travel, lodging, and subsistence. The Legal Division general counsel and the Director must approve expenses claimed.

(3) An employee of OKDHS is reimbursed for actual and necessary expenses of travel, lodging, and subsistence incurred in the performance of duties for the purpose of escorting and transporting children or adults in the care or custody of OKDHS as described for out-of-state:

(A) visitation, care, treatment, and placement of a child receiving Child Welfare services;

(B) treatment for or placement of a client receiving Adult Protective Services;

(C) treatment for or placement of a resident of a state resource center; or

(D) treatment for or placement of an individual with a developmental disability who is living in the community in community residential services.

(g) All work related travel, per diem, or subsistence reimbursement claims are filed according to requirements in 1 through 9 of this subsection. Reimbursement is not made until all items required for processing a claim are satisfied.

(1) In-state and out-of-state travel claims must be filed separately by a non-employee.

(2) A travel claim filed by a non-employee must not exceed 31 days in travel status.

(3) A travel claim must not include travel status dates from more than one fiscal year.

(4) Travel claims must be filed within 90 days of the first date in travel status on the claim. Exceptions may be made by the appropriate chief officer.

(5) Claims for reimbursement of registration fees must be supported by corresponding paid receipts. Claims requesting reimbursement of prepaid registration fees for conferences, meetings, or workshops that were not attended are subject to the approval of the appropriate chief officer. Sufficient explanation and justification for failure to attend must accompany the claim.

(6) The nature of official business must be described in sufficient detail to enable persons reviewing the claim to understand the purpose of travel.

(7) An employee or non-employee may opt to assign a portion of the travel reimbursement claim to another entity.

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(8) Attendance at conferences, seminars, or training must be pre-authorized to qualify for reimbursement.

(9) Only travel related expenses may be claimed as a part of a travel reimbursement claim. If an employee or non-employee incurs expenses while in travel status on behalf of OKDHS that are not travel related such expenses must be claimed through the rules for purchasing such items.

### 340:2-11-118. Completion of Form ADM-6, Travel Claim [REVOKED]

(a) ~~All travel reimbursement claims are filed using Form ADM-6, Travel Claim.~~

(b) ~~In state and out of state travel must be filed on separate Form ADM-6s.~~

(c) ~~A travel claim must not exceed 31 days in travel status.~~

(d) ~~A travel claim must not cover more than one fiscal year.~~

(e) ~~Travel claims must be filed within 90 days of travel dates. Exceptions must be signed by the appropriate chief officer of his or her respective area, or designee.~~

(f) ~~Claims for reimbursement of registration fees must be supported by corresponding paid receipts. Claims requesting reimbursement of registration fees for non-attendance of conferences, meetings, or workshops are subject to the approval of the appropriate chief officer of his or her respective area and are submitted with sufficient explanation and justification as to the reason of cancellation. Other than direct billing from the sponsoring entity, Form ADM-6 is the only mechanism for reimbursement of registration fees. Direct billing of registration is noted on Form ADM-6.~~

(g) ~~Nature of Official Business as referenced on Form ADM-6, must be described in sufficient detail to enable persons reviewing the claim to understand the purpose of travel.~~

(h) ~~Employees or non-employees opting to assign a portion of the travel reimbursement claim to another entity must complete two separate Form ADM-6s. One form is for employee or non-employee direct reimbursement expenses and the second denotes only those expenses which are assigned to another party. The assigned Form ADM-6 must contain all information completed in the course of filing a standard Form ADM-6 and the assignment section of Form ADM-6 A, Travel Claim Supplement. All information within the assignment section of Form ADM-6 A must be completed and the employee or non-employee must sign the form.~~

(i) ~~Agendas, announcements, or memoranda when in overnight travel status for conferences, seminars, or training must contain dates, times, and locations or designated lodging or lodging site and be submitted with Form ADM-6.~~

(j) ~~Employees and non-employees must identify on Form ADM-6 when registration, lodging, and/or any other items are directly billed.~~

### 340:2-11-119. Authorization of Reimbursement for travel, classified, unclassified, and exempt service

(a) ~~Approval.~~ Each ~~Division~~ division establishes appropriate ~~approval~~ lines of authority for ~~authorizing~~ approving employee or non-employee travel. ~~This must be in direct correlation to the authorized signature cards~~ Persons designated to ~~approve travel~~ must have a current Form F-S-222, Authorized Signature Card, on file in the ~~Office of Finance Claims Audit Unit~~ Division. Pre-approval is required for out-of-state travel except as described in (c)(4) of this Section.

(b) ~~Use of motor pool vehicles.~~ The Oklahoma Department of Central Services maintains a motor pool of vehicles for use by state employees. An Oklahoma Department of Human Services (OKDHS) employee is required, when feasible, to seek the use of a motor pool vehicle as a cost saving measure for the state.

(1) When work related travel is occasional but requires driving distances greater than local vicinity trips, the employee pursues the use of a daily-basis motor pool vehicle when such vehicles are available in the employee's geographic area. If a daily-basis motor pool vehicle is not available, the employee determines if a motor pool vehicle assigned to an OKDHS entity is available for loan. If no appropriate motor pool vehicle is available, the employee uses a privately owned vehicle.

(2) When work related travel is routine and extensive, 1,500 miles per month or more, the employee or the employee's immediate supervisor seeks a determination regarding the assignment of a motor pool vehicle.

(b)c) ~~Reimbursement for automobile transportation.~~ An employee or authorized non-employee, is reimbursed for the use of a privately owned automobile at the authorized rate established in Sections 500.1—500.20 of Title 74 of the Oklahoma Statutes regardless of the number of persons transported. ~~Employees shall travel together to and from meetings to reduce expenses to the Department.~~

(1) Distances ~~in~~ between areas for which reimbursement for use of privately owned motor vehicles is claimed must not exceed ~~distances set forth in the latest Transportation Commission road map~~ mileage. Vicinity travel on official business is entered on travel claims as a separate item from road map mileage.

(A) Travel Vicinity travel claimed on official business between points not shown on the official map is based on actual odometer readings. An employee or non-employee whose travel consists primarily of city and rural traveling within a small area computes mileage on the basis of actual odometer readings while traveling on official business.

(B) All Any non-business mileage shall ~~be~~ is deducted prior to reimbursement. This includes, but is not limited to, mileage ~~for obtaining to obtain~~ meals, or to do personal shopping, or similar situations.

(2) An employee or non-employee traveling on official business by a privately owned vehicle is reimbursed on the basis of the actual number of miles traveled from ~~his or her~~ the official duty station to the first official call, subsequent

official calls, and return to the official duty station from his or her the last official call.

(3) An employee or non-employee may claim reimbursement for transportation from his or her home to the first official call, subsequent official calls, and from his or her the last official call to his or her home, on the basis of actual miles traveled but not to exceed the amount the mileage would be from his or her the official duty station.

(A) Staff who is "on-call" may claim for travel reimbursement from his or her home for travel to any official call and return home on weekends, holidays, or when occurrence is other than the employee's regularly scheduled work hours.

(B) Employees or non-employees returning to a destination other than the original starting point, with must have supervisory approval, and must provide a brief explanation on Form ADM 6, Travel Claim justification.

(4) An employee or non-employee may be reimbursed for traveling travel during daily office hours when that requires crossing a state line; when the distance traveled in the other state is 150 miles or less one way, and the trip is to transport clients as deemed in the best interest of the client and the Department OKDHS. In such instances, an employee or non-employee is exempt from completing Form ADM 1 B, Request for Out of State Travel Authorization, is not required to obtain prior approval and is reimbursed at the current mileage rate as established in Sections 500.1—500.20 of Title 74 of the Oklahoma Statutes.

(5) An employee or non-employee staying with relatives or others shall while in overnight travel status may be reimbursed \$10 per night in lieu of subsistence. In such an instance, mileage cost to and from the location of the first official call must not to exceed the current allowable rate for lodging and other combined expenses, such as tolls and parking, as established in Sections 500.1—500.20 of Title 74 of the Oklahoma Statutes. Per diem rules are not impacted by an employee or non-employee staying with relatives or others.

(6) An employee or non-employee using Oklahoma turnpikes is strongly encouraged to use a PIKEPASS as a cost saving measure for the state.

(ed) Reimbursement for public transportation.

(1) Taxicab charges are itemized on Form ADM 6, and are reimbursed only upon justification regarding the necessity of their use. Taxicab charges of \$25.00 or more require a receipt.

(2) Reimbursement for leased or rented automobiles for local transportation during in-state travel is made only upon justification regarding the necessity for such use and does used in-state may not exceed the current mileage rate.

(3) Pre-approval for leasing or renting With adequate justification, an employee or non-employee may be approved to lease or rent an automobile to use on official business during out-of-state travel. Pre-approval by the Director or designee is required. Prior approval must be

issued by the DHS Director or designee or the chief officer of his or her respective area. Employees An employee or non-employees non-employee who are is approved for leasing or renting of an automobile must maintain a mileage log of mileage incurred for that itemizes official travel only and any other travel. Reimbursement for automobiles leased or rented within the state is based on the standard mileage rate provided for privately owned automobiles used in travel. Reimbursement for leasing or renting an automobile outside the state Oklahoma is authorized at actual rental cost, subject to approval plus a prorated cost of fuel based on the actual miles driven for official business compared to the total miles driven. The employee or non-employee is responsible for payment of all other non-official mileage and costs. The state will pay only its prorated share.

(A) Employees or non-employees must obtain the lowest cost rental automobile available and reasonable.

(4B) Each reimbursement claim for the official use of a leased or rented automobile must be supported by a receipt indicating the number of miles traveled. Employees or non-employees must obtain the lowest cost rental automobile available.

(5C) Any supplemental or special insurance, such as collision or comprehensive, purchased by an employee or non-employee is purchased at the employee's or non-employee's own expense because reimbursement is based on the actual costs of leasing or renting an automobile.

(6) Travel by privately owned or chartered airplane on official business for the state will be reimbursed in an amount which, when added to per diem and reimbursement for lodging, overnight travel status must be met, for that trip and does not exceed the equivalent of automobile mileage, per diem, and reimbursement for lodging had a privately owned automobile been used for the trip. If more than one person is involved, a listing of all persons with their lodging and per diem charges must be included on the claim with a statement that no other travel reimbursement claims will be filed in conjunction with travel.

(74) Prior to out of state travel, Form ADM 1 B shall be completed to receive the airfare comparison. The Departmental Services Unit (DSU) must be contacted to obtain the motor pool rates. Vehicles that are owned by the Department of Human Services (DHS) do not require an airfare comparison. Form ADM 6 B, Airfare Comparison Worksheet, must be completed for state motor pool and privately owned vehicles. The DSU travel coordinator obtains the lowest airplane coach fare possible for comparison purposes. Form ADM 6 B shows the airfare comparison quoted amount from DSU, source of the quote, and the date the quote was obtained. Forms ADM 1 B and ADM 6 B are attached to the Form ADM 6 for reimbursement. State motor pool vehicles driven out of state are subject to prior approval and based on the necessity of travel. When utilizing a state motor pool car for out of

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state business, Form ADM 6-B must be completed and attached to Form ADM 6. State motor pool charges may vary depending on the type of vehicle. Staff using a state motor pool vehicle must take this into consideration and be prepared to reimburse the Agency for expenditures exceeding the maximum reimbursement amount. All public airline transportation is arranged and coordinated through the Support Services Division (SSD), Departmental Services Unit (DSU), travel coordinator. Out-of-state travel by other than a public airline:

(A) must have prior approval and be necessary to meet a direct need of OKDHS or be advantageous to OKDHS; and

(B) may be approved when there is a need due to personal reasons.

(i) Travel time must not exceed travel time based on use of a public airline. For time that exceeds public airline travel time, an employee may use annual leave, if approved.

(ii) Travel expenses, such as overnight lodging, incurred, above the basic travel expenses that would have been incurred had a public airline been used, are the responsibility of the employee or non-employee.

(d) **Reimbursement for lodging.** Sections 500.8 and 500.9 of Title 74 of the Oklahoma Statutes reflect per diem and lodging rates for travel both within and outside of the state of Oklahoma based upon the amount authorized by the provisions of the Internal Revenue Code of 1986. Authorized lodging reimbursement rates vary depending on the location of travel as identified in Government Services Administration's (GSA) Continental United States (CONUS) rates for domestic locations and for locations outside of the Continental United States (OCONUS). A complete listing of the CONUS and OCONUS locations and rates can be obtained from the GSA per diem web site: [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem). Employees or non-employees are responsible for all taxes charged by the hotel, motel, or other public lodging establishment. Reimbursement for overnight lodging while in official travel status will be made, based upon a receipt issued by a hotel, motel, or other public lodging places at the current rate established in Sections 500.1–500.20 of Title 74 of the Oklahoma Statutes for in-state or out-of-state, or at actual cost if lower, except as noted in this subsection.

(1) Each claim for overnight travel reimbursement where the distance traveled is 60 map miles or less but less than 30 map miles one way from the claimant's duty station or home, whichever is less, must contain the declaration: "Overnight stay was authorized and approved as advantageous to the state." This statement is approved by the appropriate chief officer of his or her respective area. Overnight travel when distance is 30 map miles, or less, one way from duty station or home, whichever is less, must have prior approval from the Director.

(2) Methods for claiming lodging when employees or non-employees share a room are described in (A)–(C) of this paragraph.

(A) Each individual must have a copy of the lodging receipt for reimbursement of one half of the lodging cost. The name of the other individual and the dollar amount of the single room rate must be written on the lodging receipt.

(B) One individual pays for the full amount, but can only be reimbursed for one half the cost. The other individual assigns his or her portion of lodging cost over to the individual paying the full amount. The name of the other individual and the single room rate dollar amount must be written on the lodging receipt. The person assigning the lodging amount to the other individual must submit two completed Form ADM 6s. One Form ADM 6 is the assigned portion and the other Form ADM 6 is for the reimbursement for themselves.

(C) One employee pays the full amount and seeks reimbursement for the total lodging amount, provided that: the lodging receipt is submitted with the employee's Form ADM 6 and the prorated share of each employee is detailed on the billing statement, and the amount of lodging expenses does not exceed the cumulative total of the single occupancy room rate each employee would ordinarily be charged and entitled to claim. The employee not claiming lodging must write on his or her Form ADM 6, "not claiming lodging." Both claims must be submitted together.

(3) Sections 500.8 and 500.9 of Title 74 of the Oklahoma Statutes have been amended to reflect per diem and lodging rates for travel both within and outside the state of Oklahoma based upon the amount authorized by the provisions of the Internal Revenue Code of 1986. In addition, authorized reimbursement rates vary depending on the location of travel as identified in Government Services Administration's (GSA) Continental United States (CONUS) rates for domestic locations and for locations outside the Continental United States (OCONUS).

### **340:2-11-119.1. Reimbursement for lodging**

Reimbursement for overnight lodging while in official travel status is based on actual charges not to exceed the current authorized rate. This includes reimbursement of the actual cost of lodging not limited to the maximum standard daily rates being authorized when lodging occurs at a prearranged designated hotel, motel, or other facility. An employee or non-employee cannot self-designate a hotel or other lodging facility and obtain the actual lodging expenses.

(1) Claims for overnight travel reimbursement where the distance traveled is less than 61 map miles but more than 30 map miles one way from the claimant's duty station must be approved by the appropriate chief officer. Claims for overnight travel when distance is under 31 map miles, one way from duty station must have prior approval from the Director.

(2) For convenience, an employee or non-employee may claim for overnight travel reimbursement using the home location to calculate distance, if the distance from the home is less than the distance from the duty station.

(3) Reimbursement for meals and lodging on out-of-state trips cannot begin more than 24 hours before the meeting, workshop, or conference begins and cannot continue more than 24 hours after the meeting, workshop, or conference unless a pre-travel or post-travel time is beneficial to OKDHS and has prior approval by the authorizing authority.

(4) Reimbursement for lodging at one of Oklahoma's state lodges may be billed directly to OKDHS or an employee or non-employee may pay for the lodging and claim for reimbursement of the cost.

**340:2-11-120. Attendance at previously arranged meetings [REVOKED]**

Evidence such as the announcement or notice designating previously arranged meetings, workshops, or seminars must be attached to Form ADM 6, Travel Claim. Expenses may not exceed the single occupancy room rate charged by the designated hotel, motel, or other public lodging place. Lodging facilities offering military or government rates do not qualify for a sponsor arranged rate.

(1) ~~DHS in the course of conducting official Agency seminars which are required for the continued education of its employees, may designate a particular lodging facility. Designation of a lodging facility must be approved by the Director or designee or chief officer for his or her respective area. Prior to the event, a formal letter of request must be submitted to the Office of Finance indicating the designated lodging facility, any rate reductions which have been obtained, and that all statutes and DHS policies have been observed.~~

(2) ~~Employees or non-employees attending meetings, workshops, conferences, or other objective trips, which are conducted at a designated hotel, motel, or other public lodging, who choose to acquire less expensive public lodging are reimbursed the actual lodging expense not to exceed the single occupancy room rate charged by the designated public lodging place. Those employees or non-employees choosing this option are reimbursed for local transportation costs incurred while traveling between such optional lodging and the designated hotel, motel, or other public lodging place, not to exceed the difference between the cost of the designated lodging and the cost of the optional lodging. Local transportation costing \$25.00 or more for one trip one way requires receipts.~~

(3) ~~DHS is authorized to make direct purchases of lodging at facilities operated by the Oklahoma Tourism and Recreation Department (OTRD). Such lodging is reimbursed at the in-state lodging rate. Advance individual reservations are made by calling the facility or by calling 1-800-654-8240 or 405-521-2464. DHS reservations for group meetings are made directly with the facility if a signed agreement between DHS and the OTRD has been obtained and submitted to the Office of Finance, along with participant names, prior to travel dates. Meals and lodging are billed directly to DHS if so stated in the agreement. The in-state lodging and per diem rate must not exceed the rate established in Sections 500.1-500.20~~

~~of Title 74 of the Oklahoma Statutes per 24 hour period per person.~~

(4) ~~The OTRD requires a five day cancellation period. Any employee canceling under the five day limit is responsible for any charges the Agency incurs unless substantial documentation can be provided that an emergency or circumstance beyond the employee's control contributed to the delay in cancellation.~~

(5) ~~Form ADM 105, Charges Relating to State Lodges, is presented at the time of check in. Form ADM 6, is clearly marked as "State Lodge" with a 0 under lodging amount.~~

**340:2-11-121. Per diem**

Per diem expenses are reimbursable only for travel periods that incorporate when an employee or non-employee is in overnight travel status.

(1) ~~Sections 500.8 and 500.9 of Title 74 of the Oklahoma Statutes reflect per diem and lodging rates for travel both within and outside of the State of Oklahoma based upon the amount authorized by the provisions of the Internal Revenue Code of 1986. Authorized per diem reimbursement rates vary depending on the location of travel as identified in Government General Services Administration's Administration (GSA) Continental United States (CONUS) rates for domestic locations and for locations outside of the Continental United States (OCONUS). A complete listing of the CONUS and OCONUS locations and rates can be obtained from the GSA per diem web site: [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem).~~

(2) ~~An employee attending a conference or workshop in which meals are provided as part of the package plan must attach send the Finance Division via intra-agency mail a copy of the agenda or workshop notice to supplement information provided in the filing of a claim using Speed-E-Travel. A non-employee attaches a copy of the document to Form ADM-6, Travel Claim. A deduction of one-fourth of the per diem amount shall be is made against from the per diem amount for each meal provided as part of the package plan at conferences or workshops.~~

(3) ~~Out-of-state reimbursement for per diem and lodging does not begin more than 24 hours before or continue more than 24 hours after the objective of the trip, such as meeting, workshop, or conference, except as stated in this paragraph. Under limited circumstances involving airline travel, reimbursement may begin as many as 48 hours before and extend as many as 48 hours after the objective of the trip if airfare is lower than the amount which would have been reimbursed had the 24-hour rule been applied. Extra days Any extra day must be a weekend day.~~

(A) ~~If the purpose of the trip begins on Monday, reimbursement status cannot begin earlier than Saturday.~~

(B) ~~If the purpose of the trip begins on Tuesday, reimbursement status cannot begin earlier than Sunday.~~

(C) ~~If the purpose of the trip ends on Friday, reimbursement status cannot end later than Sunday.~~

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(D) If the purpose of the trip ends on Thursday, reimbursement status cannot end later than Saturday.

(4) ~~Form ADM-6 must have a detailed cost comparison of the additional per diem and lodging versus the savings on airfare. The airfare rate used in the comparison must come from the same travel agency where the ticket was purchased. The total claimed amount for reimbursement including time that exceeded the 24-hour rule cannot exceed be more than the amount of eligible reimbursement, if the 24-hour rule is adhered to had been applied, including the airfare rate available at the time.~~

## **340:2-11-122. Per diem in lieu of subsistence [REVOKED]**

~~A per diem allowance in lieu of subsistence is authorized if in overnight travel status. This allowance is applicable when staying with others and is claimed in the per diem column of Form ADM-6, Travel Claim.~~

## **340:2-11-123. Miscellaneous expenses [REVOKED]**

~~Miscellaneous expenses are to be itemized under the miscellaneous section on the ADM-6, Travel Reimbursement Form.~~

## **340:2-11-124. Completion of Form ADM-6-B, Actual and Necessary Travel Voucher [REVOKED]**

(a) ~~Employees shall be reimbursed for their actual and necessary expenses of travel, lodging, and subsistence incurred in the performance of their duties for the purpose of escorting and transporting children or adults in the care or custody of the Department.~~

- (b) ~~Reimbursement includes out of state travel for:~~
- ~~(1) visitation, care, treatment and placement of a child welfare client;~~
  - ~~(2) treatment for or placement of an adult protective services client;~~
  - ~~(3) treatment for or placement of a resident of a state resource center; or~~
  - ~~(4) treatment for or placement of an individual with a developmental disability who is living in the community in community residential services.~~

(c) ~~Receipts are required for lodging or registration expenses, regardless of the amount, and single meals or miscellaneous expenses of which the cost is \$25.00 or more. Receipts are required for any actual and necessary expenses claimed for "others" as listed on the travel voucher.~~

*[OAR Docket #06-754; filed 4-26-06]*

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

*[OAR Docket #06-755]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 21. Departmental Services Unit  
Part 1. Open Records  
340:2-21-12. through 340:2-21-13. [AMENDED]  
340:2-21-14. [REVOKED]  
340:2-21-15. through 340:2-21-16. [AMENDED]  
Part 3. Records Management [REVOKED]  
340:2-21-20. through 340:2-21-35. [REVOKED]  
**(Reference APA WF 05-22)**

**AUTHORITY:**  
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Open Records Act, Sections 24A.1 through 24A.26 of Title 51 of the Oklahoma Statutes.

**DATES:**

**Comment period:**  
January 17 through February 16, 2006

**Public hearing:**  
None requested

**Adoption:**  
February 28, 2006

**Submitted to Governor:**  
February 28, 2006

**Submitted to House:**  
February 28, 2006

**Submitted to Senate:**  
February 28, 2006

**Gubernatorial approval:**  
April 13, 2006

**Legislative approval:**  
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2006.

**Final adoption:**  
April 26, 2006

**Effective:**  
July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**ANALYSIS:**  
Proposed Support Services Division permanent rule amendments: (1) correct citation reference; (2) reflect the current names for the Oklahoma Department of Human Services (OKDHS) and Support Services Division (SSD); (3) add that foster care and child welfare record information is not subject to release; (4) revoke rules that pertain to OKDHS internal procedures; and (5) make stylistic and semantic improvements.

**CONTACT PERSON:**  
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## **SUBCHAPTER 21. DEPARTMENTAL SERVICES UNIT**

PART 1. OPEN RECORDS

**340:2-21-12. Purpose Open records program purpose and authority**

(a) **Purpose.** The ~~purpose of maintaining Oklahoma Department of Human Services (OKDHS) maintains~~ an open records ~~office is~~ program to:

- (1) meet public requests for accessible records with some uniformity;
- (2) provide assistance to ~~county and institutional OKDHS~~ offices asked to supply records;
- (3) initiate requests for legal assistance in determining whether certain disputed records may be accessible to the public;
- (4) prepare responses to requests for access in cases where the record or portions of the record are considered confidential by ~~the agency OKDHS~~; and
- (5) determine whether the request warrants charging a fee, and ensure the fees are collected before release of the information.

(b) **Authority.** The ~~authority for the open records program is the Open Records Act is to ensure that ensures~~ and ~~assist~~ assists the public's right to access, review, and copy governmental records, except where specifically required by ~~Federal federal or State state~~ law and regulation to be kept confidential. [51 O.S. § 24A.1 - ~~24A.22~~ 24A.26]

**340:2-21-13. Release of information**

(a) **Information subject to release.** Information available for release includes:

- (1) personnel information including:
  - (A) the application of a person who becomes a public official;
  - (B) gross receipt of public funds;
  - (C) dates of employment, title, or position; and
  - (D) any final disciplinary action resulting in loss of pay, suspension, demotion, or termination;
- (2) vendor and provider information not excluded by subsection (b)(4)- ~~through~~ (6) of this Section and public funds paid to vendors and providers; and
- (3) subject to OAC 340:65-1-2, copies of documents from a client's public assistance record, upon request of that specific client, whether an applicant, recipient, or former recipient.

(b) **Information not subject to release.** Records ~~required to be~~ kept confidential by federal and state law are not subject to release. ~~DHS Oklahoma Department of Human Services (OKDHS) rules provide confidentiality for specific program areas per OAC 340:1-1-20.~~ Records kept confidential include, but are not limited to:

- (1) all applications, information, payments received, and records concerning any applicant or recipient of ~~the Department of Human Services OKDHS programs or services~~;
- (2) records subject to confidential privilege such as attorney-client or physician-patient;

- (3) personal notes prepared for one's own use in making a decision or recommendation, except material related to budget requests prior to taking action;
- (4) position papers prepared to assist in ~~Agency OKDHS~~ decision-making. ~~However, documents Documents~~ regarding fiscal or policy matters presented to the Oklahoma Commission for Human Services (Commission) prior to any public action may be released if the Commission takes public action regarding these matters;
- (5) information from personnel records which is a clear invasion of personal privacy such as:
  - (A) employee evaluations;
  - (B) payroll deductions;
  - (C) employment applications submitted by persons not hired by ~~DHS OKDHS~~;
  - (D) internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation;
  - (E) employees' home addresses, telephone numbers, and Social Security numbers; and
  - (F) medical and employee assistance records;
- (6) information that may give an unfair advantage to competitors or bidders;
- (7) proprietary computer programs and software;
- (8) adoption, foster care, and child welfare records;
- (9) documents provided ~~DHS OKDHS~~ by other governmental agencies deemed confidential by the sending agency. Requests for information or documents provided by another agency are referred to the sending agency; and
- (10) records concerning child abuse.

(A) Disclosure of certain information may be provided regarding circumstances of a child's death due to abuse, neglect, or abandonment. [10 O.S. § 7005-1.4]

(B) Information released does not identify anyone filing a complaint or reporting child abuse or neglect, the child victim's siblings, parent(s), or other person responsible for the child, or any other member of the household except for the person criminally charged. ~~Prior to release of any information in this paragraph, the Office of General Counsel, Legal Unit, is consulted.~~

(c) **Access to records.** Access to records is not denied because another OKDHS division or public official is using or has taken possession of the records for investigatory purposes or has placed the records in a litigation or investigation file. ~~However, the Office of General Counsel, Legal Unit, is consulted prior to release of records described in this subsection.~~ When an employee's personnel file is requested, under the Open Records Act, the OKDHS Human Resources Management ~~Department~~ Division (HRMD) notifies the employee that the file has been requested and who requested it.

(d) **Penalties and appeals.** Any person denied access to a record may file an appeal in accordance with Section 24A.17 of Title 51 of the Oklahoma Statutes. The appeal must be filed within ten days of the denial. The appeal is requested by submitting a letter to the Director, Oklahoma Department of

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Human Services, Open Records Act Appeal, PO Box 25352, Oklahoma City, Oklahoma 73125.

(e) **Anonymity of persons requesting access to records.** A person requesting access to ~~DHS OKDHS~~ records may request to have his or her identity kept anonymous. ~~DHS OKDHS~~ cannot guarantee anonymity of the requestor, as it is not a condition of the law.

### **340:2-21-14. Designated Public Records Officer (PRO) [REVOKED]**

~~The agency maintains public records and makes them available for inspection. In order to avoid any obstacle to the public's right to requested information, DHS designates Public Records Officers (PRO). The PRO assists the public in the inspection and copying of records and has authority to decide, with the providing Division, which records may be released within the guidelines of the rules in this Part. In addition the PRO collects required search and copy fees.~~

~~(1) Each person administratively responsible for a DHS County office, or State institution appoints a contact person as a PRO and an alternate. The PRO or alternate is available during regular business hours to assist the public.~~

~~(2) The person administratively responsible for the Department is the Open Records Coordinator in the Open Records Section within the Office Support Services Division.~~

### **340:2-21-15. Requests for records**

The Oklahoma Department of Human Services (OKDHS) maintains public records and makes them available for inspection.

~~(a1) **Requirements for persons requesting records.** A person requesting information completes Form PA 23 B 23RM023E, Request to Review and/or Copy Records, for to review, search, or copy of OKDHS records. Form PA 23 B advises the requestor that the use Use of any information concerning any public assistance applicant or recipient, for publication, commercial, or political purpose constitutes a felony. [56 O.S. §183]~~

~~(b2) **Requests by attorneys.** Attorneys in formal litigation involving the Agency OKDHS must go through the Office of General Counsel, OKDHS Legal Unit, Division for information. Prior to any official legal action involving the Agency OKDHS, an attorney may obtain records through the Open Records Act in the same manner as any other request.~~

~~(e3) **Requests for employee income information.** All requests for employee income verification are referred to the Office of OKDHS Finance Division, Payroll Unit.~~

~~(e4) **Requests for DHS OKDHS vendor or provider payment information.** All requests for DHS OKDHS vendor or provider payment information are referred to the Office of OKDHS Finance Division, Claims Auditing Unit.~~

### **340:2-21-16. Fees**

(a) Fees for ~~Open Records~~ open records requests are not used to discourage requests for information or as obstacles to disclosure of requested information. A search fee is never charged for release of documents that are in the public interest, including, but not limited to, requests by news media, scholars, authors, and taxpayers determining whether government is competently performing their duties as public servants.

(1) Fees are outlined in (A) – through (E) of this paragraph.

(A) There is no charge for 100 pages or less in a calendar year.

(B) For requests exceeding 100 pages in a calendar year, the fee is \$.25 per page.

(C) For certified documents, the fee is ~~\$1.00~~ per page.

(D) Commercial requests, or those which would cause excessive disruption of office function, are charged ~~\$25.00~~ per hour for staff time.

(E) For requests requiring computer programming, the fee is equal to labor costs and computer processing time.

(2) For a request by commercial users for computer runs, microfilming, or reproduction, other than photocopying, the requester pays the agency's Oklahoma Department of Human Services (OKDHS) cost for duplicating the information involved. If computer programming is necessary to isolate requested or confidential information, the fee ~~will equal~~ equals the labor costs plus cost of computer processing time necessary to produce the record. ~~The cost of computer processing time is established by the Office of Finance at the time the work is performed. The OKDHS Finance Division establishes the cost for computer processing at the time the work is performed.~~

~~(3) The Open Records Section maintains a list of persons or organizations routinely requesting policy. Routine updates are provided upon request at the posted rate. The requester may receive updates by paying an annual \$50.00 fee, billed in May of each year. This fee is paid by July 1 of each year or the name is removed from the update list.~~

(b) All fees are paid prior to delivering the copies. If the request is for search only, the fee is paid before the person is allowed to review the material. All fees are paid by check or money order payable to ~~DHS OKDHS~~. Cash is not accepted. ~~The PRO transmits the fee payment on Form F 2, Payment Identification, to the State Office, Attention: Office of Finance. The PRO gives a copy of Form F 2 to the requestor as a receipt for payment.~~

## **PART 3. RECORDS MANAGEMENT [REVOKED]**

**340:2-21-20. Scope of Records Management [REVOKED]**

The Oklahoma Legislature mandates that every agency establish and maintain an active, continuing program for the economical management of its records. Records are maintained to document the organization, functions, policies, decisions, procedures, and essential transactions of the agency. This documentation is designed to furnish information that protects the legal and financial rights of the State and of persons directly affected by the agency's activities. Records management includes all record formats, including machine readable tapes and disks, microforms, audio and video tapes, electronic mail, local and wide area computer networks, and paper documents. A comprehensive and systematic control of a record's creation, use, and disposition is provided. Destruction of records must be carried out in strict accordance with all applicable statutes, rules, regulations, records disposition schedules or records disposition authorizations. By state law, records created or received in the transaction of official business may not be destroyed by a state agency without prior authorization from the Archives and Records Commission.

**340:2-21-21. Legal references [REVOKED]**

The Legislature created the Archives and Records Commission and gave it authority over the disposition of state records:

- (1) Statutory authority is found in:
  - (A) Sections 201-215 of Title 67 of the Oklahoma Statutes, Records Management Act;
  - (B) Section 305 of Title 67 of the Oklahoma Statutes, Archives and Records Commission; and
  - (C) Archives and Records Commission Rules and Regulations.
- (2) The program also takes direct guidance from:
  - (A) Section 590 of Title 21 of the Oklahoma Statutes, Maintenance of Financial and Business Records Retention, and Disposal Procedure Violations; and
  - (B) Section 24A.1 of Title 51 of the Oklahoma Statutes, Oklahoma Open Records Act.

**340:2-21-22. Definitions [REVOKED]**

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

- "Administrative value of a record"** means a record's usefulness in conducting an agency's current business.
- "AIIM"** means the Association for Information and Image Management.
- "ANSI"** means the American National Standards Institute.
- "Ancillary records"** means records that are routine in nature. They have no evidential or informational value beyond the immediate use for which the record is created or received. They do not contain support documentation for the financial or business transactions of an agency.

**"Archives and Records Commission"** means a five member board created by state law enacted in 1947. The Commission has the sole, entire, and exclusive authority for the disposition of all public records and archives of state officers, departments, boards, commission, agencies, and institutions.

**"Central records"** means the files relating to several offices or administrative units that are maintained and supervised in one location.

**"CCITT"** means the Consultative Committee on International Telegraph and Telephone.

**"CD-ROM"** means Compact Disk Read Only Memory, a type of optical disk which cannot be erased or altered.

**"Compression"** means the method by which redundant digital image data streams are reduced to much smaller sizes, resulting in lower digital storage and data transmission requirements.

**"Computer output microform"** means microfilm or microfiche produced directly from computer tapes.

**"Confidential records"** means those whose access is restricted by statute, court order, or legally adopted rules and regulations.

**"Correspondence"** means copies of incoming letters, memoranda, telecommunications, and other forms of written communications and copies of outgoing responses.

**"Cubic foot"** means the basic unit of measurement to determine records volume. A records center storage carton holds one cubic foot of records. A standard file drawer holds 1.5 cubic feet. A legal size file drawer holds two cubic feet.

**"Disposition"** means actions taken regarding records no longer required for day to day office use. These actions include destruction in the agency of origin, transfer to the State Records Center, transfer to the State Archives for permanent preservation, microfilming, or scanning to an optical imaging system.

**"Duplicate records"** means copies of a record which are normally maintained only for reference or convenience of access.

**"Essential record"** means it is necessary for the operation of government during an emergency created by a disaster, or necessary to protect the rights and interests of persons or to establish and affirm powers and duties of government in the resumption of operations after a disaster.

**"Evidential value of a record"** means the documenting of an agency's authority, functions, organization, policies, decisions, or the rights and legal responsibilities of an individual or institution.

**"File"** means a group of records arranged according to a particular plan that are stored together and treated as a unit.

**"Historical value of records"** means a record's usefulness for research by government, business, organizations, scholars, or others.

**"Inactive records"** means that the records are no longer required to conduct the day to day business of an agency and therefore ready for final disposition.

**"Inventory"** means a survey of the records of an agency or an administrative unit that includes information about record

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titles, purposes, uses, contents, formats, frequency of reference, volumes, dates, arrangements, and physical locations.

**"Machine-Readable Records"** means informational content is in code and has been recorded on a medium such as magnetic tape, drums, discs, or punched paper tape and which are accompanied by finding aids known as software documentation. The coded information is retrievable only with the aid of a computer.

**"Microfiche"** means a record is made up of miniaturized images on card-sized transparent sheet film.

**"Microfilm"** means a high resolution film containing greatly reduced photographic images.

**"Micrographics"** means the process by which full size documents or publications are converted to microimages on a microformat.

**"Name of record"** means the official title of a record.

**"Office of record"** means the agency, office, or administrative unit that is legally responsible for maintaining the official copy of a record.

**"Optical Imaging System"** means a computer system that consists of hardware and software that records complete images by: scanning the images with a source of light such as a laser; converting the images to a digital electronic format; and storing the converted images on an optical media which allows for the rapid retrieval of the stored images through indexing and the reproduction of the entire original image.

**"Public records"** mean those records created or received by a public agency in the normal course of its business.

**"Record"** means any document regardless of physical form or characteristic, created or received pursuant to law or ordinance or in connection with the transaction of official business, the expenditure of public funds, or the administration of public property.

**"Record copy"** means the original copy of a record preserved by an agency or administrative unit that is legally responsible for preserving it as the official record.

**"Record description"** means a written summary of the contents and purposes of a record.

**"Record series"** means documents, volumes, folders, reels, or other units of the same record title that are arranged under a single filing system or are kept together as a unit because they relate to a particular subject or function, document a specific activity, or have a direct relationship to the creation, receipt, or use of information.

**"Record type"** means the functional category of a record such as correspondence, directive, report, payroll, requisition, purchase order, invoice, minutes of proceedings, inventory, receipt, contract, voucher, warrant, case file, budget, statement of account, application, time card, ledger, court order, map, plat, or drawing.

**"Records center"** means a facility for the low cost storage and servicing of inactive or semi-current records no longer required for day to day operations, but still required to be retained for a specified period of time because of their evidential, fiscal, or informational value.

**"Records Disposition Authorization" (RDA)** means a request submitted to the Archives and Records Commission for the one-time disposition of a particular body of records which

is not subject to the continuing authority of a records disposition schedule.

**"Records Disposition Schedule" (RDS)** means a list of all records created or received and specifies the length of time and the manner in which each must be retained.

**"Records Inventory Report" (Form RMD-1)** means a form used to identify a record series consisting of documents in any format that are arranged in a single filing system because they relate to a particular subject or result from the same activity.

**"Records Custodian"** means the staff member appointed by an administrative head to coordinate, plan, develop, and implement the administrative unit's records management program.

**"Records Management Coordinator"** means the staff member appointed by an agency head to coordinate, plan, develop, and implement the agency's records management program.

**"Retention period"** means the length of time that records are to be retained.

**"Rewritable disk"** means an optical platter that can be erased, written over, or otherwise reused or altered. These are sometimes referred to as Erasable Optical Disks (EOD).

**"State record"** means a record of a department, office, commission, board, authority, or other agency, however designated, of state government, the State Legislature, the Supreme Court, the Court of Criminal Appeals, or any other court of record, and any other record treated as a state record under state law.

**"State Records Administrator"** means the Oklahoma Department of Libraries staff member responsible for making surveys of records operations, recommending improvements in records management practices, and establishing standards for the preparation of records disposition schedules.

**"Substantive records"** means those which document the organization, functions, policies, procedures, operations and essential transactions of an agency, board, commission, or institution.

**"Temporary records"** means those which are approved by the Archives and Records Commission for immediate destruction or destruction after a specified retention period.

**"WORM"** means Write Once Read Many, a type of optical disk which cannot be erased or altered.

## 340:2-21-23. State records [REVOKED]

(a) **Record handling.** Various laws and procedures regulate how state records are handled. Records are not destroyed except in strict accordance with all applicable statutes, rules, regulations, records disposition schedules, or records disposition authorizations. Each record type has its own record series containing:

- (1) name of record;
- (2) description of record;
- (3) number of cubic feet of records produced annually;
- (4) approved disposition; and
- (5) designation if it is a:
  - (A) record copy;
  - (B) duplicate record;

- (C) essential record;
- (D) confidential record;
- (E) substantive record, ancillary record or temporary record; and
- (F) active or inactive record.

(b) **Penalties.** Under State statute, any person who willfully violates the provisions of Section 590A of Title 21 of the Oklahoma Statutes regarding destruction of records is guilty of a felony, punishable by imprisonment for a period of not more than three years, or by a fine of not more than \$5,000, or both.

(c) **Categories of records.** Most records fall within two broad categories:

- (1) organizational records.—Administrative, financial, personnel, and most machine readable records of DHS fall into the organizational records category.
- (2) client case records.—A case record may contain case history material, reports, forms, documents, evaluation materials, correspondence and any other information relating to the recipient.

**340:2-21-24. Archival storage [REVOKED]**

An approved record disposition schedule determines how long records are kept and when they may be deleted. All records held in the DHS Records Center archives are on an approved disposition schedule.

**340:2-21-25. Records Management Coordinator and Records Custodians [REVOKED]**

(a) **Duties and responsibilities of the Records Management Coordinator.** The Records Management Coordinator notifies the State Records Administrator of the agency's intention to destroy records that are authorized for destruction under an approved Records Disposition Schedule, 30 days before the proposed destruction. The Records Management Coordinator also:

- (1) acts as a liaison between DHS and the Archives and Records Commission to ensure compliance with Archives and Records Commission rules, OAC 60:10, and state laws regarding records management;
- (2) establishes guidelines, coordinates scheduling and maintains an accurate inventory of Agency records;
- (3) serves as the liaison between divisions and the State Department of Libraries in establishing retention periods for Agency records;
- (4) obtains approval for disposal of records on approved schedules from the State Records Administrator;
- (5) ensures processing, storing and preserving of all records of the agency in an efficient and economical manner; and
- (6) makes site visits to field offices, institutions, or other agency locations to counsel or assist staff in fulfilling requirements of this function.

(b) **Duties and responsibilities of the Records Custodian.** The Records Custodian:

- (1) acts as a liaison between the administrative unit and the Records Management Coordinator to ensure compliance with state laws regarding records management;

- (2) coordinates scheduling and maintains an accurate inventory of all records of the administrative unit;
- (3) coordinates with the Records Management Coordinator in establishing retention periods for all records of the administrative unit;
- (4) requests permission to dispose of records, on approved schedules, from the Records Management Coordinator prior to their destruction;
- (5) ensures processing, storing and preserving of all records of the administrative unit in an efficient and economical manner; and
- (6) notifies the Records Management Coordinator upon appointment or replacement.

**340:2-21-26. Records scheduling [REVOKED]**

To meet the requirements of Sections 201 and 305 of Title 67 of the Oklahoma Statutes, a schedule for records disposition must be approved by the Archives and Records Commission before any Agency record may be destroyed. Each administrative unit of the Department is responsible for submitting an inventory of all records in their offices, which are not on an existing records disposition schedule, to the Agency's Records Management Coordinator. There are two types of records disposition schedules, the:

- (1) General Records Disposition Schedule; and
- (2) Consolidated Records Disposition Schedule.

**340:2-21-27. General Records Disposition Schedules [REVOKED]**

The General Records Disposition Schedule provides uniform dispositions for records common to several agencies. Unless an agency must retain records listed on this schedule longer than the minimum retention period specified to meet mandated legal, audit, or other requirements; it need not survey them or incorporate them into its agency's consolidated records schedule. The General Records Disposition Schedule covers administrative, financial, personnel, and certain machine readable records which apply to all agencies except those which are responsible for maintaining the office of record copy. Amendments and changes to the General Records Disposition Schedule are made by the Archives and Records Commission.

**340:2-21-28. Consolidated Records Disposition Schedule [REVOKED]**

The DHS Consolidated Records Disposition Schedule provides uniform dispositions for records specific to administrative units within the Department of Human Services. The Consolidated Records Disposition Schedule provides legal authorization to delete records in prescribed ways and a records management guide for Agency personnel. Copies of and revisions to the Consolidated Records Disposition Schedule are provided to the Records Custodian by the Records Management Coordinator. Records Custodians review their schedules annually to make sure that they reflect current needs, and initiate amendments to the schedule if the review indicates:

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- (1) new records are not included on the schedule.
- (2) various records that are listed are no longer being created or received.
- (3) responsibility for maintaining records has administratively changed.
- (4) certain retention periods do not reflect changes in the law or agency needs.

### 340:2-21-29. Records inventory [REVOKED]

A records inventory identifies records consisting of documents, in any format, that are arranged in a single filing system because they relate to a particular subject or result from the same activity. Records not covered by the General Records Disposition Schedule or listed on an administrative unit's existing Consolidated Records Disposition Schedule are inventoried to determine:

- (1) purposes and functions of the records;
- (2) physical formats;
- (3) number and locations of copies;
- (4) applicable restrictions governing access to the records;
- (5) administrative, fiscal, legal, historical or evidential values;
- (6) inclusive dates and quantities;
- (7) organization of records, for example: alphabetically, chronologically, or by subject;
- (8) existence of an index or other finding aids; and
- (9) audit requirements.

### 340:2-21-30. Deletion of records [REVOKED]

Deletion of records is carried out in strict accordance with all applicable statutes, rules, regulations, records disposition schedules or records disposition authorizations. By state law, records created or received in the transaction of official business may not be deleted by a state agency without prior authorization from the State Records Administrator thirty (30) days before the proposed deletion. All deleted records must be on an approved disposition schedule prior to their deletion.

### 340:2-21-31. Records disasters [REVOKED]

(a) **Plan.** A disaster is a calamitous event which occurs suddenly and creates damage or hardship. It may be caused by carelessness, negligence, bad judgment, or by natural forces such as a flood, tornado or hurricane. DHS:2-15-45 of the DHS Policy and Procedures Manual requires an emergency operation plan is designed and followed in the case of disaster. The general requirements for preparing an emergency operating plan are outlined in DHS:2-15-46 of the DHS Policy and Procedures Manual.

(b) **Damage.** Most disasters result in water damaged records. Records develop mold within 48 to 72 hours when they are in a warm, humid environment. Therefore, it is mandatory that recovery procedures begin as quickly as possible to salvage damaged records and to prevent additional damage from occurring.

(c) **Notification.** OAC 60:10-3-5(e) of the Archives and Records rules and regulations states that: *state agencies with*

*records that have been subject to extensive physical damage or destruction from natural or human caused disaster prior to the expiration of established retention periods must, within 24 hours of discovery, inform, and initiate a written request to, the Archives and Records Commission through the State Records Administrator to authorize emergency destruction of said records. The Commission authorizes destruction, or requires that information from all or part of the damaged records be recreated or the physical records salvaged if said records contain information essential to the operations of state government or to the protection of the legal, financial or other rights or interests of the citizens or the state. The Records Management Coordinator is notified, in writing, within 24 hours of discovery that records have been subjected to extensive physical damage or destruction by a natural or human caused disaster. The Records Management Coordinator informs the Archives and Records Commission.*

(d) **Oklahoma Disaster Recovery Assistance Team.** The Oklahoma Disaster Recovery Assistance Team (O-DRAT) was created to provide on-site salvage assistance and advice in the event a disaster strikes any library or records repository of the State of Oklahoma.

### 340:2-21-32. Confidentiality of records [REVOKED]

State and federal statutes and regulations require many Departmental records are kept confidential. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided with information from those records. Unauthorized disclosure of client information is a misdemeanor. Client and case record data stored in computer systems and available through printouts and terminals is also confidential and is protected in the same manner as other information. All staff members are responsible for ensuring that case information, whether recorded or unrecorded, is treated in a professional manner consistent with DHS Policy. [OAC 2-21-12 through 2-21-16]

### 340:2-21-33. E-Mail records [REVOKED]

DHS provides electronic mail service for its employees as a resource to conduct DHS business. E-Mail is to be used only for the communications made in the course of Agency business. Therefore, all communications transmitted through the E-Mail system are considered state records. E-mail records are subject to the disposition authority of the Archives and Records Commission, and are scheduled in the same manner as any other record. E-Mail records are subject to the Open Records Act.

### 340:2-21-34. Computer generated records [REVOKED]

Electronically generated records maintained on computer hard drives, floppy diskettes, back up tapes, CD-ROMs, servers, or on line systems are subject to the disposition authority of the Archives and Records Commission. Records created or maintained in these formats are scheduled in the

same manner as any other record. Computer generated records are subject to the Open Records Act.

**340:2-21-35. Security destruction of confidential materials [REVOKED]**

~~Each office periodically reviews their Records Disposition Schedule for the appropriate records disposition. All DHS records on previously approved schedules must have written approval by the Archives and Records Commission (ARC) 30 days prior to security destruction. Notice of Intent to Destroy, Form ARC 4, is used for this purpose and may be requested by contacting the Records Management Coordinator (RMC). After completion by the requesting office, Form ARC 4 is routed to the RMC who submits the request and obtains the necessary approval from ARC. Only after receipt of the approved Form ARC 4, may designated records be destroyed. If an office has proper disposal methods of security destruction, the office may destroy records themselves, or the office may contact the Supply Warehouse to schedule a pick up.~~

*[OAR Docket #06-755; filed 4-26-06]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 15. STATE SUPPLEMENTAL PAYMENT**

*[OAR Docket #06-757]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

340:15-1-4. [AMENDED]  
(Reference APA WF 05-24)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 161 et seq. of Title 56 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 17 through February 16, 2006

**Public hearing:**

None requested

**Adoption:**

February 28, 2006

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February 28, 2006

**Submitted to House:**

February 28, 2006

**Submitted to Senate:**

February 28, 2006

**Gubernatorial approval:**

April 13, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2006.

**Final adoption:**

April 26, 2006

**Effective:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Proposed State Supplemental Payment (SSP) permanent rule amendments clarify that certain individuals who were approved for care and continuously living in a licensed Title XIX nursing care facility, intermediate care facility (ICF), or ICF for the mentally retarded (ICF/MR) since December 1973 are eligible for an SSP if the countable income is within standards.

**CONTACT PERSON:**

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**340:15-1-4. State Supplemental Payment plan**

The State Supplemental Payment (SSP) plan for the aged, blind, and disabled encompasses the requirements listed in (1) through (11) of this subsection.

- (1) **State-wide operation.** The plan is in effect in all counties of Oklahoma as a state-administered program.
- (2) **Financing.** The State of Oklahoma provides all the money for financing the SSP Program.
- (3) **Single state agency.** The SSP Program is administered by the Oklahoma Department of Human Services (OKDHS) with an office in each county in the state, operating under rules and regulations adopted by the Oklahoma Commission for Human Services (Commission).
- (4) **Fair hearings.** Any individual whose application is denied or is not acted upon with reasonable promptness, or who is dissatisfied with the amount of his or her payment or with any other action taken in regard to his or her payment, is provided an opportunity for a fair hearing.
- (5) **Proper and efficient administration.** OKDHS operates under the State Merit System which establishes and maintains personnel standards on a merit basis for certain state agencies, including OKDHS. Employees of OKDHS engaged in the administration of the Combined State Plan are covered by the Merit System.
- (6) **Safeguarding of information.** State laws and the rules and regulations adopted by the Commission restrict the use of or disclosure of information concerning SSP applicants and recipients to purposes directly connected with the administration of this program.
- (7) **Right to apply.** A person has the right to make application for any category of assistance he or she chooses, to expect an investigation of eligibility, and to expect a reasonably prompt decision in regard to his or her application.
- (8) **Assistance under only one program.** An eligible person can have his or her needs included in only one SSP or Temporary Assistance for Needy Families (TANF) benefit.
- (9) **Standards for determining eligibility and amount of payment.** Uniform policies for determination of eligibility and the amount of payment are provided in OAC 340 Chapters 15 and 65 and OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards.

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(A) SSP standards are based on the mandatory "Pass-Along Provision" of Section 1618 of the Social Security Act which requires states to pass along cost of living adjustments (COLA) in Supplemental Security Income (SSI) benefits. The Commission approves adjustments in individual payments to maintain total expenditures for SSP in a calendar year at the same level as the total expenditures for SSP in the previous year.

(B) Maximum income and resource standards for individuals who are aged, blind, or disabled are based on the federal benefit rates (FBR) shown on OKDHS Appendix C-1, Schedule VIII.

(i) Countable income for SSP must be less than 100% of the FBR plus the maximum SSP amount.

(ii) Countable income for certain individuals who were approved for care and continuously living in a licensed Title XIX nursing care facility, ~~or~~ intermediate care facility (ICF), or ICF for the mentally retarded (ICF/MR) since December, 1973, including non-eligible SSP individuals who receive Home and Community-Based Waiver Services for the Mentally Retarded ~~Program~~ or patients 65 and older in a mental hospital must be equal to or less than 300% of the FBR.

(iii) Countable income for deeming income to a minor child who is blind or disabled must be less than 100% of the FBR.

(iv) Maximum resources must be equal to or less than 100% of the SSI resource standards.

(10) **Income and resources.** OKDHS, in determining need for an aged, blind, or disabled individual, takes into consideration any available income and resources of the individual, except the income and resources required to be disregarded by state law or by OKDHS policy.

(11) **Civil rights.** The SSP Program is administered in accordance with the provisions of Title VI of the Civil Rights Act.

[OAR Docket #06-757; filed 4-26-06]

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

[OAR Docket #06-807]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Scope and Applicability

340:25-1-1. through 340:25-1-2.1. [AMENDED]

340:25-1-5.1. [AMENDED]

Subchapter 3. Commissioned Peace Officers

340:25-3-1. through 340:25-3-1.1. [AMENDED]

340:25-3-3. [AMENDED]

Subchapter 5. Operational Policies

Part 7. The Case Record - Computer File Records and Case Folders

340:25-5-55. [AMENDED]

Part 9. Disclosure of Information

340:25-5-66. through 340:25-67.1. [AMENDED]

Part 11. CSED System Security

340:25-5-75. [AMENDED]

Part 13. Retention and Destruction of Records

340:25-5-95. [AMENDED]

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

340:25-5-110. through 340:25-5-110.1. [AMENDED]

340:25-5-114. [AMENDED]

340:25-5-117. [AMENDED]

340:25-5-123. through 340:25-5-124. [AMENDED]

340:25-5-124.2. [AMENDED]

340:25-5-133. [AMENDED]

Part 17. Past Support

340:25-5-140. through 340:25-5-140.1. [AMENDED]

Part 19. Locate Services

340:25-5-155. [AMENDED]

Part 20. Medical Support

340:25-5-168. [AMENDED]

340:25-5-170. through 340:25-5-171. [AMENDED]

Part 21. Establishment

340:25-5-176. [AMENDED]

340:25-5-178. through 340:25-5-179.1. [AMENDED]

Part 22. Review and Modification

340:25-5-198. through 340:25-5-198.2. [AMENDED]

Part 23. Enforcement

340:25-5-200. through 340:25-5-200.2. [AMENDED]

340:25-5-201.1. [AMENDED]

340:25-5-203. [AMENDED]

340:25-5-203.1. [NEW]

340:25-5-211.1. through 340:25-5-214. [AMENDED]

Part 25. Federal Offset Programs

340:25-5-215. through 340:25-5-215.1. [AMENDED]

340:25-5-225. [AMENDED]

Part 27. State Tax Refund Offset Program

340:25-5-235. [AMENDED]

340:25-5-244. [AMENDED]

Part 31. Consumer Reporting Agencies - Credit Bureaus

340:25-5-265. through 340:25-5-265.1. [AMENDED]

Part 33. Interstate and International Cases

340:25-5-270. [AMENDED]

340:25-5-285. [NEW]

Part 37. Recovery

340:25-5-305. [AMENDED]

340:25-5-312. [AMENDED]

340:25-5-328. [AMENDED]

Part 38. IV-D and Non-IV-D Central Case Registry Information

340:25-5-339. [NEW]

340:25-5-340.1. [AMENDED]

Part 39. Accounting and Distribution

340:25-5-345.1. [AMENDED]

340:25-5-350.2. through 340:25-5-351. [AMENDED]

(Reference APA WF 05-08 and 05-27)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 453, 454, 454A, and 454B of the Social Security Act, codified in Sections 653, 654, 654a and 654b of Title 42 of the United States Code (U.S.C.); Section 1738B of Title 28 U.S.C.; United States House Resolution 3130, Public Law 105-200; Sections 302.31, 302.32, 302.38, 303.6, 307.11, 307.13, and Part 310 of Title 45 of the Code of Federal Regulations; and Section 724.1 of Title 3A, Sections 7003-8.7 and 7003-8.8 of Title 10, Section 1171.3 of Title 12, Section 6058A of Title 36, Sections 112, 112A, 115, 118, 118.2, 118.4, 137, 139, 139.1, 413, and 601-604 of Title 43, Sections 1-153, 6-201, 6-201.1, 6-211 and 6-212 of Title 47, and Sections 237, 237A, 237.1, 238, 240.1, and 240.15 through 240.21A of Title 56 of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 17, 2006 through February 16, 2006

#### Public hearing:

None requested.

#### Adoption:

February 28, 2006

**Submitted to Governor:**

February 28, 2006

**Submitted to House:**

February 28, 2006

**Submitted to Senate:**

February 28, 2006

**Gubernatorial approval:**

April 13, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2006.

**Final adoption:**

April 26, 2006

**Effective:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 5. Operational Policies

Part 23. Enforcement

340:25-5-200. [AMENDED]

340:25-5-201.1. [AMENDED]

340:25-5-203.1. [NEW]

Part 37. Recovery

340:25-5-312. [AMENDED]

**Gubernatorial approval:**

January 11, 2006

**Register publication:**

23 Ok Reg 627

**Docket number:**

06-62

**ANALYSIS:**

The revisions to Subchapters 1, 3, and 5 of Chapter 25: (1) supersede emergency rules adopted December 6, 2005 that establish policy and procedure to provide for the attachment of lottery prize winnings from the Oklahoma Lottery Commission as a legal remedy to enforce court-ordered support obligations, including provisions for the Child Support Enforcement Division (CSED) to secure winnings for the collection of overpayments made by CSED, or to satisfy bad debt resulting from child support enforcement payments, and a claimant or overpayment recipient's right to contest such attachments upon timely written request; (2) codify into Chapter 25 of Title 340 of the Oklahoma Administrative Code the provisions of the Servicemembers Civil Relief Act, formerly the Soldier's and Sailor's Civil Relief Act, Sections 501 through 596 of Title 50A of the United States Code, and provisions of the 2001 Uniform Interstate Family Support Act (UIFSA) amendments, Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes; (3) replace reference to the Social Security Act with reference to the United States Code; (4) implement rule changes recommended during CSED's annual review process; and (5) make nonsubstantive changes to improve clarity of the rules.

**CONTACT PERSON:**

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**SUBCHAPTER 1. SCOPE AND APPLICABILITY**

**340:25-1-1. Purpose**

(a) The purpose of the rules in this Chapter is to explain Oklahoma's Child Support Enforcement Program as it pertains to the public it serves. Unless the context clearly indicates otherwise, the rules in this Chapter only pertain to IV-D programs and services.

(b) All entities and personnel of the Oklahoma Child Support Enforcement Program of ~~DHS~~ the Oklahoma Department of Human Services (OKDHS) and all entities and personnel of entities that contract with ~~DHS~~ OKDHS to administer and operate any portion of the Child Support Enforcement Program are bound by the provisions of this Chapter.

**340:25-1-1.1. Definitions**

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

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

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

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

**"Assignment"** means any transfer of rights to support to the State of Oklahoma under ~~Section 408 or 471 Sections 608 and 671 of Title 42 of the Social Security Act United States Code~~ or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations.

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

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

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

**"Central Case Registry"** means Oklahoma's repository for ~~Title IV, Part D, of the Social Security Act Subchapter IV of Chapter 7 of Title 42 of the United States Code (IV-D) cases~~ and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the ~~federal case registry Federal Case Registry~~ under Section ~~454A 654a~~ of Title 42 of the ~~Social Security Act United States Code~~. CSED maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

**"Centralized Support Registry"** means a repository maintained by CSED to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes.

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It serves as Oklahoma's State Disbursement Unit under Section 454B-654b of Title 42 of the ~~Social Security Act~~ United States Code. The Centralized Support Registry processes payments:

- (A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes* until all monies owed for child support are no longer owed;
- (B) *in all other cases in which support is being paid by income withholding*; and
- (C) when a court orders payments to be made through the Centralized Support Registry. [43 O.S. § 413]

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

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

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

"**DHHS**" means the federal Department of Health and Human Services.

~~"DHS" or "OKDHS" means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the Child Support Enforcement Program for the State of Oklahoma.~~

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

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

"**FPLS**" means the Federal Parent Locator Service.

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

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

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

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

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

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

"**IV-D**" means Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code, generally relating to child support. ~~Title IV appears in the United States Code as Sections 601 through 687, Subchapter IV, Chapter 7, Title 42.~~

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

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

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

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

~~"IV-E" means Title IV, Part E, of the Social Security Act covering foster care.~~

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

"**Medical enforcement only case**" or "**MEO case**" means a child support case for which CSED provides only IV-D services related to securing medical support to non-TANF Medicaid recipients.

"**Medical support**" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

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

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

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

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

"**OAH**" means the OKDHS Office of Administrative Hearings: Child Support, which conducts child support enforcement administrative hearings. [56 O.S. § 237.7]

"**Obligee**" or "**person entitled**" means:

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

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

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

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

"**OCSE**" means the federal Office of Child Support Enforcement.

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

"**OKDHS**" means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the Child Support Enforcement Program for the State of Oklahoma.

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

"**Participant in a case**" means a child, parent or putative father, or custodial person associated with a child support enforcement case.

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

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

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

"**Putative father**" means an alleged biological father of a child.

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

"**SPLS**" means the CSED State Parent Locator Service.

"**Support**" means all payments or other obligations due and owing to the obligee custodial person or person entitled by the obligor noncustodial parent under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care

obligations, support alimony payments, and other obligations as specified in Section 118 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

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

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

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

"**Tribal office**" means the Chickasaw Nation Tribal Child Support Enforcement Office.

"**Tribal office case**" means a child support case assigned to the Chickasaw Nation Tribal Child Support Enforcement Office (~~tribal office~~) under OAC 340:25-5-124.2.

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

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

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

**340:25-1-1.2. Structure and services**

(a) **Structure.**

(1) Under ~~Title IV, Part D, A of the Social Security Act~~ Subchapter IV of Chapter 7 of Title 42 of the United States Code, every state must designate a single state agency to administer a statewide plan for child support enforcement. The Oklahoma Department of Human Services ~~has been~~ is the designated ~~as that~~ agency in Oklahoma, ~~and has established a~~ The Child Support Enforcement Division (CSED) ~~to administer~~ administers the plan.

(2) CSED provides services through a state office and other offices throughout the state which may be administered through service agreements or contracts with district attorneys and other entities, such as Community Action Program (~~CAP~~) agencies, and Native American tribal organizations, to provide legal child support enforcement services.

(3) The primary function of CSED is to provide child support enforcement services in all IV-A TANF, IV-E ~~Foster Care~~ foster care, and non-TANF Medicaid cases where eligibility is due to the absence of one or both parents, and in other cases for persons who have applied for services. ~~In addition,~~ CSED also provides these services in cases forwarded by:

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- (A) IV-D agencies of other states; and ~~may provide services in cases forwarded by~~
- (B) Native American tribes and foreign jurisdictions, as appropriate.
- (4) CSED complies with the standards for an effective program and the organization and staffing requirements prescribed by ~~Section Part~~ 303 of Title 45 of the Code of Federal Regulations.
- (b) **Services.** ~~IV-D~~ CSED services include, but are not limited to:
- (1) establishment of paternity, child support obligations, and medical support obligations through administrative and court actions;
  - (2) enforcement of child support, fixed sums and judgments for medical support, health care coverage, judgments for child care costs, and in some instances spousal support obligations;
  - (3) location of noncustodial parents and their assets by establishing intrastate and interstate links with local, state, and federal agencies, ~~as well as various~~ private sources, and international central authorities;
  - (4) review of cases for modification of support orders as appropriate;
  - (5) collection and distribution of support payments in accordance with state and federal law; and
  - (6) establishment and maintenance of accounting and other records in accordance with state and federal law.
- (bc) **Excluded services.** CSED services do not include:
- (1) establishment or modification of spousal support, visitation, or custody; and
  - (2) establishment of judgment for unreimbursed medical expenses or child care costs that are not included in the fixed monthly child support obligation.
- (d) **Limited services.** CSED provides limited services at the request of an initiating interstate IV-D agency or an international central authority under Sections 601-101 through 901 of Title 43 of the Oklahoma Statutes and Section 303.7 of Title 45 of the Code of Federal Regulations. CSED provides limited services, when appropriate, even if no individual noncustodial parent or custodial person resides in Oklahoma.

## 340:25-1-2. Legal base

- (a) **Federal law.** ~~Title IV, Part D, Sections 651 through 669b of Title 42 of the Social Security Act-United States Code~~ is the primary basis in federal law for Oklahoma's Child Support Enforcement Program. ~~It is codified in Sections 651 through 669b of Title 42 of the United States Code.~~ The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's Child Support Enforcement Program.
- (b) **State law.** Oklahoma Statutes covering child support enforcement include, but are not limited to:
- (1) Sections 1 through 3, 70 through 90.5, 504 through 505, and 7005-1.4 of Title 10;

- (2) Sections 1170 and 1171.2 through 1171.4 of Title 12;
- (3) Sections 566, ~~through 568~~ 567, and 852 of Title 21;
- (4) Sections 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-901 of Title 43;
- (5) Sections 166.1, 183, 230.60 and ~~230.14~~ 231 through 240.23 of Title 56;
- (6) Sections 1-311.2 and 1-311.3 of Title 63; and
- (7) Sections 205.2 and 205.3 of Title 68.

- (c) **Generally Applicability.** The Child Support Enforcement Division (CSED) uses federal or state statutes, as appropriate, in specific situations to establish and enforce child support orders. CSED follows applicable state and federal laws to which it is subject in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.

## 340:25-1-2.1. Location for information

- (a) **Mailing address.** The mailing address of the state office of Child Support Enforcement Division (CSED) is: Child Support Enforcement Division, Capitol Station Box 53552, Oklahoma City, OK 73152-3552.
- (b) **Telephone information.** Addresses of district child support offices throughout Oklahoma and other information may be requested by telephoning 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922.
- (c) **Internet access.** Information about the Child Support Enforcement Program is ~~also available on~~ from the CSED Internet at <http://www.okdhs.org/childsupport/>.
- (1) A customer who has an active child support case(s) and an ~~OKDHS~~ Oklahoma Department of Human Services customer identification number may use the Internet to access information about the customer's case(s).
  - (2) A customer may contact CSED as described in this Section to request a child support customer personal identification number (PIN) and instructions for accessing case information on the Internet.

## 340:25-1-5.1. Administrative complaint procedure

- (a) **Purpose and scope.**
- (1) ~~This is an~~ The administrative complaint procedure ~~is~~ for IV-D customers of the Child Support Enforcement Division (CSED) of the Oklahoma Department of Human Services (~~DHS~~OKDHS). CSED:
    - (A) represents the state's economic interest in children;
    - (B) ~~CSED~~ does not represent either parent, a custodian, or the child. Parents and custodians may apply for CSED services, and CSED enforces the duties of parents to support their children; and
    - (C) ~~CSED~~ considers parents and custodians as customers, ~~and it is a high priority for whom CSED to treat them~~ treats with dignity and respect.

(2) ~~This~~ The administrative complaint procedure is established under Section 303.35 of Title 45 of the Code of Federal Regulations and available to customers in Oklahoma and from other states. ~~Its~~ The purpose is to provide:

(A) CSED customers an opportunity to raise concerns about services or treatment they receive, request an administrative review, and take appropriate action when there is evidence that an error ~~has~~ occurred, or an action should have been taken on their case. ~~It is available to customers in Oklahoma and from other states.~~

(B) ~~This procedure is meant to offer~~ customers a fast and effective procedure for reviewing issues that have no other review process. The intent of the complaint procedure is to provide customers a process for having their cases reviewed and not to require formal administrative hearing processes or adjudication of complaints; and

(C) ~~It is~~ an informal process rather than a formal hearing process. It does not replace or extend other child support enforcement processes, such as court processes, that are established by federal or state statutes, rules, or regulations. The complaint process is intended to remedy errors, not to allow individuals to dictate action in a case.

(b) **Procedure.**

(1) **Step 1.** CSED encourages any customer who has a complaint about a CSED district child support enforcement office or state office unit to address the complaint orally or by letter, fax, or e-mail to the CSED unit or district office for resolution. Interstate customers ~~should~~ express their concerns to the IV-D agency in the state in which they applied or were referred for services.

(2) **Step 2.**

(A) If the customer is dissatisfied with the response or receives no response from the CSED unit or district office, the customer may send a written complaint to ~~the Community Collaboration Unit (CCU) of CSED. The mailing address is~~ Child Support Enforcement Division, Attention: Community Collaboration Unit (CCU), P.O. Box 53552, Oklahoma City, OK 73152. ~~The, or by fax number is to (405)-522-3685. The, or by e-mail address is to~~ =csed.customer-outreach@okdhs.org. ~~A~~ The customer may describe ~~a~~ the complaint on a form supplied by CSED, which ~~solicits~~ elicits the information listed in (i) through (ix), or in a letter, fax, or e-mail, including:

- (i) first and last name;
- (ii) standing of the person submitting the complaint, for example, the noncustodial parent, custodial person, biological parent, or an attorney of record or authorized representative on behalf of the noncustodial parent, custodial person, or biological parent;
- (iii) the first and last names, mailing address, and telephone number of the attorney of record or authorized representative, if any;

- (iv) Social Security number;
- (v) child support case number;
- (vi) mailing address;
- (vii) telephone number;
- (viii) an explanation, including names of people and locations, dates, and times of incidents; and
- (ix) a description of the desired action to resolve the complaint.

(B) The CCU refers complaints about cases to the CSED district office or state office unit for administrative review. The district office or state office unit conducts the administrative review and notifies the customer in writing of the results of the review and any actions taken within 30 days after the written complaint is received in the CCU.

(3) **Step 3.** If the customer is dissatisfied with the response, the customer may ask for further review by submitting a written request to the CCU. This request for review may be made by letter, fax, or e-mail.

(A) The division director or a designee reviews the complaint, the administrative review of the complaint, and any action taken.

(B) Within 30 days after the written request for further review is received in CCU, CSED notifies the customer and the district office or state office unit in writing of the results and any actions taken. The result of this review is the final decision of CSED.

### SUBCHAPTER 3. COMMISSIONED PEACE OFFICERS

**340:25-3-1. Authority and scope**

- (a) Section 162.2 of Title 56 of the Oklahoma Statutes authorizes the Director of ~~DHS~~ the Oklahoma Department of Human Services (OKDHS) to appoint and commission peace officers to conduct investigations and assist in prosecuting court proceedings related to child support enforcement. Peace officers of the Child Support Enforcement Division (CSED) serve and execute process, arrest warrants, and other court orders in cases in which ~~DHS~~ OKDHS is a party or participant.
- (b) Peace officers may be authorized to possess and use firearms while performing their official ~~DHS~~ OKDHS duties. Firearms are carried in compliance with applicable state and federal laws.
- (c) This ~~Part~~ Subchapter does not apply to peace officers employed by entities under contract or agreement with CSED.

**340:25-3-1.1. Definitions**

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

"**CLEET**" means the Council on Law Enforcement Education and Training.

"**Peace officer**" means a peace officer commissioned and employed by the Oklahoma Department of Human Services (OKDHS) within the Child Support Enforcement Division

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under Section 162.2 of Title 56 of the Oklahoma Statutes. It does not include peace officers employed by entities under contract or agreement with ~~DHS-OKDHS~~.

## 340:25-3-3. Personal service of process

Personal service is used when ~~an individual a person~~ has not accepted service by mail or case history indicates a low probability of acceptance of service or it is more expedient to serve the ~~individual person~~ personally.

- (1) ~~CSED~~ The Child Support Enforcement Division provides address and employer information to the process server.
- (2) Service of process is ordinarily performed at reasonable hours of the day unless a residence address is unknown. Service of process may be attempted at the workplace.

## SUBCHAPTER 5. OPERATIONAL POLICIES

### PART 7. THE CASE RECORD - COMPUTER FILE RECORDS AND CASE FOLDERS

#### 340:25-5-55. Case records

The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) establishes, maintains, and closes case records under Sections 302.15, 303.2, 303.11, and 307.11 of Title 45 of the Code of Federal Regulations and Sections ~~452, 453, 454A and 466~~ 652, 653, 654a, and 666 of Title 42 of the Social Security Act United States Code. CSED maintains information in case records through a combined use of an automated system and paper documents. The information in case records includes, but is not limited to:

- (1) names of custodial persons (~~CPs~~), biological parents (~~BPs~~), putative fathers, noncustodial parents (~~NCPs~~), and children;
- (2) addresses of CPs custodial persons, BPs biological parents, putative fathers, ~~NCPs noncustodial parents~~, and children;
- (3) name and address of employers of CPs custodial persons, BPs biological parents, putative fathers, and ~~NCPs noncustodial parents~~;
- (4) Social Security numbers of CPs custodial persons, BPs biological parents, putative fathers, ~~NCPs noncustodial parents~~, and children;
- (5) paternity records and related information;
- (6) records of all legal and collection actions on cases;
- (7) records of all accruals, payments, and distribution of payments;
- (8) location, asset, employment, insurance, and financial information for CPs custodial persons, BPs biological parents, and ~~NCPs noncustodial parents~~; and
- (9) case log, correspondence, personal notes, work products, records of contacts, communications, and other actions, and other information concerning the case.

### PART 9. DISCLOSURE OF INFORMATION

#### 340:25-5-66. Legal basis for release of information

Federal and state laws and the rules adopted by the Oklahoma Commission for Human Services restrict the use and disclosure of information. Release of information from Child Support Enforcement Program records is based on applicable provisions of:

- (1) Sections OAC 340:2-21-12 through 340:2-21-16, 340:2-21-32, 340:2-21-35, and 340:75-1-44;
- (2) Chapter 70 of Title 10, Section 413 of Title 43, Sections 24A.1 through 24A.26 of Title 51, and Sections 183 and 231 through 240.23 of Title 56 of the Oklahoma Statutes;
- (3) Sections 303.15, 303.70, and 307.13 of Title 45 of the Code of Federal Regulations; and
- (4) Sections ~~453, 454, 454A, and 463~~ 653, 654, 654a, and 663 of Title 42 of the Social Security Act United States Code.

#### 340:25-5-67. Information disclosure

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

(1) All files and records concerning the assistance or services provided under the Child Support Enforcement Program or concerning a putative father of a child born out of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237]

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

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

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

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

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

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

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person representing:

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

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

(D) release of Social Security numbers for child support enforcement purposes, such as locating the parents, submitting cases for federal administrative and income tax refund offset, state income tax refund offset, financial institution data match, enrolling children as beneficiaries of health insurance coverage, and processing interstate child support enforcement;

(2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(A) pay records and payment calculations;

(B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;

(C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(D) information required by Titles 43 or 56 of the Oklahoma Statutes to be disclosed for the purpose of reviewing, establishing, or modifying a support order; and

(E) information necessary to enroll children as beneficiaries of health insurance coverage;

(3) parents or custodial persons requesting disclosure of address of record under Section 112A of Title 43 of the Oklahoma Statutes and OAC 340:25-5-340.1; and

(4) persons as directed by court order or by a subpoena that has been approved by a child support attorney.

Department of Human Services (~~DHS~~OKDHS) Child Support Enforcement Division (CSED) that indicates the participant(s) is associated with child abuse or domestic violence. The family violence indicator is used to restrict disclosure of the location of a participant who is reported to CSED as being at risk of family violence.

(b) CSED considers ~~the following to be~~ as reasonable evidence of family violence, and enters a family violence indicator on appropriate persons, ~~if when~~:

(1) a parent or custodian states that he or she or the child(ren) is at risk of emotional or physical harm from another person in the same child support case; or

(2) ~~DHS~~ OKDHS has knowledge of a court-ordered protective order or other information that family violence exists.

(c) CSED makes available to custodial persons and non-custodial parents Form CSED-8, Family Violence - Address of Record Statement, ~~available~~ to collect address of record information and explain ~~its use to custodial persons and non-custodial parents~~ how the information is used. ~~A~~ The custodial person or a noncustodial parent may use Form CSED-8 to:

(1) request that his or her home address, or location information, not be released to another parent or party in a child support case because release could result in family violence to the requesting person or the requesting person's children. ~~The person may also use Form CSED-8 to; or~~

(2) designate an address of record under OAC 340:25-5-340. CSED may release the address of record under OAC 340:25-5-340.1.

(d) The presence or absence of a family violence indicator on a case does not guarantee the safety of anyone. CSED is not liable for harm arising from the use or non-use of a family violence indicator.

(e) CSED may remove a family violence indicator from a case participant when CSED receives:

(1) a written request from the participant;

(2) information that the family violence indicator was entered in error;

(3) a court order to remove the family violence indicator; or

(4) information that ~~DHS~~ OKDHS has denied a claim from a case participant under OAC 340:10-10-6 for a good cause exception for refusing to cooperate in obtaining child support.

(f) ~~At the~~ Upon order of a court having the ~~power~~ authority to make or enforce child custody or visitation determinations under Section ~~463~~ 663 of Title 42 of the ~~Social Security Act~~ United States Code, CSED may:

(1) request the federal Office of Child Support Enforcement (OCSE) to override a family violence indicator in a single instance; and

(2) authorize release of the person's home address or location to the court.

(g) Interstate cases follow OAC 340:25-5-270.

**340:25-5-67.1. Family violence**

(a) A family violence indicator is a designation placed on a participant(s) in a IV-D or non-IV-D case by the Oklahoma

**PART 11. CSED SYSTEM SECURITY**

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## 340:25-5-75. Authority and responsibility

The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) operates a single statewide automated data processing and information retrieval system that meets the requirements of:

- (1) Sections ~~452, 454, 454A, and 455~~ 652, 654, 654a, and 655 of Title 42 of the Social Security Act United States Code;
- (2) Section 302.85 and Part 307 of Title 45 of the Code of Federal Regulations; and
- (3) Sections OAC 340:2-21-20 through 340:2-21-35.

## PART 13. RETENTION AND DESTRUCTION OF RECORDS

### 340:25-5-95. Scope and applicability

The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) manages and disposes of records according to Oklahoma Statutes as interpreted in ~~Subchapter 21 of Chapter 2 of this Title OAC 340:2-21-20 through 340:2-21-35. Per OAC 340:25-5-55,~~ CSED maintains all records for cases closed under Section 303.11 of Title 45 of the Code of Federal Regulations for a minimum of three years.

## PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

### 340:25-5-110. Scope and applicability

(a) The Oklahoma Department of Human Services, through its Child Support Enforcement Division (CSED), opens, or initiates, and closes child support enforcement cases to provide appropriate IV-D services. In initiating and closing cases, CSED is governed by Sections 302.33, 303.2, and 303.11 of Title 45 of the Code of Federal Regulations; Title IV, Part D, of Subchapter IV of Chapter 7 of Title 42 of the Social Security Act United States Code; and Section 237 of Title 56 of the Oklahoma Statutes.

(b) CSED does not initiate action to disestablish paternity ~~if~~ when:

- (1) there has been an acknowledgment of paternity executed in Oklahoma or another state and not rescinded within the allowable time, which is 60 days in Oklahoma; [10 O.S. § 70(B)(1)]
- (2) the child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two years; [10 O.S. § 3(B)] or
- (3) paternity has been established by a district or administrative court order. [10 O.S. § 70(B)(3)]

(c) In the absence of a court order, CSED does not conduct genetic tests or request the court to order genetic tests after the 60 day rescission period has expired on:

- ~~(1)~~ an acknowledgment of paternity; or after
- ~~(2)~~ a court order ~~that~~ has been entered establishing paternity.

### 340:25-5-110.1. Applications

(a) To apply for child support enforcement services, a person must submit a completed and signed application form; to the address on the form. A one cent application fee is paid by the Child Support Enforcement Division (CSED) for each application received. Form CSED-1, Application for Child Support Services, is submitted in every circumstance, including applications received by:

- (1) former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF Medicaid recipients with the Oklahoma Department of Human Services (OKDHS);
- (2) former participants in IV-D cases;
- (3) noncustodial parents listed on an existing medical enforcement only case, if the noncustodial parent is requesting a review and adjustment or to open a new case per OAC 340:25-5-198.1; or
- ~~(3)~~ persons receiving child support payments from the Centralized Support Registry and not currently receiving child support services through CSED.

(b) Application forms are obtained at any child support or other OKDHS office or by writing or telephoning the Child Support Enforcement Division.

~~(1)~~ The mailing address to obtain an application form is P.O. Box 53552, Oklahoma City, Oklahoma, 73152-3552.

~~(2)~~ The customer service toll-free telephone number is 1-800-522-2922.

~~(3)~~ Printable application forms are available ~~on~~ from the CSED Internet at <http://www.okdhs.org/childsupport/>.

(c) CSED sends outreach letters to noncustodial parents who have filed Form CSED-209, Affidavit Acknowledging Paternity, with the Oklahoma State Department of Health, ~~Bureau~~ Division of Vital Records. Outreach letters provide information about OKDHS services and invite noncustodial parents to participate in these services. These noncustodial parents may apply for child support services through this outreach process.

(d) An applicant who is a custodial person must give OKDHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the custodial person and child(ren).

(e) CSED accepts an application and opens a case ~~if~~ when:

- (1) the child is a minor;
- ~~(2)~~ ~~CSED accepts an application to establish~~ paternity must be established for a minor child against a deceased noncustodial parent consistent with OAC 340:25-5-176; and
- (3) the former custodial person's parental rights have been terminated, then the child was adopted, and the application to collect past-due support owed to the former custodial person was received before the adoption.

~~(f)~~ CSED does not accept applications for collection of past-due support when:

- (1) all children on the application have reached the age of majority;
- ~~(2)~~ ~~there is no longer a current child support order because the former custodial person's parental rights have been terminated and the child has been adopted;~~
- ~~(3)~~ the child is deceased; or

(43) the child is a minor but no longer lives with the custodial person.

**340:25-5-114. Procedures for determining and processing noncooperation on TANF and non-TANF Medicaid cases**

(a) **Cooperation of custodial persons.** The custodial person must cooperate with the Child Support Enforcement Division (CSED) in establishing paternity or in establishing, modifying, or enforcing a support order under Section ~~454~~ 654 of Title ~~42~~ of the ~~Social Security Act~~ United States Code and Section 264.30 of Title 45 of the Code of Federal Regulations.

A custodial person receiving:

- (1) Temporary Assistance for Needy Families (TANF) must assign any rights to support to the Oklahoma Department of Human Services (OKDHS) under Section ~~408~~ 608 of Title ~~42~~ of the ~~Social Security Act~~ United States Code; and
- (2) non-TANF Medicaid must assign to OKDHS any rights to medical support under Section 433.146 of Title 42 of the Code of Federal Regulations.

(b) **Noncooperation of custodial persons.** When a custodial person fails to cooperate, CSED reviews the case to determine noncooperation. If CSED determines noncooperation, CSED notifies OKDHS Family Support Services (FSS) staff in the county office. OKDHS FSS staff in the county office update the computer document for noncooperation with CSED and a computer-generated notice under OAC 340:65-5-1 is sent to advise the recipient of any decrease in benefits due to noncooperation.

- (1) For CSED to make a noncooperation determination, the cooperation must be essential for the next step in providing child support enforcement services.
- (2) Noncooperation is indicated when the custodial person:
  - (A) fails to appear at a district office to provide information or evidence relevant to the case;
  - (B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) when requested to do so by the district office;
  - (C) fails to comply with an order to submit oneself and the child(ren) to genetic testing to determine paternity;
  - (D) fails to appear as a witness at an administrative or district court hearing or other proceeding;
  - (E) fails to provide information, or attest to lack of information, under penalty of perjury;
  - (F) fails to forward to CSED all child support payments received from the noncustodial parent(s);
  - (G) refuses to make a repayment agreement or to comply with a repayment plan when child support receipts are retained; or
  - (H) pursues private legal action affecting paternity, child support, medical support, or child care without giving CSED notice.

(3) OKDHS FSS staff in the county office determine whether good cause for noncooperation with CSED exists based on OAC 340:10-10-6.

**340:25-5-117. Initiation of IV-D cases**

(a) **IV-A, IV-E foster care, non-TANF Medicaid, and child care subsidy referrals.**

(1) The Child Support Enforcement Division (CSED) automatically initiates child support enforcement cases without additional application for certified IV-A, IV-E foster care, non-TANF (Temporary Assistance for Needy Families) Medicaid, and child care subsidy referrals.

(2) Custodial persons who apply for non-TANF Medicaid on behalf of themselves and their child(ren) must assign medical support rights to the state under ~~Section 1912 of Title XIX of the Social Security Act~~ and Section 1396k of Title 42 of the United States Code.

(A) These custodial persons must cooperate in establishing paternity and obtaining medical support unless an exception exists under ~~Sections 1902, 1912, or 1925 of Title XIX of the Social Security Act~~ or Sections 1396a(l)(1)(A), 1396k, or 1396r-6 of Title 42 of the United States Code.

(B) CSED must open a IV-D medical enforcement only case as described in OAC 340:25-5-169. CSED may open a full-service case to provide all appropriate IV-D services as described in OAC 340:25-1-1.2 at the custodial person's request.

(3) When CSED receives a referral from the Family Support Services (FSS) worker, CSED must open a full-service case if any child in the household is certified for a child care subsidy. [OAC 340:40-7-9]

(4) When CSED receives a non-TANF Medicaid referral from the FSS worker in which assigned court-ordered child support is owed, CSED must open a full-service case, under OAC 340:25-5-169.

(5) Custodial persons who apply for non-TANF Medicaid on behalf of their child(ren) only are not required to assign medical support rights or cooperate in establishing paternity and obtaining medical support. Therefore, except when (a)(3) of this Section applies, CSED does not provide child support services unless the custodial person requests services for the child(ren). The custodial person may request a full-service case or a medical enforcement only case.

(b) **Termination of IV-A, IV-E foster care, and non-TANF Medicaid benefits.** When a family is no longer eligible for assistance under IV-A, IV-E foster care, or Medicaid programs, all appropriate IV-D services continue without application under Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF Medicaid cases previously limited to medical support continue as full-service cases. If a custodial person refuses continued IV-D services and subsequently requests services, the person must submit a completed and signed Form CSED-1, Application for Child Support Services, even if CSED has an active case because of unreimbursed assistance owed to the state.

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(c) **Referrals from other jurisdictions.** CSED accepts cases referred:

(1) by any ~~state's~~ state or tribal IV-D agency and from other countries ~~if~~ when the noncustodial parent lives in Oklahoma. CSED does not require an application for cases referred from another ~~state's~~ IV-D agency;

(2) ~~CSED accepts~~ by interstate referrals for judgment only collections if the case was opened in the initiating state during the minority of any child on the case; and

(3) when Oklahoma is an appropriate jurisdiction to establish, enforce, modify, or determine the controlling order under the Uniform Interstate Family Support Act in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes, whether or not the noncustodial parent resides in Oklahoma.

(d) **Responses from noncustodial parents who sign an acknowledgment of paternity.** CSED opens full-service cases for noncustodial parents who have filed Form CSED-209, Affidavit Acknowledging Paternity, with the Oklahoma State Department of Health, ~~Bureau~~ Division of Vital Records, and requested child support services in response to outreach letters sent to them as described in OAC 340:25-5-110.1.

(e) **Other IV-D cases.** Except as provided in (a), (c), and (d) of this Section, an applicant must submit a completed and signed Form CSED-1 to receive all appropriate child support enforcement services or to receive locate ~~services~~ only services.

### 340:25-5-123. Case closure system

(a) Except as provided in (b) and (c) of this Section, the Child Support Enforcement Division (CSED) closes cases eligible for closure under Section 303.11 of Title 45 of the Code of Federal Regulations.

(b) A child support case may not be closed when:

- (1) court-ordered support is owed to the state; and
- (2) current child support is being collected by income assignment.

(c) A child support case may be closed when any of the criteria in (1) through (4) of this subsection applies:

(1) less than \$500 in court-ordered support is owed to the state, unless there has been:

- (A) a collection during the past six months; or
- (B) a federal or state income tax refund intercept in the past 18 months;

(2) the custodial person is participating in the Oklahoma Department of Human Services (OKDHS) child care subsidy program, is not receiving Temporary Assistance for Needy Families (TANF) or non-TANF Medicaid, requests closure, and (A) and (B) of this paragraph apply:

- (A) there is a child support order; and
- (B) the custodial person is receiving the full amount of the current monthly child support obligation and has reported to Family Support Services receipt of this child support income;

(3) the custodial person is receiving non-TANF Medicaid benefits for a child(ren) only, requests closure, and (A) and (B) of this paragraph apply:

(A) the custodial person later contacts CSED to decline child support services; and

(B) no legal action has been initiated to enforce the child support order, including the medical support portion; or

(4) the custodial person is participating in the OKDHS child care subsidy program, is receiving non-TANF Medicaid benefits for a child(ren) only, requests closure, and all the criteria in paragraphs (2) and (3) of this subsection apply.

(d) When CSED closes a non-public assistance child support case because the parties to a case reunite, CSED terminates the ~~notice of income assignment (NOIA) Order/Notice to Withhold Income for Child Support~~ with the employer.

(e) When CSED closes a non-public assistance child support case for reasons other than reunification, CSED keeps the ~~NOIA Order/Notice to Withhold Income for Child Support~~ with the employer in effect unless ordered by district or administrative court to terminate the notice with the employer.

(1) The income assignment order remains in effect as long as support is owed under 12 O.S. § 1171.3(B)(14). If the district or administrative court orders that the ~~NOIA Order/Notice to Withhold Income for Child Support~~ be terminated, CSED sends a termination notice to the employer.

(2) Income assignment child support payments continue to be processed in a non-IV-D child support case through the Centralized Support Registry under 43 O.S. § 413(A)(2) and OAC 340:25-5-350.3.

### 340:25-5-124. Assignment and transfer of cases to child support offices

In assigning cases to child support offices, the Child Support Enforcement Division (CSED) staff ~~first determine~~ consider if the case is eligible for assignment to the tribal office under OAC 340:25-5-124.2. If the case is not a tribal office case, CSED assigns cases under this Section.

(1) Oklahoma child support cases are assigned to a district office serving the county where the Oklahoma order for current child support was entered or docketed in district court. Child support orders from another state, or federal or tribal child support orders are assigned to a district office serving the county in which the order is registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes. If there are multiple Oklahoma support orders, cases are assigned to a district office serving the county where the presumed controlling order for current child support was entered or docketed in district court.

(2) Cases are assigned to a district office serving the county where the custodian of the child(ren) resides when there is:

- (A) no Oklahoma child support order;
- (B) a federal or tribal child support order; or
- (C) a child support order from another state.

(3) Except in cases ~~in which~~ where a child support order is registered in Oklahoma, if the custodian of the child(ren) does not reside in Oklahoma, cases are assigned

to the district office serving the county where the noncustodial parent or putative father resides.

(4) When there is no Oklahoma order and no party resides in Oklahoma, cases are assigned to the district office serving the county with significant contacts with the case. When more than one county has significant contacts with the case, the case is assigned to the district office having the most recent significant contact.

(45) If the child(ren) is in a deprived or delinquent juvenile court action, and there is:

(A) no existing child support order, the case is assigned to a district office serving the county in which the district court has jurisdiction over the juvenile court action; or

(B) an existing child support order, the case is assigned to a district office serving the county in which the order was entered or docketed.

(56) CSED does not transfer cases docketed or registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes in district court because the custodial person or noncustodial parent moves to a county outside of the original district office's service area.

(67) CSED reassigns a case to another district office to avoid a conflict of interest; under OAC ~~340:2-1-29~~ 340:2-1-8.

**340:25-5-124.2. Tribal case assignments and transfer of cases to the tribal office**

(a) **Jurisdictional requirements.** The Chickasaw Nation Tribal Child Support Office (tribal office):

(1) provides child support services in tribal and federal courts within their service area under the Court of Indian Offenses civil jurisdiction requirements in Section 11.103 of Title 25 of the Code of Federal Regulations, the Full Faith and Credit for Child Support Orders Act (FFCCSOA) in Section 1738B of Title 28 of the United States Code, and the jurisdictional requirements in the Chickasaw Nation Code Sections 101.0 and 101.3; and

(2) does not provide child support services when the child(ren) is in a deprived or delinquent state juvenile court action.

(b) **New tribal case assignments and transfers from CSED.**

(1) Under the requirements of OAC 340:25-5-124, ~~the Oklahoma Oklahoma's~~ Oklahoma's Interstate Central Registry and ~~the Oklahoma Oklahoma's~~ Oklahoma's Centralized Support Registry, also known as the State Disbursement Unit, assign to a child support office incoming interstate referrals and Form CSED-1, Application for Child Support Services, with a:

- (A) Native American noncustodial parent;
- (B) tribal child support order; or
- (C) tribal employer.

(2) The assigned district child support office processes the case and transfers cases that meet the requirements under subsection (d) of this Section to the tribal office.

(3) The Child Support Enforcement Division (CSED) retains cases with noncustodial parent tribal members and tribal child support orders unless:

(A) the custodial person or noncustodial parent requests a transfer of the tribal case to the tribal office, and the tribal case meets the eligibility requirements of the tribal office under subsection (d) of this Section; or

(B) the tribal or federal courts within the tribal office service area have exclusive jurisdiction over the tribal case.

(c) **Transfers from the tribal office and CSED registration of tribal child support orders.** CSED accepts cases returned to CSED from the tribal office due to the lack of jurisdiction to proceed in the tribal court system. CSED registers tribal child support orders in state courts under FFCCSOA in Section 1738B of Title 28 of the United States Code and may establish and enforce a child support order in tribal or federal courts that are outside the tribal office's service area.

(d) **Tribal office case eligibility requirements.**

(1) **Establishment.** A person may receive services from the tribal office for paternity establishment and establishment of a child support order when the noncustodial parent or putative father is an enrolled member of one of the tribes in the tribal office's service area and lives within the boundaries of that tribe.

(2) **Enforcement.** A person may receive services from the tribal office for enforcement of a child support order when any one of (A) through (C) of this paragraph applies.

(A) The order is a tribal order from one of the tribes in the tribal office's service area.

(B) The order is issued by a state court, either district or administrative, and the noncustodial parent is an enrolled member of one of the tribes in the tribal office's service area and lives within the boundaries of that tribe. The tribal office staff notifies the state district court, the Office of Administrative Hearings: Child Support or, if necessary, both courts of the intention of the tribal office to proceed with the case in tribal court.

(C) The order is issued by a state court, either district or administrative, and the noncustodial parent is a non-Native American tribal employee of one of the tribes in the tribal office's service area. Within 30 days of case assignment to the tribal office, the tribal office registers the state order in tribal court only for enforcement of the child support order. If the noncustodial parent leaves tribal employment, the tribal office transfers the case to CSED.

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

(1) **"Native American"** means a person who is an enrolled member of a federally recognized Indian tribe.

(2) **"Tribal case"** means a child support case with a Native American noncustodial parent, tribal child support order, tribal employer, or any combination.

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### 340:25-5-133. Current child support follows the child when physical custody changes

(a) When the legal custodian relinquishes physical custody of a child(ren) to another custodial person, the Child Support Enforcement Division (CSED) of the Oklahoma Department of Human Services (OKDHS) redirects current child support payments to the new custodian under Sections 7202.3 of Title 10 and 237 of Title 56 of the Oklahoma Statutes.

(1) A custodial person who relinquishes physical custody of a child(ren) to another custodian must notify CSED of the change. The new custodial person must submit an application for child support services if an application is required under OAC 340:25-5-117.

(2) CSED remits current child support payments to the new custodial person. Transfer of child support payments occurs with the first payment received in the month after a change in physical custody takes place.

(b) When the legal custodian of a child(ren) dies and another custodial person, who is not the obligor, assumes custody of the child(ren), CSED establishes a new support order with the new custodian as the obligee.

(1) The new custodial person must submit an application for child support services if an application is required under OAC 340:25-5-117.

(2) CSED redirects current child support payments to the new custodial person pending receipt of an application if required and establishment of the new support order. CSED distributes any past support payments already collected prior to the custodial person's death according to OAC 340:25-5-140.

(c) When a new custodial person assumes custody of a child(ren), CSED directs past-due support payments ~~to the custodian(s) to whom the past due support is owed as described under OAC 340:25-5-140.~~

## PART 17. PAST SUPPORT

### 340:25-5-140. Past support

(a) The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order, and on the first day of each month thereafter except when another state's law governs the due date.

(2) CSED bases its determination of past-due support and support for a prior period on information in available records from courts, IV-D and other public and private agencies, custodial persons, noncustodial parents, and others.

(3) CSED may require sworn written statements and supporting documents from custodial persons, noncustodial parents, and others pertaining to support payments.

The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

(~~1A~~) Title IV, Part D, of Subchapter IV of Chapter 7 of Title 42 of the Social Security Act United States Code;

(~~2B~~) Section 1738B of Title 28 of the United States Code;

(~~3C~~) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and

(4D) Chapters 1 and 3 of Title 10, Chapters 3 and 21 of Title 12, Title 43, and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) CSED takes action to enforce past-due support and support for a prior period under Part 23 of this Subchapter.

(c) Past-due child support remains due to the custodial person with whom a child resided during the month the past support was due.

(d) When CSED takes action to enforce past-due support and support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(~~ee~~) Settlements of past support may include a noncustodial parent's lump sum partial payment or a series of payments made toward the total amount of past support. Settlements may include an agreement for the noncustodial parent to pay a specified number of current child support payments in the future or in-kind payments. In accordance with Section 112 of Title 43 of the Oklahoma Statutes, CSED:

(1) acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the past child support due to the custodial person, or

(2) may negotiate the right to collect all or part of past support owed to the State of Oklahoma.

(~~df~~) CSED uses the annual notice to ~~obligor the noncustodial parent~~ under Section 237A of Title 56 of the Oklahoma Statutes to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions as provided in Part 23 of this Subchapter.

(~~eg~~) If the custodial person dies and no past support is owed to any state, CSED refunds child support payments to the decedent's estate when notified in writing by the administrator of the estate. CSED does not file a forced probate court action to determine heirs and distribute past support to heirs. When:

(1) CSED does not receive notice from the administrator of the estate within six months of the custodial person's death, CSED refunds child support payments to the payor.

(2) the payor's address is unknown, or payments are returned due to the inability to distribute, support payments are returned to the noncustodial parent.

(3) past support is owed to any state, CSED distributes the payments according to OAC 340:25-5-351.

(h) When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, CSED uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce the child support orders.

**340:25-5-140.1. Interest**

(a) **General.** The Child Support Enforcement Division (CSED) collects and enforces interest on delinquent Oklahoma court-ordered child support payments under Section 114 of Title 43 of the Oklahoma Statutes.

(b) **Support for a prior period.** CSED collects interest on support for a prior period established under OAC 340:25-5-179.1 from the date of the order.

(c) **Accrual date.** Interest accrues on any unpaid portion of the monthly current child support obligation on the first day of the month following:

- (1) the due date specified in the court order; or
- (2) the entry date of the child support order when a support order does not specify a due date.

(d) **Grace period and accrual.** CSED may allow a grace period during which interest is not charged. Interest accrues from the date the arrears are in excess of one month's current support.

(e) **Servicemember relief.**

(1) Upon a servicemember's written request, an interest rate cap of six percent applies to child support arrearages of members of the military service incurred prior to the start of military service under Section 527 of Title 50A of the United States Code.

(2) The servicemember must provide to CSED not later than 180 days after the date of the servicemember's termination or release from military service a written request for reduced interest and a copy of the military orders calling the servicemember to service and any orders further extending military service.

(3) Upon receipt of these documents, CSED applies the six percent interest rate to child support arrearages existing as of the date on which the servicemember is called to military service and throughout the active military service.

(4) CSED may initiate a court action to challenge the claim that the servicemember's military duty has materially affected his ability to pay an interest rate over six percent.

(ef) **Interest rate.**

(1) CSED calculates simple interest under Section 114 of Title 43 of the Oklahoma Statutes. ~~If a court orders a compound interest rate, the prevailing party is responsible for preparing the interest calculation.~~

(2) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due until a determination of controlling order is made.

(3) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.

(4) When there are multiple child support orders and Oklahoma is determining the controlling order, CSED determines the rate of interest to be charged as described in Section 601-604 of Title 43 of the Oklahoma Statutes.

(fg) **Order silent as to interest.** When an order that settles a child support arrearage is silent as to interest, the party with the right to collect has not waived the interest.

(gh) **Enforcement.** Accrued interest is considered child support. Interest is included in all enforcement remedies ~~unless specifically prohibited by that remedy.~~

(hi) **Incoming interstate interstate cases.** In the absence of an Oklahoma order, CSED collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that CSED collect it.

(j) **Outgoing interstate cases.** Before requesting a responding state to enforce a child support order(s) entered in a state other than the responding state, CSED calculates the arrears including the accrued interest claimed.

(k) **Application of payments to interest.** CSED applies payments to interest as described in OAC 340:25-5-351.

(l) **Waiver of interest.** CSED acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the interest due to the custodial person. CSED may negotiate the right to collect all or part of the interest owed to the State of Oklahoma. Settlements of interest may include:

- (1) a noncustodial parent's lump sum partial payment or a series of payments; or
- (2) an agreement for the noncustodial parent to pay:
  - (A) a specified number of current child support payments in the future; or
  - (B) in-kind payments.

(m) **Reopening closed cases.** CSED does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

**PART 19. LOCATE SERVICES**

**340:25-5-155. Locate services**

The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) follows the provisions of Sections 453, 454, 454A, 463, and 466 653, 654, 654a, 663, and 666 of Title 42 of the ~~Social Security Act~~ United States Code and Sections 302.35, 303.3, 303.7, and 303.15 of Title 45 of the Code of Federal Regulations in locating parents and their assets for the purpose of:

- (1) establishing paternity;
- (2) establishing, setting the amount of, modifying, or enforcing child support obligations; ~~or;~~
- (3) making or enforcing a child custody determination; and
- (4) assisting in cases of parental kidnapping.

**PART 20. MEDICAL SUPPORT**

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

(a) The Child Support Enforcement Division (CSED) establishes medical support under:

- (1) Section ~~466 666~~ of Title 42 of the ~~Social Security Act United States Code~~;
- (2) Sections 302.33, 302.56, ~~303.7~~, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and
- (3) Section 6058A of Title 36, Sections 112, 118, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes.

(b) A child support order established by CSED must contain a provision for medical support. The medical support provision must include one of the provisions in (1) through (3) of this subsection.

- (1) The noncustodial parent must secure health insurance for the minor child(ren) when it is available through an employer or other group health insurance plan.
- (2) Neither parent is required to secure health insurance for the minor child(ren) because alternative health coverage is available.
- (3) The ~~custodian~~ custodial person is providing health insurance other than Medicaid for the minor child(ren).

(c) The noncustodial parent and the ~~custodian~~ custodial person must notify CSED in writing within 30 days after:

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

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

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

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

### 340:25-5-171. National Medical Support Notice

(a) When the noncustodial parent has been ordered to provide health insurance for the child(ren) and has failed to voluntarily enroll the child(ren), the Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) uses the National Medical Support Notice (NMSN) to aid in enrolling the child(ren) in the group health plans for which the noncustodial parent is eligible. CSED sends the NMSN to the noncustodial parent's employer as required by Section ~~466 666~~ of Title 42 of the ~~Social Security~~

~~Act~~ United States Code, Section 609 of the Employee Retirement Income Security Act of 1974, Section 303.32 of Title 45 of the Code of Federal Regulations, and Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(b) CSED issues a non-compliance letter to the employer when the employer:

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

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

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

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

(f) Employers and insurers must send any fine(s) imposed by the court, under Section 225 of Title 56 of the Oklahoma Statutes, by check or money order to CSED, Attn: Finance, P.O. Box 53552, Oklahoma City, Oklahoma 73125-3552.

## PART 21. ESTABLISHMENT

### 340:25-5-176. Establishment of paternity

(a) In cases where paternity has not been legally established, the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) establishes paternity and recovers costs advanced for genetic testing under:

- (1) Sections ~~453, 454, and 466 653, 654, and 666~~ of Title 42 of the ~~Social Security Act United States Code~~;

- (2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and
  - (3) Chapters 1, 3, and 22 of Title 10, Sections 601-201, 601-401, and 601-701 of Title 43, Sections 230.60 and 231 through 240.23 of Title 56, and Section 1-311 of Title 63 of the Oklahoma Statutes.
- (b) CSED does not initiate a paternity action if:
- (1) paternity has been voluntarily acknowledged in Oklahoma or another state and not rescinded within the allowable time; [10 O.S. § 70(B)(1)]
  - (2) the child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two years; [10 O.S. § 3(B)] or
  - (3) paternity has been established by a district or administrative court order. [10 O.S. § 70(B)(3)]
- (c) If no other conclusive presumption of paternity or court determination of paternity exists for a child, the parents may complete and sign Form CSED-209, Affidavit Acknowledging Paternity. CSED provides Form CSED-209 for voluntary acknowledgment of paternity under Section 70 of Title 10 and Section 1-311 of Title 63-of the Oklahoma Statutes. CSED also provides several companion forms described in (1) through (3) of this subsection. The forms include instructions for completion. Signed and witnessed forms must be filed with the Vital Records Division of the Oklahoma State Department of Health, Division of Vital Records.
- (1) When parents of an adult child, age 18 years or older, complete Form CSED-209, the adult child must give consent to add the natural father's name to the birth certificate. The child indicates consent by signing Form CSED-209-C, Adult Child's (18 Years or Older) Consent Form.
  - (2) Form CSED-209-D, Husband's Denial of Paternity, must accompany Form CSED-209 if the mother of a child is married to someone other than the natural father at the time of conception or birth. The mother and the natural father may complete and sign Form CSED-209 if:
    - (A) the mother is married at the time of conception or birth;
    - (B) the mother and her husband agree he is not the natural father of the child; and
    - (C) the child is under two years old.
  - (3) A Under Section 70 of Title 10 of the Oklahoma Statutes, CSED provides Form CSED-209-R, Rescission of Affidavit Acknowledging Paternity, for a person may to use Form CSED-209-R, Rescission of Affidavit Acknowledging Paternity, to cancel the legal finding of paternity created by having previously signed Form CSED-209. This form must be completed, signed, and filed with the Vital Records Division of the Oklahoma State Department of Health, Division of Vital Records, within 60 days from the date of the last signature on Form CSED-209.
    - (A) When a person submits Form CSED-209-R within 60 days from the date of the last signature on Form CSED-209, CSED sends notice of the rescission to all other signatories on Form CSED-209

and Form CSED-209-D. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Form CSED-209 and Form CSED-209-D and to the last-known address of the signatories, if different.

(B) When rescissions are submitted to CSED past the 60-day time period, CSED sends a letter to the person who submitted Form CSED-209-R informing the person that the rescission is invalid because it was not timely submitted.

(d) When CSED establishes paternity against a putative father or with a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(de) When CSED has the cooperation of a deceased putative father's relatives, CSED establishes paternity of the child(ren) through genetic testing of the relatives as necessary according to the standards and provisions of the Genetic Testing to Determine Paternity Act, Sections 501 through 508 of Title 10 of the Oklahoma Statutes.

**340:25-5-178. Establishment of current child support**

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) establishes current child support under:

(1) Sections ~~454, 456~~ 654, 656 and ~~466~~ 666 of Title 42 of the ~~Social Security Act~~ United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Chapters 1 and 3 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) CSED uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:

(1) establish the amount of current support; and

(2) prepare a child support computation form prescribed by OKDHS CSED and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site under Section 120 of Title 43 of the Oklahoma Statutes.

(c) To establish the amount of current support, CSED considers "actual" child care expenses to be the amount paid to the child care provider by the custodial person except when subsection (d) applies. CSED determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the noncustodial parent becomes part of the fixed monthly child support obligation.

(d) When the custodial person is participating in the OKDHS child care subsidy program under Section 230.50 of Title 56 of the Oklahoma Statutes, CSED uses OKDHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule to determine the family share co-payment amount to be considered as actual child care costs on the child support computation form. [43 O.S. § 118]

(1) CSED considers the noncustodial parent's share of the base monthly obligation for child support and the custodial person's gross monthly income as the custodial

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person's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, CSED uses the corresponding family share co-payment amount based on the number of children in OKDHS subsidized child care. CSED allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. Child support staff perform a separate child support guidelines calculation for each noncustodial parent.

(2) If the custodial person has a child(ren) in OKDHS subsidized child care other than a child(ren) included in the child support case being established, CSED uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(e) CSED establishes child support orders in deprived court actions under Section 7003-8.8 of Title 10 of the Oklahoma Statutes and prepares the child support order on the standard child support order form prescribed by CSED and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site.

(ef) CSED establishes child support orders for a minor child(ren) only.

(fg) When the noncustodial parent is a minor, CSED establishes paternity under OAC 340:25-5-176 if necessary and establishes a child support order. If a minor noncustodial parent or a custodial person is under 16 years of age, CSED does not impute gross income for the minor parent in the child support computation unless there is evidence of actual income. If a minor noncustodial parent or custodial person is between 16 and 18 years of age and regularly and continuously attending high school, CSED does impute gross income for the minor parent(s) based on minimum wage at 20 hours per week, unless:

- (1) there is evidence of actual income; or
- (2) it is otherwise inappropriate.

(gh) CSED enforces child support orders for disabled adults under Section 112.1A of Title 43 of the Oklahoma Statutes.

(hi) CSED establishes or modifies child support orders to continue after the child reaches the age of majority under Section 112.1A of Title 43 of the Oklahoma Statutes if the application or referral for IV-D services is received during the period when child support is due pursuant to under Section 112 of Title 43 of the Oklahoma Statutes.

(ij) CSED establishes a child support order on an incarcerated noncustodial parent and requests the court to enter the effective date of the child support obligation as the first day of the second month following release from incarceration.

(k) When CSED establishes a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

### **340:25-5-179. Duration of support**

(a) Section 112 of Title 43 of the Oklahoma Statutes governs the duration of a child's entitlement to support by parents when Oklahoma establishes the child support order.

(b) Sections 601-604 and 601-611 of Title 43 of the Oklahoma Statutes govern the duration of a child's entitlement to support by parents when:

- (1) another tribunal establishes the child support order;  
or
- (2) Oklahoma modifies the child support order of another tribunal.

### **340:25-5-179.1. Establishment of support for a prior period**

(a) The Child Support Enforcement Division (CSED) establishes support for a prior period.

(1) When paternity is being established by court order or when paternity has been previously established by a signed Form CSED-209, Affidavit Acknowledging Paternity, CSED establishes current support and support for a prior period at the same time under Sections 70 and 83 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, CSED establishes support for a prior period under Sections 118 and 119 of Title 43 and Section 238.1 of Title 56 of the Oklahoma Statutes.

(A) CSED establishes support for a prior period under this subsection only when:

- (i) current child support is sought; and
- (ii) Temporary Assistance for Needy Families (TANF) has been expended in any month during the past five years.

(B) CSED may issue a Notice of Support Debt or file a district court action to establish support for a prior period. CSED limits this prior period to the number of months on TANF during the five years immediately before the date CSED issues the Notice of Support Debt, or files the district court action.

(b) When a child support order is entered against a minor noncustodial parent, CSED establishes support for a prior period under the criteria for establishing current child support described in OAC 340:25-5-178. CSED establishes a monthly payment plan amount of at least \$1 a month.

(c) CSED does not establish an order for support for a prior period on an incarcerated noncustodial parent. Adjudication for support for a prior period is reserved until release from incarceration.

(d) When CSED establishes an order for support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

## **PART 22. REVIEW AND MODIFICATION**

### **340:25-5-198. Review and modification of support orders**

In reviewing and modifying support orders as described in this Part, the Oklahoma Department of Human Services Child

Support Enforcement Division (~~CSED~~) follows applicable provisions of:

- (1) Title 43 and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes;
- (2) Section 303.8 of Title 45 of the Code of Federal Regulations; and
- (3) Section 466 666 of Title 42, Sections 501 through 596 of Title 50A, and Section 1738B of Title 28 of the Social Security Act United States Code.

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

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

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

(c) **Initiation of review.** When CSED receives a request to review an order in a full-service case, CSED determines the state tribunal with the legal authority jurisdiction under subsection (e) of the Full Faith and Credit for Child Support Orders Act (FCCSOA), codified in Section 1738B (e) of Title 28 of the United States Code and the Uniform Interstate Family Support Act (UIFSA) in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes to modify the order. If another state tribunal has the legal authority jurisdiction to modify the order, CSED follows the provisions of (h) of this Section. If Oklahoma has the legal authority jurisdiction to modify the order, CSED follows the provisions of this subsection. CSED completes the review and modification process within 180 days after a request is received or the non-requesting party is located, whichever is later.

(1) CSED reviews a support order on the written request of any party in a full-service case when the criteria described in (A) and (B) of this paragraph are met.

(A) It has been more than 12 months since the support order was established, reviewed, or modified. CSED uses the date the order was entered to compute time periods. If an order is not entered after the review or modification process, CSED uses the completion date of the review to compute time periods. The 12-month time period does not apply when a military reservist custodial person or noncustodial parent is called to active duty.

(B) The non-requesting party is located.

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

(3) CSED may initiate reviews of orders in full-service cases on its own initiative for any reason, at any time,

without a request under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED notifies the parties of the review with instructions for submitting financial and other information required for the review.

(4) When medical insurance becomes available or the cost of existing medical insurance changes, a party in a currently active non-TANF (Temporary Assistance for Needy Families) Medicaid case where CSED is providing medical enforcement only services may request a review of the support order.

(A) If either the custodial person or the noncustodial parent requests a review, CSED conducts the review as a full-service case. CSED notifies the parties of the intended action before changing the case from a medical enforcement only case to a full-service case.

(B) If the noncustodial parent requests the review, the noncustodial parent must complete Form CSED-1, Application for Child Support Services, described in OAC 340:25-5-110.1.

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

(d) **Review.** Within 30 days after the deadline for the parties to submit requested financial and other information to CSED under (c)(5) of this Section, CSED completes the review process and notifies parties of its determination as to whether or not the support order should be modified.

(1) If CSED finds the existing support order deviates in excess of ten percent from the child support guidelines, CSED makes a determination that the support order should be modified.

(2) The notice of determination includes instructions for contesting the determination.

(e) **Contest of review determination.** Any person aggrieved by the review determination may contest the determination by submitting new or additional information within 15 days after the date on the notice of determination. CSED considers any new or additional information that is timely submitted, and within 15 days makes a final determination whether or not the support order should be modified.

(f) **Modification after review.** CSED proceeds with the modification of the order when:

- (1) there is no contest within 15 days after a CSED determination that the order should be modified; or
- (2) the final determination after contest of review is to modify the support order.

(g) **Termination of the review process.**

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

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

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### (h) Interstate cases.

(1) When ~~another state~~ a tribunal other than an Oklahoma district or administrative court has legal authority jurisdiction under UIFSA to modify an order, CSED obtains the information necessary for the review, ~~and CSED transmits the documents to the IV-D agency in the other state within 20 days after receipt of the request to modify the order and of the completed documents from the person requesting the modification.~~ CSED issues and enforces a subpoena to compel compliance with the request for documents if the non-requesting party fails to return the required documents or CSED is unable to obtain the necessary information to proceed and an Oklahoma tribunal has personal jurisdiction over the non-requesting party. CSED may terminate the review process in an interstate case as provided in subsection (g) under Sections 601-611 and 601-613 of Title 43 of the Oklahoma Statutes.

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

### 340:25-5-198.2. Modification

(a) The Child Support Enforcement Division (CSED) may initiate modification of a child support order under Section Sections 112, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes in the appropriate tribunal when facts indicate modification is warranted under applicable state law or federal law or regulation.

(1) If there is no existing order for the noncustodial parent to provide dependent health care coverage, CSED initiates a modification of a support order to require the noncustodial parent to provide dependent health care coverage when CSED obtains information that the child(ren) is not covered under an existing health care plan other than Medicaid, regardless of whether the coverage is currently available to the noncustodial parent.

(2) When CSED participates in the modification of a child support order, CSED requests that the court order contain a provision for medical support consistent with OAC 340:25-5-168.

(3) OAC 340:25-5-201.1 describes when modification of a child support order is appropriate after an obligor a noncustodial parent obtains physical or legal custody of the child(ren).

(b) When a child support order exists, CSED considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED seeks a medical support order in a tribunal that has jurisdiction to modify the child support order and follows procedures in OAC 340:25-5-198.1.

### 340:25-5-200. Scope and applicability

(a) ~~The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) follows Title IV, Part D, of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the Social Security Act United States Code, Section 303.6 of Title 45 of the Code of Federal Regulations, and Section 240.1 of Title 56 of the Oklahoma Statutes in initiating enforcement proceedings.~~

(1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.

(2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment. [43 O.S. § 137]

(3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.

(4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the real and personal property of the ~~obligor noncustodial parent.~~

(b) CSED registers a support order from another state, Native American tribe, territory, or foreign country, as defined by subsection (b) of the Full Faith and Credit for Child Support Orders Act (FCCSOA), codified in Section 1738B (b) of Title 28 of the United States Code and Section 601-102 (21) of Title 43 of the Oklahoma Statutes when enforcement of the order is sought.

(c) When multiple child support orders have been entered in the same or different tribunals involving the same noncustodial parent and child, CSED seeks a determination of controlling order under Sections 601-207, 601-307, and 601-601 through 601-603 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-270.

(~~b~~d) CSED determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. Remedies CSED may use, ~~as appropriate,~~ include but are not limited to:

(1) annual notice to ~~obligors noncustodial parents~~ as provided in Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213;

(2) income assignment, garnishment, and levy as provided in Chapter 21 of Title 12, Sections 115 and 601-501 through 601-507 of Title 43, ~~Section Sections 237, 240.2, and 240.23 of Title 56 of the Oklahoma Statutes, and Section 466 666 of Title 42 of the Social Security Act United States Code;~~

(3) hearing on assets as provided in Section 842 of Title 12 of the Oklahoma Statutes;

(4) intercept of federal tax refunds as provided in Section ~~464 664~~ of Title 42 of the ~~Social Security Act United States Code~~, Sections 285.3 of Title 31 and 303.72 of Title 45 of the Code of Federal Regulations, and Part 25 of this Subchapter, and intercept of state tax refunds as provided in Section 303.102 of the Code of Federal Regulations, Sections 205.2 and 205.3 of Title 68 of the

## PART 23. ENFORCEMENT

Oklahoma Statutes, ~~and~~ Part 27 of this Subchapter, ~~and~~ ~~OAC 710:50-11-1 through 710:50-11-4;~~

(5) administrative offsets as provided in Section 3716 of Title 31 of the United States Code, Section 285.1 of Title 31 of the Code of Federal Regulations, and Executive Order 13019;

(6) denial, revocation, or suspension of United States Passports as provided in Section 240.1 of Title 56 of the Oklahoma Statutes and Sections ~~452 652~~ and ~~454 654~~ of Title ~~42~~ of the ~~Social Security Act~~ United States Code;

(7) revocation, suspension, non-renewal, and non-issuance of various licenses, including but not limited to, revocations of certificates of motor vehicle titles, as provided in Sections 139 and 139.1 of Title 43, Sections 1-153, 6-201, 6-201.1, and 6-211 of Title 47, and Sections 237.1 and 240.15 through 240.21A of Title 56 of the Oklahoma Statutes;

(8) imposing liens and executing and levying on personal and real property, including but not limited to, ~~workers' compensation~~ Workers' Compensation, personal injury, wrongful death, and probate actions, as provided in Section 135 of Title 43, Section 240.23 of Title 56, and Titles 12 and 58 of the Oklahoma Statutes;

(9) registration of foreign support orders under the Uniform Interstate Family Support Act as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;

(10) credit bureau referrals as provided in ~~Section 466 of the Social Security Act, Section~~ Sections 666 of Title 42 and 1681b of Title 15 of the United States Code, Section 240.7 of Title 56 of the Oklahoma Statutes, and Part 31 of this Subchapter;

(11) financial institution data match as provided in Sections ~~466 (a)(17) and 469A 666 and 669A~~ of Title ~~42~~ of the ~~Social Security Act~~ United States Code, Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes, and OAC 340:25-5-212;

(12) seek work orders as provided in Section 240.10 of Title 56 of the Oklahoma Statutes;

(13) contempt as provided in Sections 566 and 567 of Title 21, Section 137 of Title 43, and Section 234 of Title 56 of the Oklahoma Statutes;

(14) action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor under the Uniform Fraudulent Transfer Act, Sections 112 through 123 of Title 24 of the Oklahoma Statutes and Section ~~466 666~~ of Title ~~42~~ of the ~~Social Security Act~~ United States Code;

(15) registration of foreign judgments under the Uniform Enforcement of Foreign Judgments Act, Sections 719 through 726 of Title 12 of the Oklahoma Statutes;

(16) criminal actions brought under Section 852 of Title 21 of the Oklahoma Statutes;

(17) civil actions brought under Section ~~460 660~~ of Title ~~42~~ of the ~~Social Security Act~~ United States Code;

(18) transfer of child support obligation to another custodian under Section 237 of Title 56 of the Oklahoma Statutes;

(19) referral to the United States Attorney for federal prosecution under Section 228 of Title 18 of the United States Code; ~~and~~

(20) full collection services by the Secretary of the Treasury under Section 6305 of the Internal Revenue Code of 1954; ~~and~~

(21) attachment of lottery prize winnings from the Oklahoma Lottery Commission under Section 724.1 of Title 3A of the Oklahoma Statutes.

(e) When CSED initiates proceedings to enforce a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

**340:25-5-200.1. Administrative review process**

(a) When the opportunity for administrative review is specifically provided by statute, federal regulation, or administrative rule, and a procedure for administrative review is not otherwise prescribed, the Child Support Enforcement Division (CSED) uses the procedure described in this Section.

(b) CSED notifies parties of the opportunity to request an administrative review of the action by regular mail. Notices include the date of mailing, a description of the grounds for requesting administrative review, and instructions for the time and manner to request the review in writing.

(c) Upon timely receipt of a timely written request for an administrative review, the CSED office conducts a review within 30 days or within a shorter period if otherwise required. Reviews are usually desk reviews rather than meetings. If a meeting or telephone conference is necessary, CSED notifies the parties.

(d) The review is conducted by a representative of CSED. The representative may contact any of the parties if additional information or clarification is required.

(e) After completion of the review, the CSED office issues a notice of administrative review decision regarding the disputed action. CSED mails the notice of the administrative review decision to the parties by regular mail.

(f) The administrative review decision becomes the final agency decision and may be appealed to district court within 30 days of the date of the administrative review decision.

**340:25-5-200.2. Enforcement of spousal support**

The Child Support Enforcement Division (CSED) enforces a spousal support obligation for a spouse or former spouse under Section ~~454 654~~ of Title ~~42~~ of the ~~Social Security Act~~ United States Code and Section 302.31 of Title 45 of the Code of Federal Regulations when CSED is enforcing that spouse's or former spouse's current child support obligation.

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## **340:25-5-201.1. Amendment of income assignment and modification after noncustodial parent obtains custody**

(a) The Child Support Enforcement Division (CSED) amends the Order/Notice ~~To to~~ Withhold Income ~~For for~~ Child Support to stop current support when a noncustodial parent obtains physical custody of all children who are the subject of the support order, or when the parties to the case reunite. CSED does not amend the Order/Notice ~~To to~~ Withhold Income ~~For for~~ Child Support if there is any indication of parental kidnapping or involuntary relinquishment.

(b) If the noncustodial parent obtains physical or legal custody of all children who are the subject of the support order and makes application for services, CSED initiates modification of the order to establish current support.

## **340:25-5-203. Unemployment compensation intercept**

The State ~~has in effect a system for withholding of Oklahoma withholds past-due and current child support from unemployment insurance benefit amounts in accordance with Section 454 654 of Title 42 of the Social Security Act United States Code, Section 302.65 of Title 45 of the Code of Federal Regulations, and Section 2-801 of Title 40 of the Oklahoma Statutes.~~

## **340:25-5-203.1. Collection from lottery prize winnings**

(a) The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) files claims with the Oklahoma Lottery Commission against lottery prize winnings under Section 724.1 of Title 3A of the Oklahoma Statutes to collect:

(1) child support arrearages, child support judgments and interest thereon, past-due alimony, and judgments for child care costs and medical expenses; and

(2) overpayments established by CSED under OAC 340:25-5-305 and 340:25-5-312.

(b) The minimum amount of a claim filed by CSED is \$50.

(c) Within five days after filing a claim with the Oklahoma Lottery Commission, CSED sends a notice by regular mail to the noncustodial parent. The notice includes:

(1) that a claim has been filed with the Oklahoma Lottery Commission;

(2) the basis for the claim;

(3) that the noncustodial parent has the right to contest the claim by requesting in writing an administrative review within ten days of the date on the notice from CSED; and

(4) that the administrative review is granted only on the grounds of:

(A) a mistake of identity; or

(B) the amount of arrearage or judgment is incorrect.

(d) After the administrative review, CSED issues a notice of administrative review decision and information about requesting an administrative hearing. The noncustodial parent may request in writing a hearing within 20 days after the date of the administrative review decision.

(e) Upon timely receipt of a written request for an administrative hearing, CSED schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

(f) If the noncustodial parent settles the arrearage or judgment with CSED before expiration of the 30-day administrative review period as specified in OAC 340:25-5-200.1, CSED notifies the Oklahoma Lottery Commission in writing or by electronic media that the claim has been released.

## **340:25-5-211.1. License revocation and reinstatement**

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) may apply this Section in considering ~~obligors'~~ noncustodial parents' requests to reinstate occupational and recreational licenses. Otherwise, this Section only applies to ~~obligors'~~ noncustodial parents' requests to reinstate an Oklahoma driver license for an ~~obligor a noncustodial parent~~ who is not in compliance with an order for child support.

(b) CSED follows Sections 139 and 139.1 of Title 43 of the Oklahoma Statutes, Sections 1-153, 6-201, 6-201.1, and 6-211 of Title 47 of the Oklahoma Statutes, and Sections 237.1, 240.15 through 240.17, and 240.19 through 240.21A of Title 56 of the Oklahoma Statutes in processing enforcement actions to order the revocation, suspension, nonissuance, nonrenewal, or probation of an Oklahoma driver license for an ~~obligor a noncustodial parent~~ who is not in compliance with an order for child support.

(c) When an ~~obligor a noncustodial parent~~ is complying with a court-ordered payment plan under Section 240.17 of Title 56 of the Oklahoma Statutes, CSED conducts a desk review of the case file within 15 days after receipt of a written request for reinstatement. If CSED determines an ~~obligor a noncustodial parent~~ is not complying with a court-ordered payment plan, CSED sends a notice to the ~~obligor noncustodial parent~~ that the request for reinstatement of a driver license is denied. The notice advises the ~~obligor noncustodial parent~~ that the ~~obligor noncustodial parent~~ has 15 days to request in writing an administrative reinstatement hearing.

(d) Upon timely receipt of a timely written request for a hearing, CSED schedules the matter for a hearing before the OKDHS Office of Administrative Hearings: Child Support.

## **340:25-5-212. Financial institution data match reporting system**

(a) **Legal basis.** The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) maintains a financial institution data match reporting system to identify ~~obligors'~~ noncustodial parents' assets and ~~to~~ issue levies on accounts of ~~obligors noncustodial parents~~ who are in noncompliance with an order for support. In maintaining the system, CSED follows ~~Title IV, Part D, A of the Social Security Act~~ Title IV, Part A of the Social Security Act Subchapter IV of Chapter 7 of Title 42 of the United States Code, associated federal regulations, and state statutes. This Section establishes provisions necessary to implement Sections 666(a)(17) and 669A of Title 42 of the United States

Code and Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes. The definitions in Section 240.22A of Title 56 of the Oklahoma Statutes apply to the terms used in this Section.

(b) **Financial institutions.**

(1) All data supplied to CSED by financial institutions doing business in Oklahoma must be in accordance with the Financial Institution Data Match Specifications Handbook published by the federal Office of Child Support Enforcement.

(2) A financial institution may charge an account levied on by CSED a fee of \$20, under Section 240.22E(E) of Title 56 of the Oklahoma Statutes, which is deducted from the account before the financial institution remits funds to CSED. If the levied funds are subsequently refunded by CSED because of a CSED error described in (d)(4)(A) or (d)(4)(B) of this Section, CSED refunds any fee charged to the appropriate account holder.

(c) **Levies.** Levies are for the total amount of past-due support as defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(d) **Notice of levy and administrative review.**

(1) CSED sends a notice of levy to ~~an obligor a non-custodial parent~~ within three days after sending the levy to the financial institution. [56 O.S. § 240.22G] The notice of levy includes:

- (A) instructions for the ~~obligor noncustodial parent~~ or a non-obligated joint account holder to request an administrative review in writing;
- (B) a description of the grounds for requesting an administrative review;
- (C) a description of the review process; and
- (D) notice that failure to submit a timely request for review in writing means the levy is final.

(2) It is the responsibility of the ~~obligor noncustodial parent~~ to notify any joint account holder(s) of the levy.

(3) Either the ~~obligor noncustodial parent~~ or a non-obligated joint account holder may request an administrative review of the levy in writing after the date on the notice of levy under Section 240.22G of Title 56 of the Oklahoma Statutes.

(4) The ~~obligor noncustodial parent~~ may request an administrative review in writing ~~because when~~:

- (A) there is a mistake of identity;
- (B) the ~~obligor noncustodial parent~~ did not owe three months of child support at the time of the levy;
- (C) the amount taken by the levy is more than the ~~obligor noncustodial parent~~ owes; or
- (D) the levied funds are owned by a non-obligated joint account holder.

(5) A non-obligated joint account holder may request an administrative review in writing ~~because when~~ the levied funds are not owned by the ~~obligor noncustodial parent~~.

(6) The purpose of the administrative review is to quickly resolve any obvious factual errors.

(7) After the administrative review, CSED issues a notice of administrative review decision and information about requesting an administrative hearing.

(e) **Administrative hearing.** Either the ~~obligor noncustodial parent~~ or a non-obligated joint account holder may request a hearing before the OKDHS Office of Administrative Hearings: Child Support (OAH), by the date specified in the notice of administrative review decision. A request for an OAH hearing must be submitted in writing to the district office.

(f) **Release of funds from levy.** CSED releases funds from levy when the ~~obligor noncustodial parent~~ submits sufficient and credible evidence at the administrative review that the source of the funds is:

- (1) Supplemental Security Income (SSI) benefits;
- (2) State Supplemental Payments (SSP) for Aged, Blind and the Disabled;
- (3) Temporary Assistance for Needy Families (TANF) benefits; or
- (4) child support payments, if the obligor is the custodial person of a minor child(ren) and is receiving the payments as required by a court order.

**340:25-5-213. Annual notice**

(a) The Child Support Enforcement Division (CSED) sends a notice required by Section 237A of Title 56 of the Oklahoma Statutes to ~~obligors noncustodial parents~~ and custodial persons in IV-D cases at least once every 12 months, *unless the amount of past due support has been determined in a court proceeding within the past twelve months.* [56 O.S. § 237A] CSED refers to this notice as a Notice and Order of Child Support Lien or annual notice. The annual notice confirms the amount of past support and establishes a payment plan to collect past support. It may establish an address of record for ~~obligors noncustodial parents~~ and custodial persons, and it includes notice of the procedure to submit address changes to the Central Case Registry. The annual notice:

- (1) informs the ~~obligor noncustodial parent~~ that child support services under the state plan are being provided;
- (2) instructs the ~~obligor noncustodial parent~~ to redirect the support payments to the Centralized Support Registry; and
- (3) advises the ~~obligor noncustodial parent~~ of the amount of past support and collection actions that may be taken to collect the support debt.

(b) The annual notice includes directions for the ~~obligor noncustodial parent~~ to make specified monthly payments to satisfy past-due support. Under Section 137 of Title 43 of the Oklahoma Statutes, the past-due support repayment schedule may not exceed three years unless specific findings of fact supporting the action are made. CSED compares the monthly payment amount based on this three-year repayment schedule with 50 percent of the current monthly support obligation and sets the amount of the monthly payment included in the annual notice at the greater of these two amounts.

(c) The initial notice is served upon the ~~obligor noncustodial parent~~ as provided in Section 2005 of Title 12 of the Oklahoma Statutes. If there is an address of record on file with the Central Case Registry under Section 112A of Title 43 of the Oklahoma

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Statutes, the notice may be served by regular mail at the address on record. Subsequent notices may be served by regular mail with a certificate of mailing to the last address of record. The initial notice and subsequent annual notices are sent to the custodial person by regular mail with a certificate of mailing.

(d) The annual notice sent to the noncustodial parent must not include the custodial person's address or employer's name and address. The annual notice sent to the custodial person must not include the noncustodial parent's address or employer's name and address.

(e) The noncustodial parent or custodial person may timely request in writing an administrative review of the annual notice under Section 237A of Title 56 of the Oklahoma Statutes.

### **340:25-5-214. Passport denial, revocation, restriction, or limitation**

(a) Section ~~452~~ 652 of Title 42 of the ~~Social Security Act~~ United States Code provides for the United States Secretary of State to refuse to issue a passport to a person certified as owing child support arrearages. It also provides for action to revoke, restrict, or limit a passport already issued. If the amount of arrears owed by a person exceeds the threshold amount for certification set by federal law or regulation, the Child Support Enforcement Division (CSED) may certify the person under Section ~~454~~ 654 of Title 42 of the ~~Social Security Act~~ United States Code and Section 240.1 of Title 56 of the Oklahoma Statutes.

(b) Before issuing a certification as described in (a) of this Section, CSED provides notice to the ~~obligor~~ noncustodial parent of CSED's determination that the ~~obligor~~ noncustodial parent owes child support arrearages, the consequences of the determination, and the opportunity to contest the determination through either:

- (1) the annual notice process as established in Section 237A of the Title 56 of the Oklahoma Statutes and Section OAC 340:25-5-213; or
- (2) notice of federal offset under Section 303.72 of Title 45 of the Code of Federal Regulations and Part 25 of this Subchapter.

(c) If CSED finds a request for certification was submitted in error or in life and death situations, CSED requests immediate withdrawal of an ~~obligor~~ noncustodial parent from the process described in (a) of this Section.

(d) CSED may request withdrawal of an ~~obligor~~ noncustodial parent from the process described in (a) of this Section if:

- (1) the ~~obligor~~ noncustodial parent owes:
  - (A) the threshold amount for certification or less, and pays the entire debt; or
  - (B) more than the threshold amount for certification, and pays the threshold amount, plus at least 10% percent of the additional amount owed; and
- (2) CSED sends an income assignment to the ~~obligor's~~ noncustodial parents' payor, if possible, or requires the ~~obligor~~ noncustodial parent by agreement or order to make continued payments.

(e) After requesting withdrawal of a case from the passport referral process, CSED may at any time recertify the case as described in (a) of this Section.

## PART 25. FEDERAL OFFSET PROGRAMS

### **340:25-5-215. Collection of past-due support from federal tax offset**

(a) The Oklahoma Department of Human Services, through its Child Support Enforcement Division (CSED), requests collection of child support debts from federal income tax refunds. This program is governed by:

- (1) Section ~~464~~ 664 of Title 42 of the ~~Social Security Act~~ United States Code; and
- (2) Section 285.3 of Title 31, and Sections 302.60 and 303.72 of Title 45 of the Code of Federal Regulations.

(b) A custodial person receiving a payment under this program must return the payment if the Internal Revenue Service (IRS) makes an adjustment within six years following the end of the tax year for which the refund was paid. Any adjusted amount not returned by the custodial person is an overpayment and subject to recovery under Part 37 of this Subchapter.

(c) If an offset is made to satisfy non-TANF past-due support from a refund based on a joint return, CSED delays distribution until notified that the non-obligated spouse's proper share of the refund has been paid or for a period not to exceed six months from the notice of offset, whichever is shorter.

### **340:25-5-215.1. Collection of past-due support from federal administrative offsets**

The Oklahoma Department of Human Services Child Support Enforcement Division (~~CSED~~)—may collect child support debts through administrative offsets of federal benefit programs unless a payment is exempt from offset by federal law or by action of the Secretary of the Treasury. Federal retirement payments, vendor and travel reimbursement payments, and federal salaries are examples of payments subject to administrative offset. Administrative offsets are governed by:

- (1) the Debt Collection Improvement Act of 1996 (~~DCIA~~), Public Law 104-134;
- (2) Executive Order 13019, Supporting Families: Collecting Delinquent Child Support Obligations; and
- (3) Section 285.1 of Title 31 of the Code of Federal Regulations.

### **340:25-5-225. Formal and informal review procedures for federal offset programs**

(a) Procedures for requesting and conducting formal and informal reviews of federal tax and administrative offsets are governed by the provisions of Section 303.72 of Title 45 of the Code of Federal Regulations. If the initial annual notice process under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213 has been completed, the Child Support Enforcement Division (CSED) refers the noncustodial parent for federal tax offset or administrative offset without additional notice. Subsections (b) – through (h) of this Section describe procedures for reviews in Oklahoma when the initial annual notice process has not been completed.

(b) A noncustodial parent whose payments are referred for offset may request a review as instructed in the notice. The

review must be requested within the time specified in the notice of offset.

(c) The noncustodial parent may contest the referral for offset based on a mistake of identity or a mistake of fact.

(d) The informal review process is an administrative review conducted under Section OAC 340:25-5-200.1.

(e) The notice of the administrative review decision includes instructions for requesting a formal review, administrative hearing.

(f) Unless ~~Child Support Enforcement Division (CSED)~~ receives a request for administrative hearing within 15 days after the date on the notice of administrative review decision, the administrative review decision becomes the final agency decision.

(g) Upon timely receipt of a ~~timely~~ request for an administrative hearing, CSED schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

(h) The administrative order may be appealed ~~by any aggrieved party~~ to the district court within 30 days by any aggrieved party.

**PART 27. STATE TAX REFUND OFFSET PROGRAM**

**340:25-5-235. Collection of past support and overpayments from state tax offset**

The Oklahoma Department of Human Services through its Child Support Enforcement Division ~~(CSED)~~ requests collection of overpayments and past child and spousal support from state tax offset that are due noncustodial parent(s). The state tax offset program is governed by:

- (1) Section 303.102 of Title 45 of the Code of Federal Regulations;
- (2) Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes; and
- (3) Sections 710:50-11-1 through 710:50-11-4 of the Oklahoma Administrative Code.

**340:25-5-244. Formal and informal review procedures for state tax refund offset program**

(a) The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) follows the provisions of this Section in conducting formal and informal reviews of state tax offsets if the initial annual notice process under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213 has not been completed.

- (1) If the initial annual notice process has been completed, CSED requests collection through state tax offset without additional notice.
- (2) The noncustodial parent, non-obligated spouse, or debtor whose state tax refund was offset may request a review as instructed in the notice of offset. The review must be requested in writing within the time specified in the notice of offset.

(b) A noncustodial parent or debtor whose refund is offset may request a review if there has been a mistake of identity or a mistake of fact. CSED may release or refund the offset in whole or in part to the noncustodial parent or debtor if CSED finds there has been a mistake of fact or identity.

(c) A non-obligated spouse may request a refund of the offset within the time specified in the notice of offset. The non-obligated spouse requesting a refund must submit copies of federal and state tax forms and all attachments to CSED. If the non-obligated spouse reports income on the tax return, CSED may release or refund the offset in whole or in part to the non-obligated spouse, prorated based on the income of the noncustodial parent and the non-obligated spouse.

(d) The informal review process is an administrative review conducted under Section OAC 340:25-5-200.1 of this Subchapter.

(e) The notice of the administrative review decision includes instructions for requesting a formal review, administrative hearing, unless a settlement is made and signed by the parties.

(f) The administrative review decision becomes the final agency decision if there is a settlement or if a written request for administrative hearing is not received by CSED within 15 days after the date on the notice of administrative review decision.

(g) Upon timely receipt of a ~~timely~~ written request for an administrative hearing, CSED schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

(h) The administrative order may be appealed ~~by any aggrieved party~~ to the district court within 30 days by any aggrieved party.

**PART 31. CONSUMER REPORTING AGENCIES - CREDIT BUREAUS**

**340:25-5-265. Release of arrearage information to consumer reporting agencies - credit bureaus**

(a) The Oklahoma Department of Human Services, through its Child Support Enforcement Division (CSED), periodically releases child support arrearage information to certain consumer reporting agencies - credit bureaus. Release of this information is governed by:

- (1) Section 240.7 of Title 56 of the Oklahoma Statutes;
- ~~(2) Section 466 of the Social Security Act [42 U.S.C. § 666]; and~~
- ~~(3) Section 604 and 608 of the Fair Credit Reporting Act [15 U.S.C. §~~
- (2) Sections 1681b and 1681f of Title 15 and Section 666 of Title 42 of the United States Code.

(b) CSED reports to consumer reporting agencies the names and amounts of child support arrearages of noncustodial parents. CSED applies:

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(1) a 15-day grace period to account for payment receipt date discrepancies due to early or late employer reporting if a noncustodial parent is making child support payments through income assignment; and

(2) a two-month grace period to account for the delays in the start of the income assignment process for a noncustodial parent who is a servicemember called to active duty under the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(bc) If the annual notice process under Section 237A of Title 56 of the Oklahoma Statutes has been completed, CSED releases arrearage information to credit bureaus without additional notice.

(ed) If the initial annual notice process under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213 has not been completed, CSED issues a written notice by regular mail to the person obligated to pay the support. The notice includes:

- (1) a statement of the information to be released to credit bureaus; and
- (2) instructions for disputing the accuracy of the information to be released under OAC 340:25-5-200.1.

### 340:25-5-265.1. Access of consumer reporting agency - credit bureau - information

(a) **Access to information.** The Oklahoma Department of Human Services through its Child Support Enforcement Division (CSED) periodically accesses credit information available through consumer reporting agencies - credit bureaus. Access of this information is governed by Sections ~~604 and 608 of the Fair Credit Reporting Act [15 U.S.C. § 1681b and 15 U.S.C. § 1681f]~~ of Title 15 of the United States Code.

(b) **Notice.**

- (1) Each time CSED requests a full credit bureau report on a noncustodial parent for use in establishment or modification of a support order, CSED sends the noncustodial parent advance notice to confirm that the report requested belongs to the correct individual person. The noncustodial parent is not required to authorize release of the report.
- (2) CSED does not send a noncustodial parent advance notice when CSED requests a credit bureau report for locate or enforcement purposes.

## PART 33. INTERSTATE AND INTERNATIONAL CASES

### 340:25-5-270. Interstate and international cases

(a) **Legal base.** ~~In~~ When referring and processing interstate and international IV-D cases, the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) is governed by:

- (1) the Uniform Interstate Family Support Act (UIFSA) as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;
- (2) Section 240.9 of Title 56 of the Oklahoma Statutes;

(3) ~~Section~~ Sections 1738B of Title 28 and 549A, 654, 659A, and 666 of Title 42 of the United States Code;

(4) ~~Sections~~ 454, 459A, and 466 of the Social Security Act; and

(5) ~~Sections~~ 302.36 and 303.7 of Title 45 of the Code of Federal Regulations.

(b) **Interstate central registry.** CSED operates an interstate central registry in accordance with Section 303.7 of Title 45 of the Code of Federal Regulations, ~~and Section 112A of Title 43 of the Oklahoma Statutes.~~

(c) **Forms.** CSED uses forms issued by the Secretary of the ~~U.S. United States~~ Department of Health and Human Services under Section ~~452~~ 652 of Title 42 of the ~~Social Security Act~~ United States Code as applicable for processing interstate cases.

(d) **Communication.**

(1) When Oklahoma is the initiating state, CSED obtains information and communicates with the custodial person.

(2) When Oklahoma is the responding state, CSED communicates to the initiating state with which CSED has established a case.

(3) When CSED receives a written communication from a party or his or her attorney, CSED sends copies to the appropriate agency or person within two business days of receipt, as required by Section 601-307 of Title 43 of the Oklahoma Statutes.

(e) **Family violence and nondisclosure.** When Oklahoma is the initiating state and a party claims family violence, CSED does not release the physical address of the party without a court order. CSED:

(1) enters the address of record, if designated, or the district office's address instead of the physical address of the party requesting nondisclosure on the Child Support Enforcement Transmittal # 1, Initial Request, and on the General Testimony, if applicable;

(2) does not file the interstate transmittal forms with the tribunal;

(3) does not release a copy of the interstate transmittal form to the other party under OAC 340:25-5-67; and

(4) seeks an order from the appropriate tribunal regarding release of the information when the responding state or a party requests release of specific identifying information under Section 601-312 of Title 43 of the Oklahoma Statutes.

(f) **Services provided.** Except as provided in paragraphs (1) through (4), CSED processes interstate cases in the same manner as intrastate cases.

(1) **Evidence.** If one of the parties is a nonresident of the forum state, CSED arranges for telephonic testimony at the request of the nonresident party or a IV-D agency and requests the court to admit evidence under Section 601-316 of Title 43 of the Oklahoma Statutes.

(2) **One-state processing.** In the absence of an order to establish paternity or support, CSED uses a one-state process to establish an order if personal and subject matter jurisdiction can be exercised over a nonresident party under Section 303.7 of Title 45 of the Code of Federal

Regulations and Section 601-201 of Title 43 of the Oklahoma Statutes.

(3) **Determination of controlling order.** When there are multiple orders for current support for the same child, CSED seeks a determination of controlling order (DCO) or a new order from the appropriate tribunal under Sections 601-207 and 601-602 through 601-615 of Title 43 of the Oklahoma Statutes.

(A) When making the arrears calculation for the DCO proceeding, CSED applies the law of the respective issuing states in determining the arrears under each order.

(B) Once the court issues a DCO, CSED applies the law of the controlling order state to the consolidated arrears, even if the support orders of other states contributed a portion to those arrears.

(4) **Redirection of payments.** In accordance with Sections 601-307 and 601-319 of Title 43 of the Oklahoma Statutes:

(A) CSED issues a notice to redirect payments to the IV-D agency in the state in which the custodial person resides and issues an Order/Notice to Withhold Income for Child Support to implement the order when:

- (i) Oklahoma is the state that issued the child support or income assignment order;
- (ii) neither the noncustodial parent, custodial person, or any child lives in Oklahoma; and
- (iii) Oklahoma CSED or another IV-D agency makes the request.

(B) CSED issues a notice to redirect payments to the IV-D agency in the state of residence of the custodial person when:

- (i) a child support or income assignment order has been issued;
- (ii) neither the noncustodial parent, custodial person, or any child lives in the issuing state; and
- (iii) Oklahoma provides child support services.

(C) CSED furnishes a certified record of payments to a requesting party or tribunal when CSED receives redirected payments under Section 601-319 of Title 43 of the Oklahoma Statutes.

(g) **Determination of arrears.** When Oklahoma has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, CSED uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce.

(h) **Choice of law.** The applicable law for determination of duration of support and other choice of law issues is controlled by subsection (h) of the Full Faith and Credit for Child Support Orders Act, codified in Section 1738B(h) of Title 28 of the United States Code and Sections 601-604 and 601-611 of Title 43 of the Oklahoma Statutes. The law of the initial controlling order state governs the duration of support even after the order is modified by another state.

(i) **Definition.** For purposes of this Section, forum state means the state in which the hearing is held or the responding

court proceeding is filed to establish or enforce a support order.

**340:25-5-285. International cases**

(a) **Legal base.** The Child Support Enforcement Division (CSED) follows the provisions of OAC 340:25-5-270 when Oklahoma is providing child support services on international cases, except for time frames specified in Section 303.7 of Title 45 of the Code of Federal Regulations.

(b) **Foreign reciprocating countries.** CSED initiates or responds to proceedings with foreign reciprocating countries under Section 659A of Title 42 of the United States Code.

(c) **Bilateral agreements.** CSED initiates or responds to proceedings with countries with whom Oklahoma has a bilateral agreement.

(d) **Conversion of child support orders to foreign currency.**

(1) Upon request of a foreign responding tribunal, CSED converts the child support order amount into foreign currency and prepares certificates or other documents to be issued by the Oklahoma tribunal under Section 601-304 of Title 43 of the Oklahoma Statutes.

(2) Upon request of a foreign initiating tribunal to enforce an order specified in foreign currency, CSED converts the child support order amount into United States dollars and requests an Oklahoma tribunal to make a finding of the converted child support amount.

(e) **Modification of international orders.**

(1) When modification of an order of a foreign country is requested and that country cannot or will not modify its order, CSED seeks a modification of the foreign order in an Oklahoma tribunal if Oklahoma has personal jurisdiction over both parties, as provided in Section 601-615 of Title 43 of the Oklahoma Statutes.

(2) When CSED determines another state has jurisdiction over both parties, CSED sends an interstate transmittal to the state with jurisdiction over the parties requesting that state to register and modify the foreign order.

**PART 37. RECOVERY**

**340:25-5-305. General overpayment and recovery policies**

(a) The purposes of the rules in this Part are to:

- (1) establish policies and procedures used by the Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) to recover overpayments made by CSED to custodial persons, non-custodial parents, and other entities; and
- (2) resolve payment disputes arising from overpayments.

(b) There are three categories of overpayments.

(1) Retained support occurs when the custodial person has kept support payment(s) in violation of the assignment of support rights.

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(2) Erroneous payment occurs when CSED has incorrectly paid money to a custodial person, noncustodial parent, or other entity, or failed to retain money assigned to the ~~state~~ State of Oklahoma because of an administrative error.

(3) Bad debt occurs when:

(A) the funding for a payment made by CSED to a custodial person or noncustodial parent is subsequently withdrawn when a tax intercept or other collection is revoked; ~~or~~

(B) a check or other payment instrument received by CSED from a noncustodial parent or other payor on behalf of the noncustodial parent is dishonored after a payment has been made to the custodial person; ~~or~~

(C) CSED issues a payment to a custodial person based on an incorrect arrearage balance or an incorrect allocation of a payment.

(c) ~~In~~ When recovering overpayments under this Part, CSED is governed by Title IV, Part ~~D~~, A of the ~~Social Security Act Subchapter IV of Chapter 7 of Title 42 of the United States Code~~; Section 7202.3 of Title 10 of the Oklahoma Statutes; and Sections 171, 185, and 231 through 244 of Title 56 of the Oklahoma Statutes. CSED may use any legal remedy to recover overpayments, including but not limited to, state tax offsets under Part 27 of this Subchapter.

(d) CSED is not responsible for creating or recovering overpayments for non-IV-D time periods when non-IV-D cases convert to IV-D cases.

(e) CSED does not charge, collect, or pay interest on overpayments.

### 340:25-5-312. Overpayment rules and procedures

(a) **General Overpayment recipient.** A custodial person, noncustodial parent, or other entity to whom the Child Support Enforcement Division (CSED) has made an overpayment, ~~is an overpayment recipient and~~ owes the amount of the overpayment to CSED, acting on behalf of the State of Oklahoma.

(b) **Fraud.** If an overpayment may have resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or if fraud is otherwise suspected, CSED ~~may refer~~ reports the information to the Oklahoma Department of Human Services (OKDHS) Office of Inspector General (OIG) for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(c) **Bad debt.** ~~To satisfy a bad debt resulting from a:~~

(1) ~~tax intercept paid to a custodial person which is subsequently withdrawn, CSED takes the full amount of any monthly payment to the custodial person until the bad debt is paid in full; or~~

(2) ~~noncustodial parent's dishonored check, CSED takes the full amount of the noncustodial parent's subsequent payment(s) until the bad debt is paid in full.~~

(d) ~~Erroneous payments and retained support.~~ **Recovery amount.** CSED ~~recovers~~ retains 50 percent of monthly current support payments ~~to~~ collected for the recipient

and ~~recovers~~ retains the total amount of any arrearage payments ~~made~~ collected at any time, in order to ~~satisfy erroneous payments and retained support overpayments~~ recover any type of overpayment until the overpayment is recovered in full. CSED does not reduce the recovery amount at the recipient's request.

(e) **Notice.** CSED sends a notice of overpayment and recovery to the recipient of the overpayment. The notice includes:

(1) a statement that the recipient received money to which the recipient was not entitled and owes money to CSED;

(2) the amount of the overpayment;

(3) the method of withholding from monthly payments until the overpayment is recovered in full;

(4) a statement that CSED may collect the overpayment through any means permitted by law; and

(5) instructions for requesting in writing an administrative review under OAC 340:25-5-200.1 within 30 days after the date on the notice of overpayment and recovery letter, if the recipient disagrees with the amount of the overpayment.

(e) **Other overpayment recovery methods.** CSED also ~~recovers~~ overpayments, including, but not limited to:

(1) voluntary payments;

(2) state income tax refund intercepts under Section 205.2 of Title 68 of the Oklahoma Statutes; and

(3) lottery prize claims under Section 724.1 of Title 3A of the Oklahoma Statutes.

(f) **TANF customers.** In active Temporary Assistance for Needy Families (TANF) cases, ~~if~~ when a TANF recipient retains child support receipts, CSED may make a noncooperation referral to the TANF social services specialist. CSED recovers overpayments from TANF customers through voluntary payments, ~~or~~ state income tax refund offsets intercepts, and lottery prize claims.

(g) **Administrative review.** If an administrative review is requested under OAC 340:25-5-200.1, the purpose of the review is to provide the recipient an opportunity to offer new or additional information regarding the amount of the overpayment. Upon timely receipt of a written request for an administrative review, the CSED office conducts the review within 30 days.

### 340:25-5-328. Recovery of overpayments from other entities

If an agency, agent, or entity of the ~~state~~ State of Oklahoma or another state owes the overpayment, the Child Support Enforcement Division (CSED) may collect the amount of overpayment without notice or providing the opportunity to object.

## PART 38. IV-D AND NON-IV-D CENTRAL CASE REGISTRY INFORMATION

### 340:25-5-339. Central Case Registry

(a) The Oklahoma Department of Human Services (OKDHS), Child Support Enforcement Division (CSED), maintains a Central Case Registry (CCR) under Section 112A

of Title 43 of the Oklahoma Statutes. The mailing address of the CCR is: Child Support Enforcement Division, Central Case Registry, P.O. Box 528805, Oklahoma City, Oklahoma 73152-8805.

(b) In a non-IV-D child support case, under Section 120 of Title 43 of the Oklahoma Statutes, the attorney of record, or the noncustodial parent or custodial person who is not represented by an attorney, must prepare a Summary of Support Order, present it to the judge with the support order, and mail it to the Central Case Registry.

(c) CCR staff record the support order amount and other information on the statewide automated data processing and information retrieval system so that Oklahoma's Centralized Support Registry can issue support payments to the correct custodial person.

(1) Under Section 413 of Title 43 of the Oklahoma Statutes, non-IV-D payments are properly identified and distributed to the custodial person via Oklahoma's Centralized Support Registry.

(2) Non-IV-D payments are distributed as described in OAC 340:25-5-350.3.

(d) CSED refers non-IV-D support payment inquiries from noncustodial parents, attorneys, employers, and payors to the Customer Assistance Response Effort at the telephone numbers as provided in OAC 340:25-1-2.

**340:25-5-340.1. Disclosure of address of record**

(a) A party or ~~custodian~~ custodial person seeking disclosure of the address of record of another party or ~~custodian~~ custodial person from the Central Case Registry of the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) must ~~do so on~~ submit Form CSED-9, Request for Address of Record. ~~Form CSED-9 solicits, which:~~

(1) elicits information about the requester and the reasons for the request. It also; and

(2) includes information about statutory limitations on the release of addresses of record.

(b) CSED may;

(1) refuse to release an address under Sections 112A and 413 of Title 43 of the Oklahoma Statutes, OAC 340:25-5-67.1, or other applicable law; and

(e2) CSED may release addresses of record under OAC 340:25-5, Part 9.

**PART 39. ACCOUNTING AND DISTRIBUTION**

**340:25-5-345.1. Accounting and fiscal policies and procedures**

(a) In its accounting and fiscal policies and procedures related to collections, distribution, and reporting, the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) follows standard accounting procedures and the applicable provisions of:

(1) OAC 340:2-11;

(2) Sections 235 and 237 of Title 56 and Title 62 of the Oklahoma Statutes and directions and instructions from the Office of State Finance;

(3) Section 1912 and ~~Title IV, Part D, A of the Social Security Act~~ Subchapter IV of Chapter 7 of Title 42 of the United States Code; and

(4) Parts 302 and 303 of Title 45 of the Code of Federal Regulations.

(b) CSED maintains an accounting system and supporting records adequate to ensure claims for federal funds meet applicable federal requirements under Part 74 of Title 45 of the Code of Federal Regulations.

(c) CSED maintains methods of administration designed to ensure separation of cash handling and accounting functions in accordance with the requirements in Section 302.20 of Title 45 of the Code of Federal Regulations.

(d) Employees and agents within the program are bonded against loss to meet the requirements in 302.19 of Title 45 of the Code of Federal Regulations.

**340:25-5-350.2. Unreimbursed public assistance**

(a) Support rights assigned to the State constitute an obligation owed to the State by the ~~individual person~~ responsible for providing such support under Section 302.50 of Title 45 of the Code of Federal Regulations.

(b) In collecting unreimbursed public assistance, the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) is governed by:

~~(1) Section 408 and 457~~ Sections 608 and 657 of Title 42 of the Social Security Act United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Section 238 of Title 56 of the Oklahoma Statutes.

**340:25-5-350.3. Payment of support through Centralized Support Registry**

(a) **Centralized Support Registry.** The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) operates a Centralized Support Registry (Registry), also known as the State Disbursement Unit, for the receipt, recording, allocation, distribution, and disbursement of support payments. CSED operates the Registry under Sections 410 and 413 of Title 43 of the Oklahoma Statutes, Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations, and Sections ~~454B and 457~~ 654b and 657 of Title 42 of the Social Security Act United States Code.

(1) This Section applies to both IV-D and non-IV-D cases unless the context clearly indicates otherwise.

(2) When a non-IV-D child support case has an income assignment in place, the Registry processes child support payments received from unemployment compensation benefits as income assignments per federal and state law.

(b) **Support payments.** Support payments must be paid as instructed in writing by CSED. CSED may require payors and persons to provide information needed to identify and properly allocate and distribute payments and to submit payments to the Registry in accordance with Section 413 of Title 43 of the Oklahoma Statutes.

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- (1) ~~CSED may receive support payments from employers and other payors through electronic funds transfer (EFT). Noncustodial parents, employers, and other payors may register to make electronic payments through CSED's online child support payment system (WebPay) at <https://www.okdhs-paycs.com/Login.aspx>.~~
- (2) ~~To transfer child support payments electronically, noncustodial parents, employers, and other payors must:~~
- (A) ~~first call CSED at the telephone numbers as provided in OAC 340:25-1-2.1 to set up the electronic funds transfer EFT process;~~
  - (B) ~~have a valid e-mail account;~~
  - (C) ~~have access to the Internet;~~
  - (D) ~~be a legal owner of a bank account held at a financial institution within the United States of America; and~~
  - (E) ~~register to use WebPay.~~
- (3) ~~WebPay payments do not replace federally mandated income withholding and will not stop or cancel income withholding orders for noncustodial parents.~~
- (4) ~~CSED may adjust and release payroll deductions that have been electronically transferred from a noncustodial parent's wages. When an adjustment cannot be processed in time to effect the change on the next scheduled electronic funds transfer, employers do not refund money to the employee, make adjustments to subsequent EFT payments, or take any other action to correct the amount deducted.~~
- (5) ~~CSED safeguards case information and records received from payors and persons. Information and records concerning IV-D and non-IV-D recipients of services through the Registry are confidential under Section 183 of Title 56 of the Oklahoma Statutes except as provided in OAC 340:25-5-67.~~
- (6) ~~CSED sends custodial persons a quarterly written notice of the amount of current support, arrears, and interest collected, and the amount of collections paid to the custodian. Custodial persons may also obtain this information over the Internet or by telephoning CSED as described in OAC 340:25-1-2.1.~~
- (7) ~~CSED reserves the right to refuse to accept a personal check after receiving a non-sufficient funds check from the same payor.~~
- (8) ~~CSED considers the date of collection the date that payments are received by the Registry.~~
- (9) ~~CSED allocates and distributes support payments under OAC 340:25-5-351.~~
- (c) **Payment issuance.** Under Section 654 of Title 42 of the United States Code and Section 302.38 of Title 45 of the Code of Federal Regulations, CSED issues payments, made out only to the custodial person only by transferring funds electronically, also known as direct deposit, or through child support debit cards. In interstate cases, CSED issues payments to the initiating state, IV-D agency by mailing a paper warrant or transferring funds electronically, also known as direct deposit, under subsection (11)(B) of Section 454 of the Social Security Act and Section 302.38 of Title 45 of the Code of Federal Regulations electronic funds transfer and only issues

payments by paper warrant to initiating states that do not have an electronic funds transfer system.

- (1) For purposes of this Section:
- (A) warrant, also known as a check or bank draft, means an unconditional written order by which one person authorizes another person to pay a certain sum of money to a third person; and
  - (B) payee means the person or entity to whom the check is written.
- (2) ~~CSED reissues a fraudulently endorsed and subsequently cashed warrant to the payee upon CSED's confirmation of a forged signature.~~
- (3) ~~For purposes of this Section, payee means the person or entity to whom the check is written. CSED confirms a check as forged when:~~
- (A) ~~the payee completes Form ADM-44-B, Affidavit of Forged Endorsement;~~
  - (B) ~~the payee completes Form ADM-44-C, Investigation Questionnaire; and~~
  - (C) ~~CSED compares the payee's signature against the endorsement on the check and verifies that the signatures do not match.~~
- (d) **Overcollected support amounts.** CSED returns overcollected support amounts as described in OAC 340:25-5-350.1.
- (e) **Distribution errors.** CSED manages distribution errors as described in this subsection.
- (1) ~~CSED is not responsible for overpayment, underpayment, nonpayment, misdirection of payment, or other distribution error caused by either incorrect payments or information submitted to CSED, or CSED receiving no information or payment. CSED does not attempt to recover, redirect, forward, repay, or otherwise correct this type of error.~~
  - (2) ~~When CSED errs, CSED recovers overpayments to parties or custodial persons in IV-D and non-IV-D cases as described in Part 37 of this Subchapter.~~
  - (3) CSED sends refunds to noncustodial parents by mailing a paper warrant.

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

- (a) **Basis for allocation and distribution of collections.** ~~The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized Support Registry for IV-D and non-IV-D cases. The collections are allocated and distributed according to Title IV, Part D, A of the Social Security Act Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high-level distribution policies. Actual distribution of money occurs under Section 457 657 of Title 42 of the Social Security Act United States Code after collections are allocated according to this Section.~~
- (b) **Overall priority of allocation and distribution.** This subsection has priority over (c) through (f) of this Section.

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

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

(3) In allocating collections owed to a state, CSED gives priority to cases in which unreimbursed assistance is owed to the State of Oklahoma.

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

(5) CSED applies payments to interest owed to a particular custodial person after current child support and arrears are paid in full.

(c) **Initial allocation to monthly current support obligations.** Except as provided in (e) of this Section, CSED initially allocates collections to current support obligations due each month.

(1) If collections are less than the amount of all current support due, CSED allocates collections to current child support due.

(2) After the current child support obligation is met, CSED allocates collections to current spousal support due.

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

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

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

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

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

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

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

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

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

(1) **Current support.** CSED prorates and applies support collections to each family based on the fixed current monthly support obligation due each family.

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

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

(2) **Past-due support under a payment plan.**

(A) CSED allocates collections to payment plans for multiple families in the order described in (i) through (iii) of this subparagraph. If there are multiple families within a category described in (i) through (iii) of this subparagraph, CSED allocates collections among the families according to (B) of this paragraph. The collections allocated to a family's payment plan are then allocated to monthly past-due support obligations according to (d) of this Section. Allocations are:

(i) first, to in-state cases. In-state cases are cases under ~~Title IV, Part D, A of the Social Security Act, Subchapter IV of Chapter 7 of Title 42 of the United States Code~~ that involve either assignment to the State of Oklahoma or current receipt of child support services under an application for services in Oklahoma;

(ii) second, to incoming interstate cases; and

(iii) third, to incoming high-volume administrative enforcement cases in interstate actions.

(B) If there are multiple families within a category described in (2)(A)(i) through (iii) of this subsection, CSED prorates and allocates payment plan collections among families in that category based on each family's fixed monthly payment plan obligations due. If the payment plan obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied past-due payment plans based on each family's fixed monthly payment plan obligations

due. If the past-due payment plans for all families in a category are satisfied, remaining collections are allocated to families in the next category.

(3) **Total arrears.**

(A) CSED allocates collections to arrears for multiple families in the order described in (i) through (iii) of this subparagraph. If there are multiple families within a category described in (i) through (iii) of this subparagraph, CSED allocates collections among the families according to (B) of this paragraph. Allocations are:

- (i) first, to in-state cases as described in (2)(A)(i) of this subsection;
- (ii) second, to incoming interstate cases; and
- (iii) third, to incoming high-volume administrative enforcement cases in interstate actions.

(B) If there are multiple families within a category described in (3)(A)(i) through (iii) of this subsection, CSED prorates and allocates total arrears collections among families in that category based on each family's total arrears due. If the total arrears obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied total arrears based on each family's total arrears due. If the total arrears for all families in a category are satisfied, remaining collections are allocated to families in the next category.

(4) **Interest.**

(A) CSED allocates collections to interest for multiple families in the order described in (i) through (iii) of this subparagraph. If there are multiple families within a category described in (i) through (iii) of this subparagraph, CSED allocates collections among the families according to (B) of this paragraph. Allocations are:

- (i) first, to in-state cases as described in (2)(A)(i) of this subsection;
- (ii) second, to incoming interstate cases; and
- (iii) third, to incoming high-volume administrative enforcement cases in interstate actions.

(B) If there are multiple families within a category described in (4)(A)(i) through (iii) of this subsection, CSED prorates and allocates interest collections among families in that category based on each family's total interest due. If the interest obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied interest based on each family's interest due. If the interest for all families in a category is satisfied, remaining collections are allocated to families in the next category.

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## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 40. CHILD CARE SERVICES

*[OAR Docket #06-758]*

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Subchapter 3. Initial Application  
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Subchapter 5. Plan of Service  
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Subchapter 7. Eligibility  
340:40-7-3. [AMENDED]  
340:40-7-3.1. [NEW]  
340:40-7-4. [AMENDED]  
340:40-7-6. through 340:40-7-9. [AMENDED]  
340:40-7-11. [AMENDED]  
Subchapter 9. Procedures Relating to Case Changes  
340:40-9-1. through 340:40-9-2. [AMENDED]  
Subchapter 13. Child Care Rates and Provider Issues  
340:40-13-3. [AMENDED]  
340:40-13-5. [AMENDED]

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Subchapter 5. Plan of Service  
340:40-5-1. [AMENDED]

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**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Proposed Child Care Services permanent rule revisions: (1) clarify who is responsible for taking child care applications, when a new application is required, and who can apply for child care benefits; (2) move language regarding the two eligibility levels to the Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Rates Schedule and to limit the number of clients who are still eligible for the higher income

eligibility level; (3) remove a restriction regarding child care home providers; (4) remove a requirement regarding determination of capacity of a child care provider before approving care; (5) add information about when the provider can charge the client for hours used outside of approved plan of service hours; (6) clarify rules regarding an approved plan of service hours for two parent families; (7) include information about the Supplemental Security Income-Disabled Children's Program (SSI-DCP); (8) include information about Social Security numbers; (9) add definitions; (10) include information about how to determine a child's eligibility when the child lives with his or her parent for only part of the month; (11) remove a short term illness as a need factor; (12) clarify activities that do not meet a need factor; (13) clarify the need factors of certain students; (14) clarify when child care should be approved for job search, a training or formal education program, preventive, and enrichment child care; (15) clarify how a request for a second training or formal education program is handled; (16) add information about when a child support referral is not needed; (17) add rules regarding how to handle child care benefits when the client cooperates following closure of child care benefits; (18) clarify how to handle other types of potential income; (19) allow 50% of gross income from non-farm self-employment to be excluded as a business expense for households that declare business expenses; (20) clarify when certain forms may be used for child care reviews; (21) include rules regarding preventive child care reviews; (22) clarify who is required to watch the contracting video; (23) require that the owner of a child care facility submit a copy of his or her Social Security card when requesting a child care contract; (24) clarify information regarding change of location for child care centers; (25) add information to contract violations when the provider charges the client for hours he or she is requiring the child attend above the plan hours; (26) change how provider contract violations are handled by human services center staff; (27) add language revisions to improve clarity; and (28) change the order and location of certain rules for clarification purposes.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**SUBCHAPTER 3. INITIAL APPLICATION**

**340:40-3-1. Initial application Application process**

(a) **Initial application Application process.** The application process for subsidized child care benefits begins with a request for an application form and ends with determining the household's eligibility and entering that determination into the computer system.

(1) **Staff responsible for processing the application.** A Family Support Services (FSS) worker completes all applications when an eligibility determination for a family must be made. FSS workers also complete applications for children in tribal custody, children under an Interstate Compact on the Placement of Children (ICPC) with another state, or when Child Welfare (CW) staff contract with an outside agency to provide protective or preventive child care services. CW staff must process all applications made by CW foster parents for child care. In most instances, CW staff complete protective or preventive child care requests when they are working with the family and recommending protective or preventive child care.

(2) **When an application is required.** A new application is required when:

(A) an applicant initially applies for subsidized child care benefits;

(B) expedited eligibility processing was used in accordance with subsection (b) of this Section and requested verification is not returned within 60 calendar days of the application date;

(C) the payee for the subsidized child care benefits changes;

(D) the client's subsidized child care benefits close after approval for 30 calendar days of child care to search for a job in accordance with OAC 340:40-7-8(a)(6); or

(E) the client's subsidized child care benefits have been closed for more than 30 calendar days.

(3) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. If an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving this person permission to act on behalf of the applicant or the applicant must have designated this person as his or her authorized representative on the signed application.

(A) If the natural or adoptive parent or stepparent of the child is in the home, he or she is considered the applicant and eligibility is based on that parent's situation regardless of whether he or she has custody of the child.

(B) If both the natural and adoptive parent of the child are living in the same household and the adoption has been finalized, the adoptive parent is considered the applicant and eligibility is based on that parent's situation.

(C) If the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) If the parent is a minor, either the minor parent or the responsible adult the minor is living with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) If the natural or adoptive parent is living in the home but is too incapacitated to apply, someone else living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.

(4) **Application form.** An applicant or the applicant's authorized representative completes and signs Form K-2, Application for Child Care Services, or Form FSS-1, Comprehensive Application and Review, to apply for subsidized child care services—benefits. When child care is needed for a child with disabilities, the worker and applicant also complete Form ADM-123, Certification for Special Needs Child Care Rate.

(45) **Date of request.** The date of request is the date the applicant requests subsidized child care services.—A request can be made benefits verbally or in writing.

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(26) **Date of application.** The date of application is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the ~~county office~~ human services center. This includes providing the name of the child care provider the client wishes to use.

(A) ~~This~~ The provider must already have a valid Oklahoma Department of Human Services (OKDHS) child care provider contract, ~~and not be shown at~~

(B) ~~See OAC 340:40-5-1(g) as an exception to choice of provider for reasons an applicant cannot choose certain child care providers.~~

(C) For applicants choosing an in-home provider, see OAC 340:40-13-1 and 340:40-13-2.

(37) **Child care interview.** Child care interviews are typically completed face-to-face with the applicant or authorized representative. A face-to-face interview is required for protective or preventive child care requests and strongly recommended for special needs requests.

(48) **Explanation of eligibility factors.** At the time of the initial interview, the worker advises the applicant or authorized representative of:

(A) his or her rights and responsibilities that are included on the application;

(B) all factors of eligibility, ~~and explains;~~

(C) which child care providers are eligible to receive subsidy payment; ~~County staff ensure that~~

(D) the need for the applicant and the authorized representative to view the client training video. The video explains:

(i) proper care and use of the client's electronic benefit transfer (EBT) card;

(ii) the client's responsibility to swipe accurate attendance before OKDHS helps pay for the child's care; and

(iii) the need to contact the worker immediately if a problem occurs so that ~~any problem~~ it can be resolved within ten calendar days;

(E) ~~The applicant must the requirement to cooperate with the OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and~~

(F) ~~The applicant must the requirement to report within ten calendar days any changes in his or her circumstances.~~

(59) **Timeliness.** Near real-time (NRT) benefit processing time frames are used for all child care applications. To be considered timely, the worker must determine eligibility within two working days of receiving all necessary verification to certify or deny the application. If the applicant does not provide requested verification, the worker ~~must deny~~ denies the request within 30 calendar days of the date of request. The worker sends Form FSS-37, Notice Regarding Social Services, explaining the reason for delay to any applicant whose application is over 30 days old.

(610) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.

(b) **Expedited eligibility processing.** The worker must process an application immediately when required verification is beyond the applicant's control to provide, the applicant does not have the money to pay toward the cost of child care, and without child care the applicant:

(1) is in danger of losing a job; or

(2) cannot start a new job.

(c) **Eligibility determination.** ~~A Family Support Services (FSS) worker completes all applications when an eligibility determination for a family must be made. Child Welfare (CW) staff must process all applications made by CW foster parents for child care. Either FSS or CW staff may process preventive service requests. When CW staff do not maintain an open CW case because they are contracting with an agency outside of OKDHS to provide preventive services to a family, FSS staff determine eligibility for these child care requests. The worker uses OKDHS Appendix C-4, Child Care Eligibility/Rates Schedule, to determine whether the household meets income guidelines. See OAC 340:40-5-1(h) for more information about income determination.~~

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant provides all necessary verification to determine eligibility. The applicant is responsible for any child care used before the certification date or which is not part of the approved child care plan. Once care is approved, the client swipes attendance through a point-of-service (POS) machine at the child care facility. OKDHS does not pay for care for any day the child attends child care if the client fails to swipe attendance unless extenuating circumstances exist beyond the control of the client and/or provider. If the client fails to swipe attendance, he or she is responsible for any care given for that day and may be responsible for any absent day payment OKDHS pays if all days the child attended were recorded.

(2) **Applicant determined ineligible.** The request or application is denied if the applicant is ineligible, does not provide needed verification, or requests cancellation of the application.

### SUBCHAPTER 5. PLAN OF SERVICE

#### 340:40-5-1. Plan of service

(a) **Plan of service.** Providing child care is part of an overall plan of service designed to help the ~~parent(s) parent~~ or ~~caretaker(s) caretaker~~ with whom the ~~child(ren) child~~ lives to achieve his or her maximum potential for self-support. Quality child care services assure the ~~parent(s) parent~~ or ~~caretaker(s) caretaker~~ that each child has adequate care ~~which that~~ affords developmental and learning experiences while the ~~parent(s) parent~~ or ~~caretaker(s) caretaker~~ is engaged in self-support activities.

(b) **Plan components.** The plan of service consists of many components that all link to form a goal-directed plan of care;

These components include and includes the components in (1) through (12):

(1) **Child characteristics.** The worker gathers information about the child for whom child care is needed including his or her the name, age, and grade level, of the child(ren) for whom child care is needed; and whether the child has a disability.

(2) **Need for child care.** The worker determines whether the parent or caretaker meets a need factor in accordance with OAC 340:40-7-7 and 340:40-7-8 need for child care;

(3) **Plan hours.** The worker gathers information about the days and hours for which care is approved; the parent or caretaker meets the need factor, including travel time;

(4) whether care is approved on a weekly, full-time, blended, or part-time care basis; When there are two parents or caretakers in the home, the worker only approves subsidized child care benefits for the hours both parents or caretakers meet a need factor during the same hours in accordance with OAC 340:40-7-7 and OAC 340:40-7-8. Based on the days and hours the child requires care, the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, weekly, or a blended unit type.

(5) **Alternative to subsidized child care benefits.** The worker explores with the client whether there is an appropriate, feasible alternative to Oklahoma Department of Human Services (OKDHS) subsidized child care benefits;. If the alternative is a spouse or the natural or adoptive parent of the child who lives in the home, the client must use the alternative rather than subsidized child care benefits. If the alternative is someone else, the client has a choice whether to use this alternative or not. Possible alternatives include:

(A) care by a dependable relative who is able and willing to assume responsibility for care and supervision of the child for part of the day;

(B) care in a free or low cost facility, such as a preschool, pre-kindergarten, kindergarten, Head Start, Early Head Start, or tribal child care program;

(C) dependent care expenses that are considered as earned income exemptions, per OAC 340:10-3-33(3); and

(D) for a school age child, the rearrangement of the parent's or caretaker's employment or training schedule to coincide with the hours the child is in school.

(6) that the plan to increase the client's income is in place; **Plan to increase income.** At each application or review the client and worker discuss ways the client can increase income to the household and identify the goals child care helps the family achieve. Together they estimate when the family can assume progressively greater responsibility for the cost of child care. The worker makes referrals to other agencies as appropriate and in accordance with OAC 340:40-7-9.

(7) a back-up plan for care when the child(ren) cannot go to the authorized child care provider; **Back up plan.** The worker discusses with the client the back up plan for

child care that is in place if the child cannot go to the usual provider because of illness, school holidays, or other unforeseen emergency. The back up plan includes the name and address of a person the client feels he or she can rely on when the normal plan of care cannot be used.

(8) **Emergency contact.** The worker records on the application or review form the name, address, and telephone number of a person to call in case of an emergency when the primary parent or caretaker cannot be reached;

(9) a plan to help the client choose a child care provider **Choice of provider.** The worker documents the choice of provider on the application or review form. If the client does not choose a provider at the time of request, the worker provides the client with information to help

in making the choice. The client may choose a family child care home regardless of star level. The client may not choose a child care:

(A) facility that does not have a valid contract with OKDHS;

(B) facility in which the client or his or her spouse, including the child's parent or stepparent, has an ownership interest;

(C) home in which the child resides;

(D) home in which the client also works during the hours his or her child(ren) is in care unless an approval is obtained from the Family Support Services Division (FSSD), Child Care Section;

(E) provider who does not allow parental access during the hours the provider is caring for children;

(F) provider who is receiving state or federal funds, such as Head Start, Early Head Start, or public schools, unless:

(i) all parents are charged a fee for the hours subsidy payment is requested; and

(ii) the program offers extended day services. Programs operating only during typical school or Head Start hours are not eligible;

(G) provider caring for a school age child during the regular school day when such student could be attending a public or private school during those hours; or

(H) center, which is a one star facility unless there are no one plus, two, or three star centers in the community or special exception criteria are met. Special exception criteria are:

(i) the child was already approved for care at this one star center prior to January 1, 2003. The child can remain at this facility unless the child stops attending there for more than 30 calendar days. The child may be approved at this same facility again if the only reason the child did not attend for more than 30 calendar days was because of a school break or due to circumstances beyond the control of the family such as illness of the child;

(ii) care is requested for a child living in the same home as a child already approved for care as described in (I)(i) of this subsection for the same one star child care provider; or

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(iii) the parent or guardian demonstrates there is no other child care option that meets the family's needs.

(9) **Income determination.** Based on OAC 340:40-7, the worker determines who is considered part of the household for income determination, what income is countable, and what income is excluded. After determining the amount of countable household income, the worker uses OKDHS Appendix C-4, Child Care Eligibility/Rates Schedule, to determine whether the household meets income guidelines. The OKDHS Appendix C-4 is amended from time to time and the Commission for Human Services must approve any changes. If the income of the family exceeds the eligibility standard on the appendix or is above the income level on the appendix, the family is not eligible for subsidized child care benefits.

(10) ~~a discussion about the family share co-payment, if one is required;~~ **Family share co-payment.** The worker uses OKDHS Appendix C-4 to determine the family share co-payment for each family. The family share co-payment is applied before OKDHS pays a child care subsidy. The amounts the family and OKDHS pay toward the cost of care varies depending on the plan of service, family size, income, and the number of children receiving subsidized child care benefits.

(11) ~~a discussion of any other social service needs of the family;~~ and **Social services requests.** When a client requests help in meeting the social services needs listed on the application or review form, the worker provides all available information to aid a client in meeting these needs.

(12) ~~a discussion of the client's responsibilities and rights when using subsidized child care.~~ **Client rights and responsibilities.** The worker advises the client of rights and responsibilities listed in (A) through (H).

(A) The client has the right to an explanation by the worker of the "Client Child Care Responsibilities and Service Plan Agreement" listed on Form FSS-1, Comprehensive Application or Review, or Form K-2, Application for Child Care Services, before signing the form.

(B) A child care request is only approved back to the date of request when the interview is conducted and verification is provided on that same date.

(C) The client has the right to ask for a fair hearing if the client disagrees with an action taken on his or her case, per OAC 340:2-5.

(D) The provider may charge the client for special fees, such as enrollment or transportation fees, provided these fees are posted and also charged to the general public.

(E) The provider may charge the client for care provided in excess of OKDHS approved child care plan hours when the client chooses to leave the child in care longer. If the provider requires that all children in the facility begin care by a certain time of day and the client's child care plan hours start later,

the provider must not charge the client for those additional hours. The client swipes attendance based on the child care plan hours.

(F) The provider may charge the client for any days OKDHS refuses to pay for care when:

(i) the client did not swipe attendance for the correct days and times his or her child attended child care;

(ii) swipes were denied and the client did not get them corrected within ten calendar days; or

(iii) the provider loses the absent day payment for a child approved for a weekly unit type because the client did not swipe correct attendance for every day the child attended that month.

(G) The provider may not charge the client for:

(i) days and hours covered in the child care plan when all attendance was correctly swiped even if the hours are more than customary for a full-time day; and

(ii) days the child is not in attendance.

(H) The client is required to cooperate with the OKDHS Office of Inspector General in any audit or investigation of possible overpayments by the client or by the client's chosen provider.

(e) **Alternative to subsidized child care.** The worker explores with the client whether there is an appropriate, feasible alternative to OKDHS subsidized child care. The client has a choice whether to use this alternative unless the alternative is a spouse or the natural or adoptive parent of the child(ren) who lives in the home and who does not meet a need factor. Possible alternatives include:

(1) care by a dependable relative who is able and willing to assume responsibility for care and supervision of the child(ren) for part of the day;

(2) care in a free or low cost facility, such as a preschool, pre kindergarten, kindergarten, Head Start, Early Head Start, or tribal child care program;

(3) dependent care expenses paid directly by a Temporary Assistance for Needy Families (TANF) client which are considered as earned income exemptions; and

(4) for a school age child(ren), the possible rearrangement of the parent's or caretaker's employment or training schedule to coincide with the hours the child(ren) is in school.

(d) **Plan to increase income.** At each application or review, the client and the worker discuss ways the client can increase income to the household. The client and worker identify together the goals child care helps the family achieve. Together they estimate when the family can assume progressively greater responsibility for the cost of child care. The worker makes referrals to other agencies as appropriate.

(e) **Back up plan.** The worker discusses with the client the back up plan for child care he or she has in place if the child(ren) cannot go to the usual provider for some reason such as illness, school holidays, or another unforeseen emergency. The back up plan includes the name and address of a person the client feels he or she can rely on when the normal plan of care cannot be used.

(f) **Emergency contact.** Form FSS 1, Comprehensive Application and Review, or Form K 2, Application for Child Care Services, includes the name, phone number, and address of a person to contact in case of emergency when the primary parent or caretaker cannot be reached.

(g) **Choice of provider.** The worker documents the choice of provider on Form FSS 1 or Form K 2. He or she calls the chosen provider to ensure acceptance of the child(ren) does not cause the provider to exceed his or her licensed capacity after describing the days and hours care is needed. If the client does not choose a provider at the time of the request, the worker provides the client with information to help in making the choice. The client can choose a family child care home regardless of star level. The client cannot choose a child care:

- (1) facility that does not have a valid contract with OKDHS;
- (2) facility in which the client or his or her spouse, including the child's parent or stepparent, has an ownership interest;
- (3) home in which the child resides;
- (4) home in which the client also works during the hours his or her child(ren) is in care;
- (5) center in which the client works and has job responsibilities which include care of the child(ren) for whom child care is requested;
- (6) provider who is related to the client and only accepts a relative's child(ren);
- (7) provider who does not allow parental access during the hours the provider is caring for children;
- (8) provider who is receiving state or federal funds, such as Head Start, Early Head Start, or public schools unless:
  - (A) all parents are charged a fee for the hours subsidy payment is requested; and
  - (B) the program is offering extended day services. Programs operating only during typical school or Head Start hours are not eligible;
- (9) provider caring for a school age child during the regular school day when such student could be attending a public or private school during those hours; or
- (10) center which is a one star facility unless there are no one star plus, two, or three star centers in the community or one of the special exception criteria are met. Special exception criteria are:
  - (A) the child(ren) was already approved for care at this one star center prior to January 1, 2003. The child(ren) can remain at this facility unless the child(ren) stops attending there for more than 30 days. The child(ren) can also be approved at this same facility again if the only reason the child(ren) did not attend for more than 30 days was because of a school break or due to circumstances beyond the control of the family such as illness of the child;
  - (B) care is requested for a child living in the same home as a child already approved for care as described in (10)(A) of this subsection for the same one star child care provider; or

(C) the parent or guardian demonstrates that there is no other child care option that meets the family's needs.

(h) **Income determination.** The worker uses policy in OAC 340:40-7 to determine who must be considered part of household for income determination, what income is countable, and what income is excluded. After determining the amount of countable household income, the worker uses OKDHS Appendix C 4, Child Care Eligibility/Rates Schedule, to determine whether the household meets income guidelines. Clients who are approved for child care prior to September 1, 2004 meet income eligibility guidelines if their income, family size, and number of children in care meet the guidelines stated on the Schedule of Co-payments chart on OKDHS Appendix C 4, as amended from time to time, as approved by the Commission for Human Services, with or without a transition plan as determined by the Commission. If the Commission approves a transition plan to migrate to a new eligibility schedule pursuant to a new Schedule of Co-payments chart on OKDHS Appendix C 4, previously eligible clients continue to be eligible using the previously approved Schedule of Co-payments chart as long as they do not lose eligibility for more than one month. If these clients stop receiving child care assistance or lose eligibility for more than one month, the worker determines their eligibility using the new eligibility Schedule of Co-payments chart. Clients approved for child care on or after September 1, 2004 meet income eligibility guidelines if their income, family size, and number of children in care meet the eligibility standards stated in the Schedule of Co-payments chart which is effective on September 1, 2004, or such other later date as their eligibility is determined which matches the Schedule of Co-payments then in effect. If the income of the family exceeds the eligibility standard of the chart or are off the chart, they are not eligible for child care services.

(i) **Family share co-payment.** The worker uses OKDHS Appendix C 4 to determine income eligibility and the family share co-payment for each family. The family share co-payment is applied before OKDHS pays a child care subsidy. The amounts the family and OKDHS pay toward the cost of care varies depending on the plan of service, family size, income, and the number of children receiving child care services.

(j) **Social services requests.** When a client requests help in meeting the social services needs listed on Form FSS 1 or Form K 2, the worker provides all available information to aid a client in meeting these needs.

(k) **Client rights and responsibilities.**

- (1) The client has the right to an explanation by the worker of the "Client Child Care Responsibilities and Service Plan Agreement" listed on Form FSS 1 or Form K 2 before signing the form.
- (2) The worker must advise the client that a child care request is not approved back to the date of request unless the interview is conducted and verification is provided on that same date.
- (3) The client has the right to ask for a fair hearing if he or she disagrees with an action taken on his or her case.

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(4) ~~The client is advised by the worker that the provider may charge the client extra for special fees such as enrollment or transportation fees as long as these fees are posted and also charged to the general public. The provider may also charge the client for any days OKDHS refuses to pay for care because:~~

~~(A) the client did not swipe attendance for the correct days and times his or her child(ren) attended child care;~~

~~(B) swipes were denied and the client did not get them corrected within ten days; or~~

~~(C) the provider loses the absent day payment for a child(ren) approved for a weekly authorization because the client did not swipe correct attendance for every day the child(ren) attended that month.~~

(5) ~~The worker advises the client that the provider is not allowed to charge him or her for:~~

~~(A) days and hours covered in the child care plan when all attendance was correctly swiped even if the hours are more than customary for a full time day; and~~

~~(B) days the child(ren) is not in attendance.~~

(6) ~~The client is advised he or she is required to cooperate with the OKDHS Office of Inspector General in any audit or investigation of possible overpayments by the client or by his or her chosen provider.~~

### SUBCHAPTER 7. ELIGIBILITY

#### **340:40-7-3. Age requirements**

~~(a) Children are~~ A child is eligible for subsidized child care services benefits through the day before they turn he or she turns 13 years of age.

~~(b) Children~~ A child with disabilities and children under court supervision may be eligible to receive a subsidized child care subsidy benefits through the day before they turn he or she turns 19 years of age.

(1) A child with disabilities is defined at OAC 340:40-7-3.1.

(2) When a child with disabilities is 13 or older, the client must provide a statement from a licensed health care professional verifying that the child is physically or mentally incapable of self care as age appropriate. If the licensed health care professional states that the child is capable of self care as age appropriate, care is not approved.

(c) A child under court supervision may be eligible to receive subsidized child care benefits through the day before the child turns 19 years of age. When the child is 13 or older, the client must provide a copy of the court order, a statement from the Child Welfare worker, or the Office of Juvenile Affairs (OJA) worker verifying this before care is approved.

#### **340:40-7-3.1. Child with disabilities**

(a) **Child with disabilities.** A child with disabilities is defined as a child who receives Supplemental Security Income

(SSI), SoonerStart early intervention services, or special education services provided in accordance with an Individualized Education Program (IEP) by the local school district. This definition also includes a child whose SSI payment stops because of financial reasons but who still meets the medical definition of disability as determined by the Social Security Administration (SSA). When a child with disabilities is 13 or older, the client must provide a statement from a licensed health care professional verifying that the child is physically or mentally incapable of self care as age appropriate. If the licensed health care professional states that the child is capable of self care as age appropriate, subsidized child care benefits are not approved.

(b) **Special needs rate approval process.** The special needs rate, if approved, is paid in addition to the daily rate paid for a typical child. If a child does not meet the definition of a child with disabilities, the child is not eligible for a special needs rate. A child with disabilities may be approved for a moderate or severe special needs rate unit type after the special needs rate approval process is completed. If the worker determines that the parent or caretaker is eligible for subsidized child care benefits before the special needs rate approval process is completed, the worker approves the child for a typical child unit type. The process includes:

(1) the parent or caretaker must provide proof that the child meets the definition of a child with disabilities and information about the child's care needs.

(A) For a child under age three, the parent or caretaker submits the child's current Individualized Family Service Plan (IFSP) that verifies the child receives SoonerStart services and documents the care needs of the child.

(B) For a child over age three, the parent or caretaker submits the child's current IEP that documents the child receives special education services and documents the care needs of the child.

(C) If the child receives SSI, the parent or caretaker submits the child's award letter or other proof from the SSA that verifies receipt of this income. If the child is not receiving SoonerStart or special education services, the parent or caretaker submits a statement from a health professional describing the care needs of the child.

(2) The parent or guardian, the child care provider, Division of Child Care (DCC) licensing staff, and the child's Family Support Services (FSS) or Child Welfare (CW) worker completes appropriate sections of Form ADM-123, Certification for Special Needs Child Care Rate. Determination of whether certification requirements are met by the:

(A) child are made by the FSS or CW worker; and

(B) provider are made by the DCC licensing specialist.

(3) The worker uses Form ADM-123-A, Scoring Sheet for Special Needs Rate Determination, to score the ADM-123. The child's care needs must be within the scoring range shown on Form ADM-123-A for moderate or high need to qualify for a special needs rate.

(4) DCC licensing staff completes Section IV of Form ADM-123 indicating whether the provider meets certification requirements described at OAC 340:110-1-9.1.

(5) When the child and the provider meet certification requirements for the special needs rate, the rate is effective the first of the month following the month DCC licensing staff signs Section IV of Form ADM-123. If the child waits to start child care until after the special needs rate is approved, the rate is effective the first date care is approved.

(6) Once Form ADM-123 has been completed and the worker determines the child is eligible for one of the special need rates, a new Form ADM-123 is only completed when:

- (A) the needs of the child change;
- (B) the child moves to a different child care facility;  
or
- (C) the child stops attending, for more than six months, the facility that was approved for the special needs rate unit type.

(c) **Supplemental Security Income-Disabled Children's Program (SSI-DCP).** A child between the ages of birth to 18 who receives SSI may be eligible for additional services described at OAC 340:70-8-1. This might include approval for enrichment child care further described at OAC 340:40-7-8(f).

**340:40-7-4. Identity and Social Security number**

(a) **Identity.** The identity of the person making application for child care services must be verified. When an authorized representative applies on behalf of a household, the worker verifies the identity of both the authorized representative and the applicant. Identity may be verified through readily available documentary evidence, or if evidence is unavailable, through a collateral contact. Any documents that reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed. Examples of acceptable documentary evidence that the applicant may provide include, but are not limited to:

- (1) a ~~driver's~~ driver license;
- (2) a work or school identification (ID);
- (3) an ID for health benefits or for other assistance or social service program;
- (4) a voter registration card;
- (5) wage stubs; or
- (6) a birth certificate.

(b) **Social Security number (SSN).** The client is not required to provide a SSN for any member of the household in order to receive subsidized child care benefits.

**340:40-7-6. Household composition and income consideration**

(a) **Definition of household composition terms.** The worker determines household composition for income considerations using the definition of terms listed in (1) through (9) of this subsection.

(1) An adult is an emancipated minor or person 18 years of age or older. A child who is also a parent is considered an adult.

(2) A spouse is a person married by ceremony or common-law to another person. They can be living together or separately. If they are living separately, they are considered part of the household if the separation is temporary with no intention of severing the marital relationship or the separation is involuntary.

(3) A stepparent is a person who is a spouse or has been a spouse to the child's parent.

(4) A caretaker is an adult that the child is living with who is acting in the role of a parent. This person may or may not be related to the child by blood, adoption, or marriage and may or may not be legally and financially responsible for the child. The caretaker must pursue child support from the natural or adoptive parent in accordance with OAC 340:40-7-9.

(5) A non-relative adult is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.

(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child for whom child care is needed. The term also includes other caretaker adults who are court-ordered to be legally and financially responsible for the child.

(7) A child is any unmarried, unemancipated, non-parental person under 18 years of age.

(8) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.

(9) A sibling is a minor child who has at least one parent in common with another child in the same household. This definition of a sibling also includes a step-brother or step-sister.

(ab) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care benefits, it is necessary to define who must be considered part of household composition for income consideration. Individuals ~~who whose income must be included~~ considered in determining eligibility are:

- (1) the natural, adoptive, or stepparent of the ~~child(ren)~~ child who lives in the home and for whom child care is needed;
- (2) the caretaker(s) of the minor ~~child(ren)~~ child who needs child care if that caretaker is legally and financially responsible for the ~~child(ren)~~ child;
- (3) ~~all minor children~~ the child for whom child care is requested and ~~their~~ his or her siblings under 18 who live in the home ~~for whom child care is requested~~;
- (4) any non-relative adult of the opposite sex who is living in the home with the natural or adoptive parent; and
- (5) any ~~child(ren)~~ child of the non-relative adult of the opposite sex who is living in the home with the natural or adoptive parent.

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(bc) **Periods of absence.** When a household member is out of the home due to a temporary absence, he or she is still considered a household member as long as he or she plans to return to the home. If a child lives with each parent for part of the month, see (d) in this Section. If a child lives with a parent for part of the month and a caretaker for the rest of the month, the child's eligibility is based on whether the parent meets eligibility factors in accordance with OAC 340:40-7. The caretaker must also meet a need factor in accordance with OAC 340:40-7-7 during the time he or she has physical custody of the child. Examples of temporary absence include:

- (1) a hospitalization for physical or mental health reasons;
- (2) incarceration;
- (3) attending school;
- (4) military service;
- (5) vacation time for a child; and
- (6) working or looking for a job away from home.

(e) ~~**Definition of household composition terms.** The worker determines household composition for income considerations using the definition of terms listed in (1) through (7) of this subsection.~~

~~(1) An adult is an emancipated minor or person 18 years of age or older. A child who is also a parent is considered an adult.~~

~~(2) A child is any unmarried, unemancipated, non-parental person under 18 years of age.~~

~~(3) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.~~

~~(4) Spouses are persons married by ceremony or common law and who are living together, or living separately on a temporary basis with no intentions of severing the marital relationship, or who are involuntarily separated.~~

~~(5) A non-relative adult is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.~~

~~(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child(ren) for whom child care is needed. The term also includes other caretaker adults who are court ordered to be legally and financially responsible for the child.~~

~~(7) The term in loco parentis is defined as a person acting in place of a parent without going through legal proceedings. He or she is expected to pursue child support from the natural or adoptive parent(s) of the child(ren) if it is not currently being received. See OAC 340:40-7-9 for more information regarding pursuit of child support.~~

(d) **Joint or shared custody.** When parents separate or divorce and share custody of their ~~child(ren)~~ child, either voluntarily or through a court order, the worker considers each parent's eligibility separately as well as his or her income. If only one parent qualifies for subsidized child care benefits, only the days and hours of care needed while that parent has physical custody of the ~~child(ren)~~ child is approved. If both

parents qualify for subsidized child care benefits, each parent is approved only for the days and hours that parent has physical custody and meets a need factor.

### **340:40-7-7. Establishing the need factor for child care**

(a) **Establishing the need factor.** ~~The In order for children to be cared for in a safe environment while the parent or caretaker participates in an approved activity or for protective or preventive reasons, the Oklahoma Department of Human Services (OKDHS) provides subsidized child care services so children are cared for in a safe environment while the parent or caretaker participates in an approved activity or for protective reasons for the child benefits.~~ The worker arranges to obtain from the client or collateral sources, documentation of the need factor. The worker and client negotiate the amount of travel time allowed for an activity based on what is a reasonable length of time. ~~Before approving child care for a second training or formal education program, the worker considers whether:~~

- ~~(1) the client can establish receipt of such training or education can increase the individual's earning potential;~~
- ~~(2) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons;~~ or
- ~~(3) there is no longer a demand for the type of work the person is trained to do.~~

(b) **Need factor for single parent or caretaker families.** Need The need for OKDHS-subsidized child care is met when the:

(1) parent or caretaker is employed in accordance with OAC 340:40-7-8(a);

(2) parent or caretaker needs sleep time during the day after working night hours when a feasible alternative is used at no cost to OKDHS during the night working hours in accordance with OAC 340:40-7-8(a)(5);

~~(23)~~ parent or caretaker is actively searching for a job in accordance with OAC 340:40-7-8(a)(~~6~~);

~~(34)~~ parent or caretaker is engaged in a training or formal education program designed to lead to employment in accordance with OAC 340:40-7-8(b) and (c);

~~(45)~~ parent or caretaker attends high school, General Educational Development (GED), literacy, adult basic education (ABE), or English as a second language Second Language (ESL) classes in accordance with OAC 340:40-7-8(c);

~~(56)~~ parent or caretaker is actively participating in an approved Temporary Assistance for Needy Families (TANF) Work activity in accordance with OAC 340:10-2-1;

~~(6)~~ parent or caretaker is actively participating in approved Food Stamp Employment and Training (E&T) activities;

~~(7)~~ parent or caretaker needs sleep time during the day after working night hours when a feasible alternative is used at no cost to OKDHS during the night working hours;

~~(8)~~ parent or caretaker has a short term illness or requires a period of hospitalization. Short term is defined as a period not exceeding six weeks. Child care needed

beyond this time frame is handled as a protective or preventive service;

~~(97) child(ren) child~~ is in need of care or supervision for part of the day as a protective or preventive service in accordance with OAC 340:40-7-8(e); or

~~(108) child~~ receives Supplemental Security Income (SSI) and care is needed for enrichment purposes in accordance with OAC 340:40-7-8(f).

(c) **Need factor for two-parent or two-caretaker families.** Two-parent or two-caretaker families can be two natural or adoptive parents, the natural parent and a stepparent, two grandparents, other relative married couples, or other non-relative married couples. If a couple who is not married applies and only one person is the natural or adoptive parent of the child, only the natural or adoptive parent must meet a need factor as described at OAC 340:40-7-7(b). The need for OKDHS subsidized child care is met when:

(1) both parents or caretakers are employed during the same hours for which child care is requested in accordance with OAC 340:40-7-8(a);

~~(2) one or both parents or caretakers need sleep time during the day after working night hours when a feasible alternative is used at no cost to OKDHS during the night working hours in accordance with OAC 340:40-7-8(a)(5).~~ If both parents do not work night hours, the other parent must be employed during the other parent's sleep time hours;

~~(23) one or both parents are actively searching for a job in accordance with OAC 340:40-7-8(a)(26).~~ If only one parent or caretaker is searching for a job, the other parent or caretaker is employed, in training, or in a formal education program during the same hours;

~~(34) one parent or caretaker is attending a formal education or training program during the same hours the other parent or caretaker is employed in accordance with OAC 340:40-7-8(a) through (c);~~

~~(45) both parents or caretakers are in high school in accordance with OAC 340:40-7-8(c);~~

~~(6) one parent or caretaker is in high school during the same hours the other parent or caretaker is working, attending a formal education, or post high school training program in accordance with OAC 340:40-7-8(a) through (c);~~

~~(57) one parent or caretaker is attending GED, literacy, ABE, or English as a second language ESL classes during the same hours as the other parent or caretaker is employed in accordance with OAC 340:40-7-8(a) through (c);~~

~~(6) one parent or caretaker is in high school during the same hours the other parent or caretaker is working, attending a formal education, or post high school training program;~~

~~(7) one parent or caretaker is incarcerated while the other parent is employed, in training, or in a formal education program;~~

(8) one or both parents or caretakers are actively participating in approved TANF Work activities in accordance with OAC 340:10-2-1. If one parent or caretaker is not

participating in TANF Work activities, that parent is ~~employed, in training, or in a formal education program~~ meets a need factor defined at OAC 340:40-7-8 during the same hours;

~~(9) one parent or caretaker is actively participating in approved Food Stamp E&T activities and the other parent is employed, in training, or in a formal education program;~~

~~(10) one or both parents or caretakers need sleep time during the day after working night hours when a feasible alternative is used at no cost to OKDHS during the night working hours;~~

~~(11) one parent or caretaker has a short term illness or requires a period of hospitalization while the other parent or caretaker is employed, in training, or in a formal education program. Short term is defined as a period not exceeding six weeks. Child care needed beyond this time frame is handled as a protective or preventive service;~~

~~(129) the child(ren) child~~ is in need of care or supervision for part of the day as a protective or preventive service in accordance with OAC 340:40-7-8(e); and

~~(1310) the child(ren) child~~ receives SSI and care is needed for enrichment purposes- in accordance with OAC 340:40-7-8(f); or

~~(11) one parent or caretaker is incarcerated and the other parent remains in the home. In this instance, use subsection (b) of this Section to determine if the parent remaining in the home meets a need factor.~~

(d) **Need factor in joint custody cases.** When parents are separated or divorced and share custody of their ~~child(ren) child~~, either voluntarily or through a court order, each parent's need for child care is considered separately as well as his or her income.

(e) **Activities which do not meet the need factor for child care.** The need factor for child care is not met and child care cannot be approved for:

- (1) job search for persons not involved in:
  - (A) TANF Work activities described at OAC 340:10-2-1; or
  - ~~(B) Food Stamp E&T activities; or~~
  - ~~(C) the activities described at OAC 340:40-7-8(a)(26);~~

~~(2) on-line Internet based or televised education or training courses when an instructor is not conducting a live broadcast and attendance is not required while the program is being broadcast in accordance with OAC 340:40-7-8(b) and (c);~~

~~(3) undergraduate classes or other training that are not expected to lead to a degree or certificate of completion in accordance with OAC 340:40-7-8(b) and (c);~~

~~(24) post graduate education such as master's and doctoral programs;~~

~~(35) two-parent or two-caretaker families when both are attending a formal education or training program during the same days and hours;~~

~~(46) transportation only;~~

~~(57) court-ordered community service hours, volunteer hours, or jury duty; and~~

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(68) hours a school age child could be in a public or private school but the parent or caretaker chooses not to allow the child to attend because he or she wishes to home school the child at night.

### 340:40-7-8. Defining the need factor for a child care benefit benefits

(a) **Employment.** Employment means the parent or the caretaker earns wages for work performed.

(1) The client must provide proof of his or her work hours. If the client has the flexibility to set his or her own work hours, the client and worker jointly determine if they can reduce the number of hours the ~~child (ren)~~ child needs care by rearranging the client's work schedule. This is especially important in two-parent or two-caretaker families.

(2) The worker limits approval of child care to the number of days and hours the client is working plus reasonable travel time. In two-parent or two-caretaker working families, the worker limits approval to the days and hours they are both working at the same time plus reasonable travel time. If the child attends school or Head Start during part of the work hours, the worker reduces the number of hours he or she approves child care accordingly.

(3) If the parent or caretaker is not making at least minimum wage for the number of hours he or she is working, the worker may limit the number of days and hours of care initially approved. The worker counsels with the individual regarding increasing his or her income. If counseling is unsuccessful, the worker decides whether to further reduce or terminate the subsidized child care benefit benefits.

(4) A person employed and working from his or her own home may be approved for a ~~subsidized~~ child care benefit benefits in an out-of-home child care home or center.

(5) Subsidized child care benefits can be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used at no cost to the Oklahoma Department of Human Services (OKDHS) during the night working hours. Night working hours is defined as the hours between 11:00 p.m. and 7:00 a.m. The maximum amount of time the worker approves child care is to allow the client eight hours of sleep plus travel time to and from the child care provider. In two-parent or two-caretaker families care can only be approved for this reason when both parents have night time jobs or when one parent has a night time job and the other parent or caretaker works during the day while the other parent is sleeping.

(56) Job search meets the definition of employment and child care may be approved only when a recipient who has received a subsidized child care benefit benefits for at least 30 calendar days loses employment or successfully completes a formal education or training program and requests child care ~~assistance~~ to look for a job. Child care may be approved for a maximum of 30 calendar days from the date the client loses employment or successfully completes a

formal education or training program as long as the child continues to attend the same child care facility. Job search may be approved no more than twice per calendar year. The client must have been employed or going to school for at least 90 calendar days between approval periods.

(b) **Training.** ~~Job skills training includes vocational training and hands on work experience to develop technical skills, knowledge, and abilities in specific occupational areas. All training programs must include qualitative measures to evaluate the participant's progress. Examples include competency gains, proficiency levels, and certificates of completion. A training program is defined as a course of study that when completed qualifies a person to meet requirements for a job that the client could not have obtained without the certificate of completion, accreditation, or licensure. Child care can be approved for one parent or caretaker to attend a training program. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.~~

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. Care is only approved for an on-line Internet based course or televised course if it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If the program is self-paced and can be completed whenever the client chooses, care is not approved.

(4) The client must provide proof of progress when requested. If the client is not making satisfactory progress, further child care for this reason is not approved.

(5) Once the client completes a training program, further child care is not approved for training or education. The client is expected to look for jobs that require his or her training credentials. The client may be eligible for subsidized child care benefits to job search if he or she meets requirements at (a)(6) of this Section.

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must first have been employed in a job that required the training credentials he or she already has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the training program in which the client wants to enroll;

(B) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a Workforce Investment Act (WIA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training can increase the individual's earning potential. The client must provide proof that the starting salary for a person with the training credentials the client wants to obtain is higher than he or she is currently earning.

(c) **Education program.** An education program can include:

(1) **High school.** Child care can be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval the client must provide proof that he or she is enrolled, the days and hours the client is attending, and when he or she is expected to graduate.

(2) **General Educational Development (GED), literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care can be approved for one parent or caretaker to attend GED, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. If the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) Within the first month of classes, the client must provide proof of initial testing showing the client's current educational and/or literacy level.

(C) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. If the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. At review, the client must provide a statement from the school that includes:

- (i) whether the client is attending regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time it will take to complete the program; and
- (iv) what days and hours the client is currently attending classes.

(D) If the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

(3) **English as a Second Language (ESL) classes.** The program must require classroom attendance with an

instructor present. Child care can be approved for a single parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. If the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. If the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. The client must provide a statement from the school that includes:

- (i) whether the client is attending regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time it will take to complete the program; and
- (iv) what days and hours the client is currently attending.

(C) If the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

(e4) **Formal education program.** A formal education program is defined as a course of study which that leads to the attainment of an associate's or bachelor's degree. Child care can be approved for one parent or caretaker to attend a formal education program. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client is attending, and when he or she is expected to complete the degree.

(C) The degree program must require classroom attendance on the school campus with an instructor present. Care is only approved for an on-line Internet based course or a televised course if it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If the program is self-paced and can be completed whenever the client chooses, care is not approved.

(D) The client must provide proof of progress when requested. If the client is not making satisfactory progress, further care for this reason is not approved.

(E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree. The client may be eligible for subsidized

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child care benefits to job search if he or she meets requirements at (a)(6) of this Section.

(F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:

(i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the degree program in which the client wants to enroll;

(ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a WIA contracted entity, OESC, or DRS; or

(iii) the client can establish receipt of the second degree can increase the individual's earning potential. The client must provide proof that the starting salary for a person with the degree the client wants to obtain is higher than he or she is currently earning.

**(d) Temporary Assistance for Needy Families (TANF) Work activity.** When a client receives a TANF benefit, subsidized child care benefits may be provided for any activity outlined ~~in~~ on the client's Form TW-2, TANF Work/Personal Responsibility Agreement, in accordance with OAC 340:10-2-1.

(1) Need for child care is also met when the individual is waiting to enter an approved TANF Work activity. Approval is limited to a time period not to exceed:

(1A) two weeks; or

(2B) one month on an exception basis where child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period.

~~(e2) TANF applicant job search.~~ TANF applicants referred for immediate employment ~~are eligible~~ may be approved for subsidized child care benefits to job search. TANF applicants are advised:

(1A) child care to job search is limited to 20 days which must be used within 30 calendar days from the date of request;

(2B) in-home child care arrangements are not available for TANF applicants;

(3C) child care may only be used during the times the applicant is actually looking for a job; and

(4D) he or she must notify the county office worker immediately upon securing employment.

~~(fe) Protective or preventive child care.~~ A Subsidized protective or preventive child care benefit benefits can be used as an early intervention strategy in certain critical situations to help in preventing neglect, abuse, or exploitation of a child. The worker may approve child care in these situations to help stabilize the family situation or to enhance family functioning. In most instances, Child Welfare (CW) staff complete protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. When CW staff contract with an outside agency to provide protective or preventive services and child care is recommended, Family Support Services (FSS) staff complete these child care requests with the help of the contracted agency staff. The client must provide proof of the need for child care before the worker authorizes care.

(1) Subsidized protective or preventive child care benefits are temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.

(2) The worker must complete a face-to-face interview with the client prior to approving subsidized protective or preventive child care benefits in order to better assess all of the service needs of the family.

(3) The client must provide a statement from a professional working with the family stating:

(A) the reason child care is recommended;

(B) how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and

(C) the length of time this care is expected to be needed.

(4) The family may or may not be expected to help in paying the cost of these subsidized child care benefits depending on the unique circumstances of the family.

(5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt that the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning. The client must also provide a plan for reducing his or her debt.

~~(46)~~ The worker may approve subsidized protective or preventive child care benefits for a maximum of 30 calendar days ~~at the county level.~~ If determining ongoing eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information during this 30 calendar day period.

(7) If the family requests subsidized protective or preventive child care ~~is needed~~ benefits beyond this initial 30 calendar day period, the worker obtains approval for this extension from the ~~sends~~ a memo and supporting documentation to the Family Support Services Division (FSSD) Child Care Section to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.

(2) The family may or may not be expected to help in paying the cost of this child care depending on the unique circumstances of the family.

(3) If the family is financially ineligible for a child care benefit but there is evidence the family is so burdened by debt that the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning, the worker may approve protective or preventive child care. A plan to reduce such debt must be established.

(4) If determining financial eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information as long as the client has provided proof of the need for child care.

(5) Protective or preventive child care is temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.

(g) **Child with disabilities.** A child with disabilities is defined as a child who receives Supplemental Security Income (SSI), SoonerStart early intervention services, or special education services provided in accordance with an Individualized Education Program (IEP) by the local school district. This definition also includes a child whose SSI payment stops because of financial reasons but who still meets the medical definition of disability as determined by the Social Security Administration. Child care may be approved for a child with disabilities through the day before the child's 19<sup>th</sup> birthday when a statement from a licensed health care professional is provided stating the child is physically or mentally incapable of self care as age appropriate.

(1) **Approval for the higher special needs rate.** Form ADM 123, Certification for Special Needs Child Care Rate, is completed and signed by the parent or guardian, the child care provider, Division of Child Care (DCC) licensing staff, and the child's Family Support Services worker or Child Welfare worker. The parent or caretaker must submit the child's IEP or Individualized Family Service Plan (IFSP) that documents the care needs of the child. If a child who receives SSI is not receiving special education or SoonerStart services, the parent or caretaker must submit a statement from a health professional describing the care needs of the child. A change to the higher special needs rate is effective the first of the month following the month eligibility for the rate is determined by DCC licensing staff. When care is not provided until the special needs rate is approved, it is effective the first day care is provided. Once Form ADM 123 has been completed and the worker determines the child is eligible for one of the special need rates, a new Form ADM 123 is only completed when:

- (A) the needs of the child change;
- (B) the child moves to a different child care facility;
- or
- (C) the child stops attending the facility that was approved for the special needs rate for more than six months.

(2f) **Enrichment child care benefit for children with disabilities.** The purpose of an subsidized enrichment child care

benefit benefits is to assist the a child in developing receiving Supplemental Security Income (SSI) to develop socialization skills and to transition into a group setting such as a classroom. If a child is not receiving SSI benefits, the child is not eligible for subsidized enrichment child care benefits. Children with disabilities receiving SSI who are normally not eligible for child care may be approved for an

(1) The need for subsidized enrichment child care benefit benefits is based solely on the needs of the child's condition of delay or disability rather than on the activities of the parent or caretaker.

(2) Child care for enrichment is limited to a maximum of two days per week not to exceed ten full-time or part-time days per month.

(3) The parent or caretaker must provide a statement written recommendation from a professional involved in the child's life recommending child care be provided and the reason who is working directly with the child in some capacity that states how child care would be beneficial to the child. The professional could be the child's doctor, occupational therapist, physical therapist, or special education teacher.

(4) Unless special circumstances exist, subsidized enrichment child care is only approved for children who have not yet started school or Head Start.

(5) When such subsidized enrichment child care is benefits are approved, it is provided outside of the child's home, preferably in a setting where at least one other child is present care must be provided outside of the child's home and at least one other child must be attending during the same hours.

(6) The worker obtains approval from staff in the FSSD Health Related and Medical Services Section prior to authorizing care for this need factor in accordance with OAC 340:70-8-1.

**340:40-7-9. Exploration and development of Mandatory pursuit of child support and other potential income**

(a) **Exploration and development of potential income.** The worker explores all potential sources of income such as court ordered child support from a noncustodial parent(s), Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, and veterans benefits at the time of application and at each review. The client is encouraged but not required to apply for SSI when the client indicates that a household member has a disability. The client must agree to pursue child support through the Child Support Enforcement Division (CSED) at the time of application when one or both of the child(ren)'s parents are absent from the home as indicated at (b) of this Section. For all other types of potential income identified at application or review, the client must pursue such income within 90 calendar days of the income being identified.

(1) If the client refuses to pursue available income at the time of request and good cause as described in (c) of this Section does not exist, the worker denies the child care request.

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(2) If the client agrees to pursue all potential income and then fails to do so, the worker closes the child care benefit for the next negative action deadline.

(3) At each review the worker determines whether the client continues to pursue potential income.

(A) If the client begins receiving such income, the worker considers the income for the next negative action deadline after it is reported.

(B) If the client was determined not eligible for the income, the worker records this in the case record and stops exploring this potential income with the client.

(C) If the client stops pursuing the income and good cause as described in (c) of this Section does not exist, the worker closes the client's child care benefit for failure to cooperate for the next negative action deadline.

(4) If the client reappplies after closure because of non-cooperation regarding pursuit of potential income, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care can be approved.

**(ba) Mandatory referral to the Child Support Enforcement Division (CSED).** When one or both of the child(ren)'s child's parents are absent from the home, the worker makes a mandatory referral to CSED to pursue child support at the time child care is certified client must agree to pursue child support through CSED for all children that must be included in the same household in accordance with OAC 340:40-7-6 before subsidized child care benefits are approved unless good cause exists as described at paragraph (6) of this subsection. This includes when the parent or caretaker is not requesting subsidized child care benefits for that child, the client is currently receiving court-ordered child support, there is a joint custody agreement and neither parent is ordered to pay support, an additional child whose parent is absent is added to the household, or one or both parents leave the home after certification. The worker makes this referral whether or not the client is currently receiving court ordered child support. After the worker approves the client for child care, all future child support payments must be made to the Centralized Support Registry (CSR).

**(1) When a CSED referral is not required.** The client is not required to complete child support forms when:

(A) he or she is a foster parent to the child and the CSED referral was completed in the child's Medicaid case;

(B) the client is an adoptive parent and provides proof of a single parent adoption;

(C) a parent is temporarily out of the home in accordance with OAC 340:40-7-6(c) and is still considered part of the household;

(D) the child whose parent is absent is not required to be considered part of the household in accordance with OAC 340:40-7-6; or

(E) the client is a minor parent and is not living with his or her own parents. The minor parent must

pursue child support for his or her own child but not for himself or herself.

(1) The client must provide the name(s) of the person(s) alleged as responsible for the support of a child(ren) and provide identifying information such as name, address, and the employer(s) of the person(s), if known.

(2) The termination of parental rights does not eliminate the obligation of either parent to provide financial support for his or her minor child(ren). Per Section 7006-1.3 of Title 10 of the Oklahoma Statutes, termination of parental rights affects the parent's rights, not his or her responsibility to support the child(ren) except in the case of adoption. An adoptive parent's legal obligation continues even if a child(ren) is returned to the care of the natural parent.

(3) **Required forms.** The worker makes the referral to CSED by completing with the client Form FSS-AP-1-A, Absent Parent (AP) Information Sheet, for each absent parent. The worker gives Form C-16, Child Support Services and Responsibilities, to the client. The form explains CSED services and client expectations. Supplemental information sent to the appropriate CSED district office by the worker includes:

(A) a signed and completed Form CSED-1-A, Affidavit of Child Support Payments Received;

(B) a signed and completed Form CSED-1-B, Mother's Affidavit of Paternity. This form is only completed if the mother is applying for subsidized child care benefits and paternity has not been established; and

(C) copies of any legal documents concerning custody or child support.

(3) **Centralized Support Registry (CSR).** After the worker approves the client for subsidized child care benefits, all future child support payments must be made to the CSR. Form C-16 contains the address for the CSR.

(4) **Termination of parental rights.** The termination of parental rights does not eliminate the obligation of either parent to provide financial support for his or her minor child. Per Section 7006-1.3 of Title 10 of the Oklahoma Statutes, termination of parental rights affects the parent's rights, not his or her responsibility to support the child except in the case of adoption. An adoptive parent's legal obligation continues even if a child is returned to the care of the natural parent.

(4) **Establishment of paternity.** If paternity has not yet been established, the worker discusses the voluntary acknowledgment of paternity process with the alleged father when he is located. If the alleged father admits paternity, the worker secures the alleged father's and the mother's signature on Form CSED-209, Affidavit Acknowledging Paternity, per instructions under the Notice of Rights and Responsibilities on the form.

(e) **Good cause.** Although the client's cooperation in the pursuit of child support through CSED is required as a condition of eligibility for child care, good cause for refusal to cooperate may be granted when such cooperation is not in the best interest of the child. The Oklahoma

Department of Human Services (OKDHS) may determine that child support activities can be safely conducted without the cooperation of the client.

~~(1A)~~ The client must sign Form C-9, Cooperation Agreement and Request for Good Cause, at the time of the initial application, at the time of an additional child request, or when circumstances result in an ~~applicant's~~ applicant or recipient's request for good cause. The worker does not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish evidence or information.

~~(2B)~~ OKDHS determines that the client has good cause for refusing to cooperate only if:

- ~~(A)i~~ there is possible physical or emotional harm to the child;
- ~~(B)ii~~ there is possible physical or emotional harm to the parent or caretaker;
- ~~(C)iii~~ the child was conceived as a result of incest or forcible rape;
- ~~(D)iv~~ legal proceedings for adoption of the child are pending before a court; or
- ~~(E)v~~ the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

~~(3C)~~ It is the responsibility of the applicant or recipient who makes a claim for good cause to supply documentary evidence to establish the claim, or to furnish sufficient information to permit OKDHS to investigate the circumstances of good cause for refusing to cooperate. Uncorroborated statements of the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. Examples of acceptable written statements include:

- ~~(A)i~~ birth certificate or medical or law enforcement records which indicate that the child was conceived as a result of incest or forcible rape;
- ~~(B)ii~~ court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;
- ~~(C)iii~~ criminal, medical, child protective services, social services, psychological, or law enforcement records indicating that the putative or absent parent might inflict physical or emotional harm on the child or caretaker;
- ~~(D)iv~~ medical records indicating the emotional health history and present emotional health status of the caretaker or child, or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker or child;
- ~~(E)v~~ a written statement from a public or licensed private social agency that the applicant or recipient is being assisted by OKDHS to resolve

the issue of whether to keep the child or relinquish the child for adoption; and

~~(Fvi)~~ sworn statements from individuals other than the client with knowledge of the circumstances which provide the basis for the good cause claim.

~~(4D)~~ Upon request, the worker assists the client in obtaining evidence that is not reasonably obtainable. This requirement is limited to the specific documentary evidence in ~~(3)(A)~~ (C)(i) through ~~(F)~~ (vi) of this subsection. The client must specify the type of document or record needed, as well as provide sufficient identifying information to make it possible to be obtained.

~~(5E)~~ Under limited conditions the ~~parent(s)~~ parent of a child removed from the home by a custody order may be exempt from the required referral to the CSED district office as a condition of the child's eligibility. ~~The Children and Family Services Division (CFSD) or Office of Juvenile Affairs (OJA) worker must send a referral that includes reasons for the request of an exemption to the requirement to cooperate in the development of child support. This can occur when the judge from the juvenile court states that no child support is to be pursued.~~

~~(db)~~ **Failure to cooperate in the pursuit of child support.** Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.

(1) Actions indicating failure to cooperate include refusals to:

- (A) identify and assist in locating a known parent;
- (B) establish paternity; or
- (C) establish, modify, or enforce a support order.

(2) When the worker is informed by CSED that the client is not cooperating, the worker closes the subsidized child care benefit for the next negative action benefits effective ten calendar days from the date action is taken.

**(c) Cooperation with CSED following closure of the subsidized child care benefits.** The client must verify that he or she is cooperating with CSED before subsidized child care benefits can be approved again.

(1) If the client cooperates with CSED within 30 calendar days of the closure of the subsidized child care benefits and the worker is notified of this cooperation within this time frame, the worker can reopen the benefits back to the date they closed without imposing a penalty period.

(2) If the client does not to cooperate with CSED or waits to inform the worker of this cooperation for more than 30 calendar days from the date the subsidized child care benefits closed, the client must complete a new application before care can be approved. The earliest date subsidized child care benefits can be approved is the date the client completes a child care interview and provides all necessary verification in accordance with OAC 340:40-3-1.

**(d) Exploration and development of potential income other than child support.** The worker explores all other

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potential sources of income such as Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, veterans benefits, and increased wages at the time of application and at each review for all members of the household whose income must be considered in accordance with OAC 340:40-7-6. The client must apply for or continue to pursue all potential sources of income for which it appears likely he or she may be eligible except for SSI. The client is encouraged but not required to apply for SSI when the client indicates that a household member has a disability. The worker gives the client 90 calendar days from the date potential income is identified to pursue such income.

(1) If the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) If the client agrees to pursue all potential income and then fails to do so, the worker closes subsidized child care benefits effective ten calendar days from the date the worker takes action.

(3) If the client is approved for the potential income or offered a raise in pay and refuses to accept it, the worker closes the subsidized child care benefits effective ten calendar days from the date the worker takes action.

(4) If the client's pay is decreased either in rate of pay or number of hours worked, the worker explores why the decrease occurred. If the client requested the decrease to avoid a family share co-payment increase or to maintain eligibility for the subsidized child care benefits, the worker closes the subsidized child care benefits.

(5) At each review, the worker determines whether the client continues to pursue potential income.

(A) If the client begins receiving previously identified potential income, the worker considers the income for the next negative action deadline after it is reported.

(B) If the client was determined not eligible for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) If the client stops pursuing the income and was not determined ineligible for it, the worker closes the client's child care benefit for failure to cooperate effective ten calendar days from the date the worker takes action.

(6) If the client's subsidized child care benefits were closed because of failure to cooperate, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care can be approved.

(A) If the client verifies cooperation within 30 calendar days of the closure of subsidized child care benefits, the worker can reopen the benefits back to the date they were closed without imposing a penalty.

(B) If the client does not cooperate or waits to verify cooperation for more than 30 calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is

approved. The earliest date subsidized child care benefits can be approved is the date the client completes a child care interview and provides all necessary verification in accordance with OAC 340:40-3-1.

### **340:40-7-11. Sources of income considered**

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded in OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. Gross income is treated the same for both types of income.

(b) **Earned income.** Earned income means total money earned by an individual through the receipt of wages, salary, commission, or profit from activities in which the individual is engaged as self-employed or as an employee.

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Only the portion of the cafeteria plan the client controls is counted as income.

(B) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(C) Payments made for annual leave, sick leave, or severance pay are considered as earned income during the month such income is received whether paid during employment or at termination of employment.

(D) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Earnings derived from a business enterprise owned solely or in part by the individual are considered as self-employment income. ~~Gross~~ Except for households with farming income, self-employment income for households declaring business expenses is determined by calculating total gross receipts or sales and subtracting the costs of producing the income listed in this Section 50% of the gross income to arrive at the net profit. Alternatively, the net business profit for the most recent tax year as reported on Internal Revenue Service Form 1040, Schedule C, Profit or loss from Business, may be used. See (b)(2)(F) of this Section to determine self-employed farm income.

~~(A) Costs of producing self-employment income.~~ Allowable costs of producing self-employment income include, but are not limited to, the identifiable cost of labor, stock, raw material, seed and fertilizer, and payments on the principal of the purchase price of income producing real estate and capital resources, equipment, machinery, and other durable goods, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property. Items not considered as a cost of producing self-employment income are:

(i) net losses from previous periods;

- ~~(ii) federal, state, and local income taxes, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation;~~
- ~~(iii) depreciation;~~
- ~~(iv) penalties and fines; and~~
- ~~(v) charitable contributions.~~

**(BA) Monthly self-employment income.**

Self-employment income received on a monthly basis is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business income, the worker calculates the self-employment income based on anticipated earnings.

**(CB) Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

**(CC) Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged over a 12-month period, even if the income is received in a short period of time. If the averaged amount does not accurately reflect the individual's actual monthly circumstances because the individual has experienced a substantial increase or decrease in business income, self-employment income is based on anticipated earnings.

**(CD) Income from rental property.** Income from rental property is considered income from self-employment.

**(CE) Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount. If the roomer or boarder is a non-relative adult of the opposite sex, OAC 340:40-7-6(ab)(5) applies.

**(CF) Self-employed farm income.** ~~Self employed farm income is determined like other self employment income except when the business expenses exceed the self employment income. When the cost of producing self employment income exceeds the income derived from self employment as a farmer, such losses are offset against any other countable income in the household. When the annual net loss has been established, the worker prorates the loss by dividing by 12 for the monthly amount to be subtracted from the total countable income. For purposes of this exception, to~~ To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1000 or more from the farming enterprise. Farming is defined as cultivating or operating a farm for profit either as owner or tenant. A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised and where they are artificially fed and

protected and does not include an area where they are merely caught or harvested. A plant nursery is a farm for purposes of this definition. To determine the net monthly self-employed farm income, the worker:

- (i) adds all gross self-employment income excluding capital gains;
- (ii) subtracts the total allowable business expenses from the total gross self-employment farm income. Items that are not allowable business expenses include:
  - (I) net losses from previous periods;
  - (II) federal, state, and local income taxes;
  - (III) money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation;
  - (IV) depreciation;
  - (V) penalties and fines;
  - (VI) charitable contributions; or
  - (VII) transportation costs to and from work;
- (iii) subtracts any additional business expenses that exceed the farm income against any other countable income in the household; and
- (iv) divides the net self-employment farm income by the number of months to be averaged.

(3) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

(4) **Workforce Investment Act (WIA).** Income earned in on-the-job training positions provided under Section 134 of WIA is considered earned income for individuals who are 19 years of age and older. ~~This is on the job training provided under Section 134 of WIA for individuals 19 years of age or older.~~ On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded under OAC 340:40-7-12. ~~This includes income to Volunteers in Service to America, University Year for Action, and similar volunteer payments.~~

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded ~~as long as the child is attending school regularly. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break per OAC 340:40-7-12.~~

(c) **Unearned income.** Unearned income ~~means~~ is income an individual receives for which he or she does not put forth

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any daily, physical labor. Types of income listed in paragraphs (1) through (11) of this subsection are considered unearned income.

- (1) **Assistance payments.** Assistance payments include state means tested programs such as Temporary Assistance for Needy Families (TANF) and State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Cash Assistance.
- (2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.
- (3) **Supplemental Security Income (SSI).** SSI is considered unearned income.
- (4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.
- (5) **Child support, court-ordered child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, which are made directly to the household from non-household members are counted as unearned income.
  - (A) If a child care payment is paid directly to the child care provider, it is not considered income for the client.
  - (B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record. If the absent parent or another third party is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment which that must be met before OKDHS makes a subsidy payment to the provider.
  - (C) Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made to the household. Payments for medical support are excluded.
- (6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.
- (7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except in instances where the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed \$30 per calendar quarter per individual.
- (8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income.
- (9) **Lump sum payments.** Non-recurring lump sum payments ~~which are~~ from a countable income source are

considered as income the month they are received. Money not expended within the month of receipt is considered as a resource. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

- (10) **Title IV-E or State Adoption Subsidy.** Federally or state funded adoption subsidy payments ~~are~~ made to adoptive parents ~~of children with special needs~~ are considered as unearned income.
- (11) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered as income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

## SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

### 340:40-9-1. Review of child care eligibility

(a) **Child care review.** ~~The social services specialist worker completes a review of all conditions of eligibility for subsidized child care services benefits by the date agreed upon by the social services specialist and the client. A review is completed no later than 12 months from the date of approval of the application or from the last review. The social services specialist also completes a review when a family's cash assistance stops and child care services are still needed. When the need factor for child care is for a protective or preventive reason, child care is reviewed more often in accordance with OAC 340:40-7-8(e). The client or the client's authorized representative completes and signs Form FSS-1, Comprehensive Application and Review, or Form K-2, Application for Child Care Services. If the client is a semi-annual reporter as described in subsection (b) of this Section, Form FSS-BR-1, Benefit Review Report, may also be used as a review form for subsidized child care benefits. When circumstances change between review months, the worker evaluates whether to make a change to the client's family share co-payment and/or plan of service or whether a complete Form FSS-1 or K-2 is required.~~

(1) A complete application/review form is required when:

- (A) the payee on the child care benefit changes;
- (B) the client's subsidized child care benefits closed because a period of job search was given in accordance with OAC 340:40-7-8(a)(6) and the client finds employment; or
- (C) subsidized child care benefits must be synchronized with the client's food benefits or Medicaid benefits in accordance with subsection (c) of this Section.

(2) The client completes only the last page of Form FSS-1 or K-2 when:

- (A) the days and hours child care is needed changes;

(B) the client requests a child be added to the subsidized child care benefits and that child's plan of service is different than the other children already approved for subsidized child care benefits. Policy regarding adding children is found at OAC 340:40-9-2(b); or

(C) the client's Temporary Assistance for Needy Families benefit closes and there is a continued need for subsidized child care benefits.

(b) **Semi-annual reporting households.** ~~Households considered semi-annual reporters for food stamps or Medicaid must be~~ If a client receiving subsidized child care benefits is also receiving food benefits and/or Medicaid and is considered a semi-annual reporter for one or both of these programs, the client is considered a semi-annual reporters reporter for the Child Care Program.

(1) Semi-annual reporters are sent a computer-generated benefits report form Form FSS-BR-1 in the fifth month of certification and every six months thereafter as long as the subsidized child care benefits remain active and the client remains in benefit reporting status.

(2) The benefits report form Form FSS-BR-1 asks households to report changes in the household's circumstances which that could affect their benefits. The semi-annual benefits report form Form FSS-BR-1 must be completed and returned to the county office human services center, along with all required verification, by the last day of the sixth month, of the review period or the subsidized child care benefits automatically close.

(3) If the household fails to provide sufficient information regarding a deductible expense, continued eligibility is determined without regard to the deduction.

(4) The social services specialist worker must act on any changes reported on the benefits report form FSS-BR-1 in a timely manner.

(c) **Coordination Synchronization of benefits.** ~~Certification~~ When the client is receiving other benefits from the Oklahoma Department of Human Services (OKDHS) in addition to the subsidized child care benefits, certification and review dates must be coordinated between Child Care Program, food stamps, and Medicaid benefits when the household is a semi-annual reporter with the other programs.

**340:40-9-2. Case changes**

(a) **Case changes.** The client must report within ten calendar days any changes in his or her circumstances that would result in an increase or decrease in ~~the~~ subsidized child care benefit within ten days ~~benefits.~~ The worker acts on changes which that increase or decrease the subsidized child care benefit ~~benefits~~ regardless of whether the client is a semi-annual reporter or not. Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

- (1) household income;
- (2) household composition;
- (3) names and number of household members in child care;
- (4) the reason child care is needed;

(5) parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed;

(6) the client's address or telephone number;

(7) the child care facility the child is attending;

(8) child care is no longer being used or needed; and

(9) family size; ~~and~~

~~(10) days and hours child care is needed.~~

(b) **Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two working days of the client providing all necessary verification to determine eligibility. The client completes the last page of Form FSS-1, Comprehensive Application and Review, or Form K-2, Application for Child Care Services, only when the days and hours this child needs ~~the~~ subsidized child care benefit ~~benefits~~ differs from the current plan of service. If eligible, the child can be approved for a subsidized child care benefit ~~benefits~~ beginning with the date of request. Family share co-payment increases due to adding an additional child to the ~~case~~ subsidized child care benefits are effective the month after the month the client requests a subsidized child care benefit ~~benefits~~ for that child.

(c) **Changes which that increase the subsidized child care benefit benefits.** When the client reports a change timely that increases the subsidized child care benefit ~~benefits~~, the client and the worker jointly plan the effective date of the change. When the client does not report changes are not reported timely, the earliest date the worker increases the subsidized child care benefit ~~benefits~~ is the first day of the month in which the client reports the change.

(d) **Changes that decrease the subsidized child care benefit benefits.** When possible, the worker plans with the client changes that decrease the subsidized child care benefit ~~benefits~~ before implementing the change. When the client reports an increase in income, the worker uses Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Rates Schedule, to determine whether the household meets income guidelines. ~~See in accordance with OAC 340:40-5-1(A)(9).~~

(e) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether or not the client reports this change timely. The worker completes provider changes within two working days of the date the client reports the change.

(f) **Closure of the subsidized child care benefit benefits.** When advance notice is required, the worker closes the subsidized child care benefit ~~benefits~~ ten days from the date ~~he~~ or she takes action is taken. Ten day advance notice is not required when the client is ~~no longer using the child care benefit~~ or gives written permission to the worker agreeing to an earlier closure date.

(g) **Reopen action.** When a client's subsidized child care benefit ~~closes~~ benefits ~~close,~~ it ~~they~~ can be reopened using current eligibility information if policy and procedures were not administered correctly or if county human services center staff receive new or additional information within 30 calendar days of the effective date the benefit ~~benefits~~ terminated that shows the family continues to be eligible. ~~The worker cannot~~

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~~reopen the child care benefit~~ The client must complete a new application when:

- (1) a 30 calendar day period of job search was given because the client lost his or her job or successfully completed school and the subsidized child care ~~benefit was~~ benefits were closed;
- (2) expedited eligibility processing is used and requested verification is not returned within 30 calendar days of the application date. See OAC 340:40-3-1(b); or
- (3) the payee for the child care case changes. ~~A new application must be completed in this instance.~~

## SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

### 340:40-13-3. Child care payments and rates

(a) The Oklahoma Department of Human Services (OKDHS) contracts to purchase out-of-home child care services for children only with licensed providers who:

- (1) post rates and fees;
- (2) sign and comply with all the terms of Form CCDF-1-E, Child Care Provider Contract;
- (3) have participated in mandatory contract training; and
- (4) have access to an account at a financial institution for electronic benefit transfer (EBT) purposes.

(b) ~~By~~ In accordance with Section 85.44B of Title 74 of the Oklahoma Statutes, OKDHS cannot make advance payments to child care providers.

(c) The rates paid by OKDHS are determined by:

- (1) the child's age;
- (2) settings in which the care is provided:
  - (A) the child's own home;
  - (B) a child care center; or
  - (C) a child care home;
- (3) whether the child has disabilities and the provider is approved for the special needs rate unit type. The special needs rate is added to the applicable rate a child care provider receives for a typical child of the same age after the Form ADM-123, Certification for Special Needs Child Care Rate, approval process is followed;
- (4) whether the care is provided ~~on a full-time basis,~~ over four hours per day or a part-time ~~basis,~~ four hours or less per day;
- (5) ~~whether care is provided on the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, blended, or a weekly basis and, if on a weekly basis, whether care is provided three, four, five, six, or seven days per week unit type;~~
- (6) the county in which the provider is located; and
- (7) whether the facility qualifies for a differential quality rate.

(d) ~~For OKDHS purchased in home child care services for children, the allowable rate is the amount as shown on OKDHS Appendix C 4, Child Care Eligibility/Rates Schedule. The in-home child care rate is paid for children cared for in their~~

own homes. The in-home rate is 90% of the one star child care home daily rate shown on OKDHS Appendix C-4, Child Care Eligibility/Rates Schedule, for the child's age of the child. If a child is eligible for the severe or moderate special needs rate, this additional amount is added to the applicable in-home rate for that child.

(e) ~~For OKDHS purchased out of home services~~ When the child is cared for in an out-of-home child care center or home, the allowable rate is the amount as shown on OKDHS Appendix C-4.

(f) Care may only be authorized at one facility per day per child. If the client uses care at two different providers for the same day for the same child, OKDHS staff approves care at only one of the facilities. The parent or caretaker can use care at two different providers for the same child when care is needed on different days of the week.

(g) Charges are authorized and payment is made only when the care provided is in accordance with the jointly developed plan of service between the client, ~~the provider,~~ and OKDHS.

(h) Age-driven rate changes are effective the first of the month following the child's birth date except as shown in (i) of this Section.

(i) Eligibility for a ~~child(ren)~~ child stops the day before:

- (1) a typical child reaches age 13; or
- (2) a child with disabilities or a child in OKDHS custody reaches age 19.

(j) A change to add the higher special needs rate to the applicable daily rate is effective the first of the month following the month eligibility for this rate is determined.

(k) A child care provider may be approved for a differential quality rate if he or she meets the criteria for this rate. This rate is given effective the first of the month following the month Division of Child Care (DCC) licensing staff approves the provider for the rate. The rate is designated on OKDHS Appendix C-4 by its "Star" star status.

(l) The traditional school year blended rate may be approved for children age four and older from August 16th through May 15<sup>th</sup> each year for children attending public school, a pre-kindergarten program, or Head Start during the traditional school year. The extended school year blended rate may be approved for the full calendar year when children attend school the entire year.

### 340:40-13-5. Child care provider contracts

(a) **Criteria.** In order for the Oklahoma Department of Human Services (OKDHS) to purchase out-of-home child care services, a provider must have a current Form CCDF-1-E, Child Care Provider Contract, signed by both the owner of the facility and the OKDHS Director or designee on file with the Family Support Services Division (FSSD) Child Care Section. OKDHS assures all persons that OKDHS or any provider of contractual services, does not take into account a person's race, color, religion, sex, national origin, or disability in the selection or eligibility of individuals to receive services and in the manner of providing them. Age may be a factor only to the extent that certain services are designed for a particular age group.

(1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the Director of OKDHS or to the Secretary of Health and Human Services, Washington, D.C. 20201.

(2) ~~County Local~~ Division of Child Care (DCC) licensing staff provide initial information about contracts for child care facilities. The provider contacts the ~~county~~ child care liaison to request a contract.

(3) Child care contracts are valid for a maximum of one year. They are automatically renewed for successive one year terms, under the same terms and conditions, unless either the child care provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the current term.

(b) **Procedure for obtaining child care contracts.** OKDHS contracts only with licensed or permitted out-of-home providers. A child care center provider requesting an initial contract must be licensed or permitted and have a one star plus, two star, or three star status before signing Form CCDF-1-E. A one star child care home provider requesting an initial contract must be licensed; not on permit, before signing Form CCDF-1-E. A child care home provider at one star plus, two star, or three star status requesting an initial contract must be licensed or permitted before signing Form CCDF-1-E. The procedures in (1) through (8) of this subsection are used to obtain child care contracts.

(1) DCC licensing staff give the child care provider a promotional flyer containing information about contracting with OKDHS. The provider is instructed to contact the ~~county~~ child care liaison for training and review of the contracting requirements.

(2) When contacted by the owner or director of a child care facility, the ~~county~~ child care liaison ~~arranges an appointment at which time explains that the owner or director is required to~~ must review the "Contracting with DHS for Child Care Subsidy Payments Handbook" and watch a training video. ~~The owner or director must fulfill this training requirement before an initial contract is submitted to the FSSD Child Care Section. In-home child care providers must also watch this training video.~~

(A) If the owner of a child care center does not live in Oklahoma, the director of the facility can fulfill this requirement.

(B) Child care directors are not required but are highly encouraged to also watch the training video.

(C) The child care liaison arranges an appointment time with the provider to watch the training video.

(3) If the provider wishes to contract with OKDHS following this training, the ~~county~~ child care liaison ~~provides~~ gives Form CCDF-1-E to the child care provider after typing all identifying information on the contract. The child care liaison explains that the earliest date a contract is valid is the date of approval by the OKDHS Director or designee.

(4) The owner and director sign the contract, have it notarized, and return the contract to the ~~county~~ child care liaison. ~~Proof~~ The owner must also provide proof of his or

her identity, a copy of his or her Social Security card, and proof of ownership of the child care business is attached.

(5) The child care liaison attaches Form CCDF-1-E, a copy of the owner's Social Security card, and proof of ownership to the Contract Routing Checklist and sends them to the FSSD Child Care Section for approval or denial. If the DCC licensing staff provide the ~~county~~ child care liaison with a copy of the provider's Oklahoma State Bureau of Investigation background investigation report, he or she also attaches that document to the contract.

(6) If the child care provider signs Form CCDF-1-E but fails to complete other contracting requirements within 30 calendar days, the child care liaison attaches Form CCDF-1-E to the Contract Routing Checklist and sends it to the FSSD Child Care Section for denial.

(7) If approved, the FSSD Child Care Section staff assign a contract number and send a copy of the signed contract back to the provider.

(8) If denied, the FSSD Child Care Section returns the original contract to the provider with a letter advising the provider OKDHS has decided it is in the best interest of OKDHS not to contract with the provider.

(c) **Out-of-state providers.** OKDHS does not contract with out-of-state child care providers.

(d) **Changes that must be reported.** Form CCDF-1-E advises child care providers to report to the FSSD Child Care Section the anticipated sale of the business, change of legal business entity, change of location, or plan to stop caring for children no less than 30 calendar days prior to the change occurring. The training video does not need to be viewed as long as the person who signs as owner on the new contract remains the same and he or she already viewed the most recent training video. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. A new contract is required in the situations included in (1) through (4).

(1) **Change in facility status.** A change in facility status occurs when a facility changes from a home to a center or a center to a home. A change from a family child care home to a large family child care home does not require a new contract as long as the same license number is used.

(A) When the status of a child care home changes to a child care center, a new license application is required. Prior to signing a new contract, the provider must be issued a license or permit at one star plus, two star, or three star status.

(B) When the status of a child care center changes to a child care home, a new license application is required. Prior to signing a new contract, the provider must be issued a license or permit at one star plus, two star, or three star status, or be licensed; not permitted, at one star status.

(2) **Change in ownership for a child care center.** The new owner must meet or be anticipated by DCC licensing staff to meet one star plus, two star, or three star status within 30 calendar days before a new contract is signed and submitted to the FSSD Child Care Section.

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(3) **Change of location.** When a child care center or home provider changes the location of his or her child care business, the provider must sign a new license application and contract agreeing to care for children only in the new location. The provider's license and contract remain open with the same begin date, the same number assigned, and the star status remains the same.

~~(A) A child care center provider must sign a new license application when the facility changes location. They must wait to sign a new contract until a license or permit is approved at the new location. Center providers approved at one star status at their new location may only sign a new contract if a child(ren) already receiving a child care subsidy at the old location wishes to move to the new location.~~

~~(B) A child care home provider is not required to sign a new license application when the home location changes. A new contract is signed agreeing to care for children receiving a child care subsidy only at the new location. The provider maintains the same contract number.~~

(4) **Change of legal business entity.** The child care provider must complete a new license application and contract when he or she changes his or her legal business entity. Examples of changing legal business entity include changing from a sole proprietor to a corporation, partnership, or limited liability company. The provider must provide proof of ownership.

(A) A child care center provider who was at one star plus, two star, or three star status under their previous legal business entity can sign and submit Form CCDF-1-E to the FSSD Child Care Section while the new license application is pending. A child care center provider who was at one star status under the previous legal business entity cannot sign a new contract until attaining one star plus, two star, or three star status even if a ~~child(ren)~~ child already receiving a child care subsidy benefits is currently in care under their previous legal business entity.

(B) Child care home providers who were at one star plus, two star, or three star status under their previous legal business entity can sign and submit Form CCDF-1-E to the FSSD Child Care Section while the new license application is pending. Child care home providers who were at one star status may only sign a new contract once they are licensed; they cannot be on permit.

(e) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract. In certain circumstances, a child care center provider who owns more than one child care center only may move children eligible for a child care subsidy subsidized child care benefits to an alternate center after he or she receives prior approval in writing from the FSSD Child Care Section authorizing him or her to move the children and the point-of-service (POS) machine to the alternate site for a

designated period of time. FSSD Child Care Section staff give approval when:

(1) ~~the alternate site is owned by the same owner or legal business entity owns the alternate site;~~

(2) ~~the alternate site is licensed and contracted at the same star level;~~

(3) ~~there is a legitimate business reason for providing care in another location; and~~

(4) ~~the provider advises FSSD Child Care Section staff how he or she is ensuring that parents are aware their children are being cared for at a difference location.~~

(f) **Renewal of child care contracts.** Child care provider contracts are effective July 1 through June 30 of each year. They Contracts are automatically renewed for successive one year terms, under the same terms and conditions, unless either the provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the previous term. A contract is not renewed when a provider fails to attend required contract training or to provide any other information or documents requested during the contract renewal period.

(g) **Contract violations.** ~~The worker or the county child care liaison investigates all reports of contract violations by providers. The worker or the county child care liaison discusses and participates in planning with the provider to eliminate any apparent violation. The provider is informed that, under the terms of the agreement with OKDHS, all terms of the contract must be met and ten calendar days are given to correct any violation. If at the end of the ten day period the provider fails to correct the violation, the worker documents and reports the continued violation to his or her supervisor, who is then responsible for submitting the information by memorandum to FSSD Child Care Section for a determination of further action. When the child care provider signs Form CCDF-1-E, the provider is agreeing to abide by the terms of the contract. When human services center staff become aware that a provider is violating the terms of the contract, he or she advises the provider to stop the practice immediately and sends an e-mail to FSSD Child Care Section advising of the circumstances. He or she may also complete Form OIG-1, Referral Form, to report the violation to the Office of Inspector General.~~ Examples of contract violations include, but are not limited to:

(1) ~~discriminating against persons seeking services either by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990;~~

(2) ~~failing to post all of the facility's rates and fees maintain a drug-free workplace;~~

(3) ~~failing to inform OKDHS of a change in facility status, location, legal business entity, or ownership of the business at least 30 calendar days in advance of the change possessing or swiping a client's electronic benefit transfer (EBT) card;~~

(4) ~~charging a client receiving subsidized child care more than the OKDHS rate for days and hours within the~~

~~client's plan of service knowing a client's personal identification number (PIN);~~

~~(5) moving the child(ren) from the agreed upon location shown in the contract for reasons other than field trips and claiming for services at this other location without prior written approval from the FSSD Child Care Section failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the POS machine. The attendance, not time, of a child approved for the part-time or blended unit type must be recorded during the school year by the parent or caretaker;~~

~~(6) subcontracting services to another provider without written prior approval from charging a client receiving subsidized child care more than the OKDHS rate for days and hours within the client's plan of service;~~

~~(7) refusing unlimited access by a parent or caretaker to the facility during the hours of operation charging a client for days and hours outside of client's plan of service or requiring that the client swipe attendance for those days and hours when the additional hours are a requirement of the provider and not a choice of the client;~~

~~(8) failing to maintain a drug free workplace moving the children from the agreed upon location shown in the contract for reasons other than field trips and claiming for services at this other location without prior written approval from the FSSD Child Care Section;~~

~~(9) refusing to make available to OKDHS within an hour of request by any OKDHS representative all business records that document proper fiscal and program management by the provider moving the POS machine and allowing parents to record time and attendance at a different location than agreed upon in contract without receiving prior written approval from the FSSD Child Care Section in accordance with subsection (e) of this Section;~~

~~(10) failing to advise and provide OKDHS a completed copy of any agreement the provider enters into within 30 calendar days of entering into such collaboration or agreements, and This includes agreements with Head Start, Early Head Start, public schools, and/or any other programs receiving state or federal funding;~~

~~(11) claiming and/or receiving payment from OKDHS for the same hours of care the provider receives payment from another state or federal funding source;~~

~~(12) failing to inform OKDHS of a change in facility status, location, legal business entity, or ownership of the business at least 30 calendar days in advance of the change;~~

~~(13) filing manual claims when they could be filed through the EBT system;~~

~~(14) failing to post all of the facility's rates and fees;~~

~~(15) subcontracting services to another provider without written prior approval from OKDHS;~~

~~(16) refusing unlimited access by a parent or caretaker to the facility during the hours of operation;~~

~~(17) refusing to make available to OKDHS within an hour of request by any OKDHS representative all business records that document proper fiscal and program management by the provider;~~

~~(18) breaching the contract signed by the provider with the OKDHS EBT contractor;~~

~~(19) not maintaining written records for any manual claims filed during the last three years; and~~

~~(20) failing to inform OKDHS in writing within ten calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of the child care business, who has been convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act.~~

~~(h) **Additional electronic benefit transfer (EBT) contract violations.** Examples of EBT contract violations by a provider include:~~

~~(1) filing manual claims when they could be filed through the EBT system;~~

~~(2) possessing or swiping a client's EBT card;~~

~~(3) knowing a client's personal information number (PIN);~~

~~(4) failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the POS machine. The attendance, not time, of a child(ren) approved for the part time or blended authorization must be recorded during the school year by the parent or caretaker;~~

~~(5) moving the POS machine and allowing parents to record time and attendance at a different location than agreed upon in the contract without receiving prior written approval from the FSSD Child Care Section;~~

~~(6) breaching the contract signed by the provider with the OKDHS EBT contractor; and~~

~~(7) not maintaining written records for any manual claims filed during the last three years.~~

~~(h) **Cancellation of child care provider contracts.** FSSD Child Care Section staff initiates the cancellation by issuing a notice to the provider by certified mail and regular mail at the same time.~~

~~(1) Contracts may be canceled:~~

~~(A) with cause. The effective date of cancellation is 13 calendar days after FSSD staff mail the notice. This allows three calendar days for mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) that was violated; or~~

~~(B) without cause. The effective date of cancellation is 33 calendar days after FSSD staff mail the notice. This allows three calendar days for mailing time.~~

~~(2) The FSSD Child Care Section communicates with the county child care liaison when a contract is being canceled to ensure that county human services center staff have sufficient time to plan with clients to find another facility, if necessary. When it is necessary to cancel authorizations with a child care provider, the provider is notified by use of a computer-generated notice. FSSD Child Care Section staff closes all authorizations with the provider whose contract is canceled.~~

~~(3) Copies of all correspondence regarding contract cancellation proceedings that are not initiated by the~~

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provider are routed by the When OKDHS initiates contract cancellation. FSSD Child Care Section to staff route all correspondence regarding contract cancellation proceedings to:

- (A) DCC, licensing coordinator;
  - (B) Legal Division;
  - (C) Finance Division;
  - (D) Office of Inspector General;
  - (E) FSSD Overpayment Section;
  - (F) Commodity Distribution Unit;
  - (G) the Child Care Resource and Referral Agency serving the area where the provider is located;
  - (H) Department of Education, Child Care Food Program;
  - (I) Cherokee Nation, if serving the area where the provider is located;
  - (J) Creek Nation, if serving the area where the provider is located;
  - (K) Choctaw Nation, if serving the area where the provider is located;
  - (L) Field Operations Division area office where the provider is located; and
  - (M) the local county director, ~~county~~ child care liaison, DCC licensing supervisor, and DCC licensing staff where the provider is located.
- (4) Copies of all correspondence regarding contract cancellation proceedings that are initiated by the provider are routed by the FSSD Child Care Section to:
- (A) Finance Division; and
  - (B) local county director, ~~county~~ child care liaison, DCC licensing supervisor, and DCC licensing staff where the provider is located.

*[OAR Docket #06-758; filed 4-26-06]*

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

*[OAR Docket #06-759]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Financial Eligibility Criteria

Part 3. Income

340:50-7-30. [AMENDED]

Subchapter 9. Eligibility and Benefit Determination Procedures

340:50-9-1. [AMENDED]

340:50-9-5. [AMENDED]

Subchapter 11. Special Procedures

Part 3. ~~Simplified Application Processing (SAP) for Food Stamp Program (SFSP) for Temporary Assistance for Needy Families (TANF) and categorically needy Title XIX cases (ABCD) Companion State Supplemental Payment (SSP) recipient(s)~~

340:50-11-20. [AMENDED]

340:50-11-22. through 340:50-11-23. [AMENDED]

340:50-11-25. [AMENDED]

340:50-11-26. [REVOKED]

340:50-11-27. [AMENDED]

(Reference APA WF # 05-03 and 05-23)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Parts 271 through 283 of Chapter 7 of the Code of Federal Regulations; 2002 Farm Bill; Section 183(c) of Title 38 of the United States Code.

### DATES:

#### Comment period:

January 17 through February 16, 2006

#### Public hearing:

None requested

#### Adoption:

February 28, 2006

#### Submitted to Governor:

February 28, 2006

#### Submitted to House:

February 28, 2006

#### Submitted to Senate:

February 28, 2006

#### Gubernatorial approval:

April 13, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2006.

#### Final adoption:

April 26, 2006

#### Effective:

July 1, 2006

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 9. Eligibility and Benefit Determination Procedures

340:50-9-1. [AMENDED]

340:50-9-5. [AMENDED]

Subchapter 11. Special Procedures

Part 3. ~~Simplified Application Processing (SAP) for Food Stamp Program (SFSP) for Temporary Assistance for Needy Families (TANF) and categorically needy Title XIX cases (ABCD) Companion State Supplemental Payment (SSP) recipient(s)~~

340:50-11-20. [AMENDED]

340:50-11-22. through 340:50-11-23. [AMENDED]

340:50-11-25. [AMENDED]

340:50-11-26. [REVOKED]

340:50-11-27. [AMENDED]

(Reference APA WF # 05-03)

#### Gubernatorial approval:

July 26, 2006

#### Register publication:

22 Ok Reg 2767

#### Docket number:

05-1197

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

Proposed Food Stamp Program permanent rule revisions: (1) allow a 12-month certification period for certain food stamp households; (2) clarify application processing rules for the Simplified Food Stamp Program (SFSP); (3) clarify eligibility determination rules for households who qualify for SFSP; (4) change Simplified Application Processing (SAP) to SFSP; (5) revoke rules that are moved to other Sections; (6) explain actions to be taken regarding food stamp benefits when the Temporary Assistance for Needy Families (TANF) case closes; (7) specify that households are not required to report changes while receiving transitional food benefits (TFB); (8) simplify computation of business related expenses for non-farm related self-employed enterprises; (9) identify households whose food benefits are processed using the SFSP rules; and (10) remove redundant language.

### CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 3. INCOME

340:50-7-30. Self-employed households

Households whose income is derived either wholly or in part from a self-employment enterprise are treated in accordance with the procedures listed in paragraphs (1) - through (98) of this Section.

(1) **Capital gains.** The proceeds from the sale of capital goods or equipment is income for program purposes and is calculated in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment is taxed for federal income tax purposes, the ~~social services specialist worker~~ counts the full amount of capital gain as income.

(2) **Costs of producing self-employment income.**

(A) Allowable costs of producing self-employment income include, but are not limited to:

- (i) the identifiable cost of labor, stock, raw material, seed and fertilizer;
- (ii) payments on the principal of the purchase price of income producing real estate, capital assets, equipment, machinery, other durable goods;
- (iii) interest paid to purchase income producing property;
- (iv) insurance premiums; and
- (v) taxes paid on income producing property.

(B) Items not considered as a cost of producing self-employment income are:

- (i) net losses from previous periods;
- (ii) federal, state, and local income taxes;
- (iii) money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation which are accounted for by the appropriate amount of earned income deduction from DHS Appendix C 3, Maximum Coupon Allotments and Standards for Deductions, Maximum Income and Utilities; and
- (iv) depreciation.

(32) **Monthly self-employment income.** Self-employment income which is received on a monthly basis but which represents a household's annual support is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the ~~social services specialist worker~~ calculates the self-employment income based on anticipated earnings.

(43) **Seasonal self-employment income.** Self-employment income which is intended to meet the household's

needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(54) **Annualized self-employment income.** Self-employment income which represents a household's annual support must be analyzed over a 12-month period, even if the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period if the income represents the farmer's annual support.

(A) If the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced substantial increase or decrease in business, the ~~social services specialist worker~~ calculates the self-employment income on anticipated earnings.

(B) The ~~social services specialist worker~~ does not calculate self-employment income on the basis of prior earnings such as income tax returns when an increase or decrease of business has occurred.

(i) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(ii) If the business has been in operation for a short time and there is insufficient data to make a reasonable projection, self-employment income is recomputed at each new certification until a full year's information is available.

(65) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in business, the ~~social services specialist worker~~ calculates the self-employment income based on anticipated earnings.

(A) For those households whose self-employment income is calculated on an anticipated basis, the ~~social services specialist worker~~ adds any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divides this amount by 12. This amount is used in successive certification periods during the next 12 months except that a new average monthly amount must be calculated over this 12-month period if the anticipated amount of capital gain changes.

(B) The ~~social services specialist worker~~ adds the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtracts the cost of producing the self-employment income.

(76) **Determining net monthly food stamp non-farm income.** Self-employment income is not compared to the maximum gross income standards shown on DHS

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Appendix C-3 Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Stamp Allotments and Standards for Deductions, Maximum Income, and Utilities, until after the business expenses have been deducted from the gross self-employment income.

(A) To determine the net monthly self-employment income the ~~social services specialist worker~~:

(i) adds all the gross self-employment income including capital gains;

(ii) ~~subtracts the total allowable cost of doing business from the total gross self-employment income~~ 50% of the gross self-employment income for those households declaring business expenses for those households declaring business expenses or uses the net profit for the most recent tax year as reported on the Internal Revenue Service Form 1040, Schedule C, Profit or Loss from Business; and

(iii) divides the net self-employment income by the number of months to be averaged.

~~(B) When the business expense exceeds the gross self-employment income, such expenses may not be deducted from other household income. The household is considered to have zero self-employment income.~~

~~(C)~~ The monthly net self-employment income is added to all other earned income received by the household.

(i) The total monthly earned income less the earned income deduction according to ~~DHS OKDHS~~ Appendix C-3 is then added to all other monthly income received by the household.

(ii) The standard deduction, dependent care, and shelter costs are computed as for any other household and subtracted to determine the monthly net income of the household.

~~(87)~~ **Household with income from boarders.** While a household which operates a commercial boarding house may be considered a food ~~stamp benefit~~ household and self-employed as shown in paragraph (7) of this subsection, households with boarders or roomers that are not commercial boarding houses may also receive food ~~stamp benefits~~ as shown in subparagraphs (A)- through (C) of this paragraph.

(A) Persons paying a reasonable amount for room and board are excluded from the household when determining the household's eligibility and benefit level. Payments from the boarder are treated as self-employment income if the boarder is paying a reasonable amount.

(i) The income from boarders includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) Shelter expenses paid directly by boarders to someone outside the household are not counted as income to the household.

(B) After determining the income received from the boarder, the ~~social services specialist worker~~

~~excludes that portion 50% of the boarder payment which is a cost of doing business. The cost of doing business is equal to the amount of the food stamp allotment for a household size that is equal to the number of boarders unless the amount paid for board is less than this amount, or the actual documented cost of providing room and board. If actual cost is used, only the separate and identifiable cost of providing room and board is excluded.~~

(C) The net income from self-employment is included with other earned income and the earned income deduction from ~~DHS OKDHS~~ Appendix C-3 is taken.

(i) Shelter cost the household actually incurred, even if the boarder contributes to the household for part of the household's shelter expense, is computed to determine if the household will receive a shelter deduction.

(ii) The shelter and utility cost cannot include any expense billed to and directly paid by the boarder to a third party.

~~(98)~~ **Self-employed farm income.** Self-employed farm income is determined just like any other self-employed income ~~except when the business expenses exceed the self-employment income. When the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses are offset against any other countable income in the household. When the annual net loss is established, the loss is prorated by dividing by 12 for the monthly amount to be subtracted from the total countable income prior to subtraction of any applicable standard deduction, dependent care, and shelter costs. For purposes of this exception, to~~ To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1000 or more from the farming enterprise. Farming is defined as cultivating or operating a farm for profit either as owner or tenant. A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised and where they are artificially fed, protected, and cared for, and does not include an area where they are merely caught or harvested. A plant nursery is a farm for purposes of this definition.

(A) To determine the net monthly self-employed farm income, the worker:

(i) adds all the gross self-employment income including capital gains;

(ii) subtracts the total allowable cost of doing business as listed in paragraph 8 of this subsection, from the total gross self-employment farm income; and

(iii) divides the net self-employment farm income by the number of months to be averaged.

(B) When the business expense exceeds the gross self-employment farm income, the losses are offset against any other countable income in the household. When the annual net loss is established, the loss is

prorated by dividing by 12 for the monthly amount to be subtracted from the total countable income prior to subtraction of any applicable standard deduction, dependent care, and shelter costs.

(C) The monthly net self-employment farm income is added to all other earned income received by the household. The total monthly earned income less the earned income deduction according to OKDHS Appendix C-3 is then added to all other monthly income received by the household.

(i) The standard deduction and dependent care costs are computed as for any other household.

(ii) The shelter costs are computed as for any other household unless the income producing farm property is connected to the home property and the self-employment costs cannot be separately identified from the shelter costs.

(I) Proration may be used to separately identify costs based on information from a mortgage lender, real estate tax records, Farmer's Home Administration (FmHA) documents, or insurance premiums.

(II) The shelter ratio may be applied to taxes and insurance costs if better information is not readily available.

(III) If the cost of rent or mortgage, insurance, taxes, and interest cannot be separated, no self-employment deduction for insurance, taxes, or interest on the mortgage payment is allowed and no portion of the mortgage payment, taxes, or interest may be allowed as shelter costs.

(D) Costs of producing self-employment farm income.

(i) Allowable costs of producing self-employment farm income include, but are not limited to:

(I) payments on the principal of the purchase price of income producing real estate, capital assets, equipment, machinery, other durable goods;

(II) interest paid to purchase income producing property;

(III) insurance premiums; and

(IV) taxes paid on income producing property.

(ii) Items not considered as a cost of producing self-employment income are:

(I) net losses from previous periods;

(II) federal, state, and local income taxes;

(III) money set aside for retirement purposes and other work related personal expenses, such as meals and necessary transportation which are counted for by the appropriate amount of earned income deduction shown on OKDHS Appendix C-3; and

(IV) depreciation.

## SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

### 340:50-9-1. Determining the food stamp benefit allotment and teleprocessing certifications

#### (a) Cases with unverified deductible expenses.

(1) **Food stamp benefits without deductions.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires, the worker determines the household's benefit level without giving a deduction for the claimed but unverified expense. If the household:

(A) is eligible without allowing the expense, an allotment which does not reflect deduction of the expense is provided within 30 calendar days after the application is filed; or

(B) chooses to claim expenses for an unoccupied home, the worker verifies the household's utility expenses for the unoccupied home and uses the appropriate utility standard.

(2) **Benefits delayed.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the household application is held pending or denied.

(b) **Determining household eligibility.** In calculating net monthly income, cents are used in determining each source of each individual's monthly income and the household's monthly dependent care, shelter, or medical expense. When the monthly amount of each individual's source of income or each of the household's expenses is established, and at all other steps of the net income computation, cents are rounded to the nearest dollar, 1 cent through 49 cents is rounded down and 50 cents through 99 cents is rounded up. For example an individual's weekly earnings of \$99.90 are multiplied by the number of checks that will be received in a month's time and the cents rounded to the nearest dollar,  $99.90 \times 4.3 = \$429.57$  rounded to \$430. Due to changes in composition or circumstances, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker is required to change the one income standard to the other when any change is made in the case to adjust the household's eligibility, benefit level, or certification period, or at recertification, whichever is earlier.

(1) **Households without elderly or disabled members.** If the household does not have an elderly or disabled member, the household's total gross monthly income and household size are the first basis for determining eligibility. The household is not eligible if the total gross income exceeds the Maximum Gross Income Standard for the appropriate household size as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Stamp Allotments and Standards for Deductions, Maximum Income, and Utilities (Food Stamps). After gross income, resource, and non-financial conditions of eligibility are established, the net food stamp

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monthly income is computed and compared to the Maximum Net Income Standard for the appropriate household size as shown on OKDHS Appendix C-3. If the net food stamp income does not exceed this standard, the household is determined eligible. The steps in (A) through (H) of this paragraph are used to determine the household's net food stamp monthly income if the household does not include an elderly or disabled member.

(A) Add gross monthly income earned by all household members including any net self-employment income minus the earned income exclusions to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction according to OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed as shown in OKDHS Appendix C-3. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an Employment and Training Program or other source.

(F) Subtract verified legally-binding child support payments made to someone outside the food stamp household.

(G) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions given in subparagraphs (A) through (F) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(H) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income if the total of excess shelter costs does not exceed the maximum shown in OKDHS Appendix C-3. If the total of the shelter costs exceeds the standard shown in OKDHS Appendix C-3, only the amount not exceeding the standard is deducted.

(2) **Households with elderly or disabled members.**

(A) The steps listed in (i) through (ix) of this subparagraph are used to determine the household's net food stamp income if the household includes an elderly or disabled member.

(i) Add gross monthly income earned by all household members, including any net self-employment income minus the earned income exclusions, to determine the household's total gross earned income.

(ii) Multiply the total gross earned income by the appropriate earned income deduction from OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(iii) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(iv) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(v) Subtract medical expenses which exceed \$35 for the elderly or disabled household members only. Thirty-five dollars is subtracted only once for the household rather than for each household member.

(vi) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed as shown in OKDHS Appendix C-3. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an Employment and Training Program or other source.

(vii) Subtract verified legally-binding child support payments made to someone outside the food stamp household.

(viii) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions in (i) through (vi) of this subparagraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(ix) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income.

(B) When a household that includes an elderly or disabled member meets the other resource and non-financial conditions of eligibility, the household's net food stamp monthly income and household size are the basis for determining eligibility. The net food stamp monthly income is compared to the Maximum Net Income Standards for the appropriate household size as shown on OKDHS Appendix C-3. If the net food stamp income does not exceed this standard, the household is determined eligible.

(c) **Food stamp benefit allotment.**

(1) **Initial month proration.**

(A) Initial month means the first month the household is certified for food stamp benefits following any period during which the household was not certified. Food stamp benefit allotments for an initial month are based upon the date of the application and prorated from the date of application. Proration of benefits from the application date applies to the new case if one food stamp household separates into two or more food stamp households. Migrant and seasonal farm workers are not prorated when the household has received food stamp benefits in the prior month. While a household's eligibility for the initial month is determined by considering the household's circumstances for the entire month of application, the benefit is based on the day of the month the household applies for benefits. The monthly benefit that the recipient would be eligible to receive if proration did not apply must be determined prior to computation by using the prorated benefit on OKDHS Appendix B, Proration Table for TANF and Food Stamp Benefits, or by using the formula:  $(31 \text{ minus the application date}) \times \text{monthly benefit divided by } 30 = \text{the prorated benefit}$ .

(B) The prorated benefit is rounded down to the lower dollar. If the answer is less than \$10, the household is denied for the month of application but certified for the next month. If the household applies on the 31st day of the month, use the 30th for the application date for purposes of this provision. Households that apply after the 15th of the month are issued the prorated benefits for the month of application and the benefits for the first full future month on the same day.

(C) When a household is certified for the month following the month of initial application because the household failed to furnish necessary information, benefits are prorated from the date the household furnished the information. The application date becomes the date information was furnished to OKDHS.

(2) **Monthly benefit.** The monthly benefit for all months except the initial month is the amount listed on OKDHS Appendix C-3 for the appropriate household size and net income.

(d) **Certification periods.** Definite periods of time are established for each eligible household to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits is established only upon a recertification based upon a newly completed application, an interview, and required verification provided. [OAC 340:50-3-2] Under no circumstances are benefits continued beyond the end of a certification period without a redetermination of eligibility. The month of application is the first month in the certification period for initial applicants if eligibility is determined within the 30-day period. Because of anticipated changes, a household may be eligible for the month of application but ineligible for the subsequent month. In this situation, the household is certified for the month of application only. If a household is found to be ineligible and is denied benefits for the month of application but is eligible for subsequent months, a new application form is not needed and the case is certified effective

the month following the month of application. During the application process a household who did not appear for their first scheduled interview may request a new interview date be scheduled through the 30th day following their application date. See delayed applications in paragraph (1) of this subsection to determine the proration date of the food stamp benefit allotment. When an application is denied because the household did not provide the requested information and the applicant furnishes the required information and an eligibility determination can be made within the second 30-day period, no new application is required. The case is then certified using the date the information or verification is furnished as the application, certification, or proration date.

(1) **Delayed applications.** Applications that are not approved or denied by the 30th calendar day are considered delayed applications. On the 30th calendar day following the application date, every delayed application is assessed to determine who caused the delay. The purpose of this assessment is to determine if the benefits are denied and what date is used to prorate benefits if the household is determined eligible at a later date.

(A) **Delay caused by the Oklahoma Department of Human Services (OKDHS).** When the processing delay is caused by OKDHS, the application remains in pending status. At the end of the first 30 calendar days the household is notified of the reason the application is still pending using Form ABCDMS-37-A, Notice to Client of Action Taken. If the household is later determined eligible, the case is certified back to the date of application. OKDHS caused delays include, but are not limited to, the circumstances given in (i) through (vi) of this subparagraph.

(i) The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview but subsequently failed to provide the required verification. During the interview the worker did not explain to the household or provide the information in writing regarding:

- (I) what factors must be verified;
- (II) what is considered acceptable verification; or
- (III) by what date the information must be supplied.

(ii) An interview was never scheduled for the household.

(iii) The worker did not offer or provide assistance to the household in obtaining the verification as required or did offer assistance but failed to follow through on collateral contacts or release of information.

(iv) The worker discovered that additional information was required after the interview but the client did not have ten calendar days between the request for the verification and the 30th calendar day of the application process.

(v) The household missed their first interview on or before the 30th calendar day and requested

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that the interview be rescheduled. The county was unable to schedule the second interview date until after the 30th calendar day.

(vi) The eligible household provided all the required verification on or before the 30th day, and the application was not approved or denied.

(B) **Delay caused by the household.** When the processing delay is caused by the household, the application is denied on the 30th calendar day. The household is notified by computer-generated notice that the application is denied. When the household provides the required verification in the second 30 calendar days, no new application is required. If the household is determined eligible, the food stamp benefit allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (i) through (iii) of this subparagraph.

(i) The household's first interview was scheduled on or before the 20th calendar day following the date of application. The household appeared at the interview but subsequently failed to provide the required verification. The worker provided the household with a statement of required verification, offered to assist the household in obtaining the verification, and also allowed the household sufficient time to provide the verification.

(ii) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The interview was rescheduled to be held on the 30th calendar day; however, the household did not provide all the required verification at the rescheduled interview.

(iii) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The household stated they could not come in until after the 30th calendar day.

(2) **Length of certification periods.** Households are assigned the longest certification period possible based on the predictability of the household's circumstances. In (C) and (D) of this paragraph, the length of the incapacity must be expected to exceed the length of the certification period.

(A) **One month.** A one-month certification is assigned to:

- (i) households eligible only for the month of application; and
- (ii) migrant farm worker households, in the work stream, who apply before the 16th of the month.

(B) **Two months.** A two-month certification is assigned to:

- (i) households eligible only for the month of certification and subsequent month; and
- (ii) migrant farm worker households, in the work stream, who apply after the 15th of the month.

(C) **Three to six months.** A three to six-month certification is assigned to all households with circumstances not addressed in subparagraphs (A), (B), or (D) of this paragraph. Information used as guidelines for the length of certification periods for groups listed in this subparagraph is given in (i)(I) through (III) of this subparagraph.

(i) The worker reviews the case carefully to see if there have been overissuances or underissuances due to the household's failure to report:

- (I) changes in income;
- (II) changes in household composition; or
- (III) moving from residence to residence, thereby changing the shelter expense.

(ii) The factors in (i)(I) through (III) of this subparagraph are some of the factors to be checked, but are not meant to be all inclusive. At the discretion of the worker, a shorter certification period may be assigned. The length of the certification period assigned groups in this subparagraph is based on review of the history of the household and the judgment of the worker.

(D) **Twelve months.**

(i) A 12-month certification period is assigned to non-public assistance (non-PA) households ~~who have countable earned income~~ at certification unless:

- (I) the household includes an able-bodied adult without dependents member who is not meeting the work requirement or is not otherwise exempt; or
- (II) all adult household members are elderly or disabled with no earned income.

(ii) These households are required to complete Form FSS-BR-1, Benefit Review Report, at six-month intervals. They are known as semi-annual reporters.

(E) **Twenty-four months.** A 24-month certification period is assigned to non-PA households when all adult members are elderly or disabled ~~without~~ with no earned income. These households are required to complete Form FSS-BR-1 at 12-month intervals. They are known as annual reporters.

### 340:50-9-5. Changes after application and during the certification period

(a) **Applicant households.** Applicant households must report all changes related to their food stamp benefit eligibility and benefit amount. Households must report changes, that occur after the interview but before the date of the notice of eligibility, within ten calendar days of the date of the notice.

(b) **Certified households.** Those households assigned a certification period other than 12 months are required to report within ten calendar days:

- (1) changes in sources of income;
- (2) changes in unearned income of \$50 per month or more;

- (3) changes in earned income of more than \$100 per month;
  - (4) all changes in household composition, such as an addition or loss of a household member;
  - (5) changes in residence and resulting changes in shelter costs;
  - (6) the acquisition of licensed vehicles not fully excluded;
  - (7) cash on hand, stocks, bonds, and money in bank checking or savings accounts or savings institutions, when the balance reaches or exceeds a total of \$2,000; and
  - (8) changes in the legal obligation to pay child support.
- (c) **Change affecting food stamp benefit.** If a reported change affects the household's eligibility or food stamp benefit amount, the household is notified of the adjustment to be made and the effective date. The worker has ten calendar days from the date the change is reported to take the necessary action.
- (d) **Follow-up.** The household is notified of the receipt of the change report by a computer-generated notice.
- (1) If the household fails to report a change within the ten-day period and, as a result, receives benefits to which it is not entitled, an overissuance is referred to the Family Support Services Division, Overpayment Section.
  - (2) If the worker fails to take action on a reported change within the prescribed time limits and benefits are lost, they are restored to the household.
- (e) **Changes that increase benefits.** Changes resulting in a benefit increase must be verified. The household is allowed ten calendar days to verify the information.
- (1) The change is made effective no later than the first issuance to be delivered ten calendar days after the date the change was reported or verified, whichever is later.
  - (2) The worker issues a supplement when a change that increases benefits is reported too late to verify and make the change by regular roll deadlines.
  - (3) The household is allowed ten calendar days to verify the information.
  - (4) If verification is provided timely, the supplement is issued by the tenth calendar day following the date the change was reported, or the date the regular roll benefit is to be received, whichever is later.
  - (5) If the required verification is not provided within ten calendar days but is provided at a later date, the supplement is issued within ten calendar days of the date verification was provided, rather than from the date the change was reported.
- (f) **Changes which decrease or terminate benefits.** Food stamp benefits are closed, **never** suspended, if a change in household circumstances causes a household to be ineligible for food stamp benefits. When a household's benefit level decreases or is terminated, an advance notice is required unless exempt from such a notice for a reason listed in (1) and (2) of this subsection. When an advance notice is required, the decrease or termination of the benefit is effective no later than the month following the month in which the advance notice period expired. When the change is reported less than ten calendar days before the advance notice deadline, the action must be

taken before advance notice deadline the following month. Advance notice is not required when:

- (1) the Oklahoma Department of Human Services (OKDHS) receives a clear written statement signed by a responsible household member stating he or she no longer wishes food stamp benefits or giving information which requires termination or reduction of food stamp benefits and stating that he or she understands the food stamp benefit will be reduced or terminated. The household retains its right to a fair hearing and to continue benefits if a fair hearing is requested within ten calendar days of the change notice; and
  - (2) the reduction or termination of food stamp benefits is based on situations listed in (j) of this Section.
- (g) **Annual reporting households.** Non-public assistance (non-PA) households with all adult members elderly or disabled with no earned income are known as annual reporters. A 24-month certification period is automatically assigned. These households are required to report within ten calendar days those changes listed in (b) of this Section.
- (h) **Benefit review form for annual reporters.** Annual reporting households are sent computer-generated Form FSS-BR-1, Benefit Review Report, in the 11th month of certification. The intent of this form is to allow the household's circumstances to be reviewed without requiring face-to-face contact.
- (1) The worker must act on any changes reported on Form FSS-BR-1.
  - (2) If the reported changes result in a reduction or termination of benefits, an advance notice must be sent to the household.
  - (3) If the household fails to provide sufficient information regarding a deductible expense, the benefits are not terminated, but processed without regard to the deduction.
  - (4) Form FSS-BR-1 must be completed and returned to the county office, along with all required verification, by the last day of the 12th month of certification.
- (i) **Semi-annual reporting households.**
- (1) A 12-month certification period is assigned to non-PA households at certification unless the household contains:
    - (A) a member who is an able-bodied adult without dependents (~~ABAWDs~~ ABAWD) who is not meeting the work requirement;
    - (B) an ~~ABAWDs~~ ABAWD who is not otherwise exempt; or
    - (C) all adult household members who are elderly or disabled with no earned income.
  - (2) These households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size. The worker must act on any changes reported by these households that increase their benefits. Changes reported by the household that result in a decrease in benefits are also acted upon by the worker. The system determines if the change results in a decrease in benefits. A decrease in benefits does not occur unless the:

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- (A) household has requested closure of the case; or
  - (B) worker has information about the household's circumstances considered verified upon receipt.
- (j) **Benefit review form for semi-annual reporters.** Semi-annual reporting households are sent a computer-generated Form FSS-BR-1, Benefit Review Report, in the fifth month of certification.
- (1) The worker must act on any changes reported on Form FSS-BR-1.
  - (2) If the reported changes result in a reduction or termination of benefits, an advance notice must be sent to the household.
  - (3) If the household fails to provide sufficient information regarding a deductible expense, the benefits must not be terminated, but processed without regard to the deduction.
  - (4) Form FSS-BR-1 must be completed and returned to the county office, along with all required verification, by the last day of the sixth month of certification.
- (k) **Notice of adverse action not required.**
- (1) **Mass changes.** The individual notification requirement is waived when changes affecting the entire caseload or significant portions of the caseload are initiated because of changes or requirements in federal or state law. In these situations, the Family Support Services Division (FSSD) mails notices to the households informing them of the changes that are about to be made.
  - (2) **Notice of death.** If the worker determines, based on reliable information, that all members of the household are deceased, notice of adverse action is not required.
  - (3) **Moved out of county.** Notice of adverse action is not required when the worker determines, based on reliable information, that the household has moved out of the county and that a transfer request has not been received.
  - (4) **Completion of restoration of lost benefits.** Notice of adverse action is not required if the household is previously notified in writing when restoration of lost benefits is completed and the household's food stamp benefit is reduced due to completion of restoration of lost benefits.
  - (5) **Variable food stamp benefit.** The household benefit amount varies from month to month within the certification period to take into account changes that were anticipated at the time of certification and the household was so notified at the time of certification.
  - (6) **Willful misrepresentation.** Notice of adverse action is not required if a person in the household is disqualified for willful misrepresentation. If there is more than one person in the household, the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member.
  - (7) **Food stamp recoupment.** A notice of adverse action is not required if the household fails to make agreed upon cash or food stamp repayment of an overpayment.
  - (8) **Drug or alcohol treatment center or group home loses approved status.** If a household's eligibility is being terminated because the drug or alcohol treatment center or group home facility is no longer approved, an individual notice of adverse action is not required.

- (l) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within ten calendar days of the date shown on the adverse action notice, the household may continue to receive food stamp benefits.

## SUBCHAPTER 11. SPECIAL PROCEDURES

### **PART 3. SIMPLIFIED APPLICATION PROCESSING (SAP) FOR FOOD STAMP PROGRAM (SFSP) FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND CATEGORICALLY NEEDY TITLE XIX CASES (ABCD) COMPANION STATE SUPPLEMENTAL PAYMENT (SSP) RECIPIENT(S)**

#### **340:50-11-20. Scope**

(a) ~~The Simplified Application Processing (SAP) is Food Stamp Program (SFSP) rules in this Subchapter are used when all **ALL** food stamp benefit household members receive ABCD benefits. Therefore, when all food stamp household members are included in:~~

- (1) ~~an ABCD case, including essential spouses, food stamp eligibility is based on rules in this Subchapter Temporary Assistance for Needy Families (TANF) cash assistance; or~~
- (2) ~~TANF cash assistance and a companion State Supplemental Payment (SSP) case. Food stamp households with members in the circumstances in (1) — (5) of this Section are **processed as Non-PA cases using normal Non-PA policy.** Non-PA food stamp households include at least one member is:~~

(b) ~~SFSP procedures do not apply when:~~

- (1) ~~not included in an ABCD case benefit no household member receives TANF cash assistance;~~
- (2) ~~participating in the Work Supplementation Program all household members receive SSP;~~
- (3) ~~an ineligible spouse in an ABD case a household member is participating in the Work Supplementation Program;~~ or
- (4) ~~any household member is a disqualified food stamp benefit household member as described in OAC 340:50-5-10(a)(1) 340:50-5-10.1.~~
- (5) ~~included in a TANF benefit but whose needs should not currently be included in the food stamp allotment.~~

#### **340:50-11-22. Application processing**

At the time of application for ~~ABCD Temporary Assistance for Needy Families (TANF)~~, the worker determines if the applicant wants to receive or is currently receiving food stamps benefits and if the household is eligible for the Simplified Food Stamp Program (SFSP). ~~When the applicant wants to receive food stamps, the worker determines if the food stamp household is within the SAP scope. When an ABCD household does not participate in the Food Stamp Program the worker must explain the reason for the non participation~~

~~in the case record. This must be done at the time of the original application, at each ABCD review, and when food stamps are expired or terminated. If the household is receiving non-public assistance (non-PA) food benefits at the time of the TANF application, the food benefits remain as non-PA until TANF is certified.~~

~~(1) **Households within SAP SFSP scope.** A food stamp application has been made when an applicant states on a signed ABCD application that he/she wants to participate in the Food Stamp Program. If the household is not receiving food benefits and wants food benefits, non-PA Food Stamp Program (FSP) rules are used to determine eligibility when:~~

~~(A) A household which is not receiving food stamps must be issued Non PA food stamp benefits when:~~

~~(i) the household qualifies for expedited service and the ABCD TANF application will not be certified within seven calendar days; or~~

~~(ii) the ABCD TANF application will take longer than 30 calendar days to determine eligibility; or~~

~~(iii) the ABCD TANF application will not be completed and certified for the month of application and food stamps benefits must be issued for the initial month.~~

~~(B) In the instances given in (A) (i) - (iii) of this paragraph, when the ABCD case is certified, food stamps are also certified using SAP with the effective date the Non PA case is closed as the application date and certification date on the teleprocessing form.~~

~~(2) **Denial of ABCD TANF.** When the worker knows that the ABCD TANF application will be is denied, the worker determines must determine if the household is also ineligible-eligible for food stamps under normal benefits using non-PA policy FSP rules. As a result of this determination the worker:~~

~~(A) denies eligibility for food stamps on the ABCD case if food stamp ineligibility is established benefits; or~~

~~(B) determines approves eligibility for food stamp eligibility for Non PA benefits.~~

~~(3) **Application date.** The food stamp application date will be the date food stamps were requested when the ABCD application was made. This same date will be used for either PA or Non PA determinations. When a household's Non PA case is closed because their food stamps will be included in an ABCD case, the effective date of closure of the Non PA case is the application date and certification date for the ABCD food stamps.~~

**340:50-11-23. Eligibility determination for households within the Simplified Application Processing (SAP) scope Food Stamp Program (SFSP)**

~~(a) **Eligibility.** All households within SAP SFSP scope meet applicable food stamp Food Stamp Program (FSP) eligibility policy rules. Eligibility and benefit amount are~~

~~determined by the computer. The income and deduction computations are described in this subsection.~~

~~(1) **Income determination.** Food stamp benefit income is based upon ABD and Temporary Assistance for Needy Families (TANF) income definitions. If there is a TANF case and a companion State Supplemental Payment (SSP) for the aged, blind, or disabled case, income definitions for TANF and SSP apply. Income amounts from the ABD TANF and TANF case which SSP cases that are converted to food stamp benefit income, must be classified as food stamp benefit unearned income. Food stamp benefit unearned income is computed as described in (A) - (C) of this paragraph for:~~

~~(A) TANF cash assistance only. - The total household requirement, plus the exempt earned income amount less the non-fraud related recoupment; or~~

~~(B) ABD Total case income plus SSP less non-fraud related recoupment.~~

~~(C) ABCD TANF with companion SSP case(s). - The total countable income of all the companion cases case(s) is added to the countable income of the primary food benefit case using the applicable method for type of case described in this paragraph.~~

~~(2) **Deduction determination.** Deductions are determined prospectively. The allowable deductions under SAP scope are for SFSP are shelter, utilities, and medical expense as determined and verified according to food stamp FSP rules in OAC 340:50-7-31. Medical expense must be verified only when the food stamp allotment benefit would be increased by allowing the medical deduction. The dependent care deduction is automatically allowed, when applicable, through the method used in determining income.~~

~~(3) **Net monthly income computation.** The net monthly income is calculated using the food stamp computation procedures.~~

~~(b) **Household eligible for ABD or TANF.** When the household is determined eligible for ABD or TANF, the household is also categorically eligible to participate in the Food Stamp Program.~~

**340:50-11-25. Proration of food stamp benefits**

Initial month food stamp benefits will be prorated. The initial month means the first month the household is certified for food stamps benefits following any period of time during which the household was not certified. If the household's benefits are continuous, the food stamp benefits are not prorated even when there is a change from Non PA non-public assistance (non-PA) to SAP the Simplified Food Stamp Program (SFSP) or SAP SFSP to Non PA non-PA.

**340:50-11-26. Certification periods [REVOKED]**

ABD and TANF cases are certified for 18 months under SAP; however, at the review date required by ABD and TANF policy, a new food stamp application is completed, and the food stamps are recertified even if there are remaining months in the certification period. Food stamps cannot be issued after the

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certification period ends and certification periods are expired by the State Office at the appropriate time. A certification period also expires when it is shortened by the worker.

### 340:50-11-27. Changes after application and during the certification period

Households are required to report changes in accordance with ABCD program policy OAC 340:65-3-1. In addition, changes in medical expense of more than \$25 and changes in shelter cost resulting from a change in residence must be reported within ten days of when the change is known by the household. At each application or redetermination, households are advised of their reporting responsibilities. Households are given a supply of Form FSP-38A—FSP-38, Change Report Form Changes in Household Circumstances, and advised to contact their social worker to request additional forms as needed.

(1) **Reported change results in closure of ABCD TANF.** When the ABCD case Temporary Assistance for Needy Families (TANF) cash assistance is being closed, the social worker either closes food stamps, expires the food stamp certification period (extends benefits) or changes the remainder of the certification period to a Non PA certification. The food stamps are closed only when a household's whereabouts is unknown or when the reported information establishes that the household is not eligible for benefits under Non PA policy. When the social worker is unable to determine eligibility using the information in hand, the certification is expired. The certification is converted to Non PA when the social worker has all the information and verification needed to determine eligibility for Non PA benefits. When the certification is closed or expired, an expiration notice is computer generated immediately and the allotment issued is the amount on file preceding the ABCD closure. Prior to the effective date of closure, advance notice is given unless adverse action notice is not required. This notice is computer generated. When food stamp eligibility cannot be terminated based on the information in the ABCD case, the certification period is expired as follows:

(A) **ABCD advance notice required.** Food stamps are extended for one month after the ABCD closure. The expiration notice is computer generated on the day the ABCD advance notice expires unless a hearing is requested during the ABCD advance notice period and ABCD benefits continue. In that instance food stamps are continued and an expiration notice is not sent. The allotment issued is the amount on file preceding ABCD closure. the worker closes the food benefits the same effective date as the TANF cash assistance closure when the TANF is closed as a result of:

- (i) death of the payee;
- (ii) failure or refusal to participate in TANF Work;
- (iii) the household moves out of state; or
- (iv) the household requests closure of the TANF cash assistance and food benefits;

(B) **ABCD advance notice not required.** See (i) —(ii) when ABCD advance notice is not required. the computer converts the food benefits to transitional food benefits (TFB) when the TANF cash assistance is closed for reasons other than those listed in (A) of this paragraph and:

(i) Food stamps are extended for one month after the ABCD case closure when the ABCD closure is teleprocessed on or before the deadline date. there is no companion State Supplemental Payment (SSP) case; or

(ii) If teleprocessing of ABCD closure is done between deadline and the last of the month, food stamp expiration will be effective for the month following closure of the ABCD case. the TANF case is the primary food benefit case, and the companion SSP case remains open.

(C) the computer converts the food benefits to non-PA food benefits when the TANF cash assistance is closed for reasons other than those listed in (A) of this paragraph and the companion SSP case, which is the primary food benefit case, remains open.

(2) **Reported change causes loss of SAP eligibility changes during the TFB certification period.** A household's food stamps can no longer be processed under SAP scope when all the members are not on the ABCD case. When the social worker is unable to determine eligibility using the information in hand the certification is expired. Expiration (EB process) is effective the first day of the month two months after the month the expiration was teleprocessed. The certification is converted to Non PA policy when the social worker has all the information and verification needed to determine eligibility for Non PA benefits. If the household is determined ineligible under Non PA policy using the reported information, food stamps are terminated the next possible effective date depending on the advance notice requirement. The household is not required to report changes timely while receiving TFB. If there is an application for TANF while in TFB status, at certification of the TANF cash assistance, food benefits are converted to Simplified Food Stamp Program (SFSP) as long as all household members are receiving cash assistance.

(3) **Supplementation due to shortened certification period Notifications.** An underissuance is corrected by authorizing a supplement. The supplement amount authorized is the difference between the last month's benefits under SAP and what the household was entitled to receive under normal Non PA policy. The TANF applicant is given a copy of the signed and dated Form FSS-1, Comprehensive Application and Review, which informs the applicant food benefit eligibility is determined using information contained in Form FSS-1. Notification of eligibility is required at certification and any time the food benefit amount changes. The notice is computer-generated.

~~(4) Information reported results in allotment change. See OAC 340:50-9-5 to determine the effective date for allotment changes.~~

~~(5) Reapplication and recertification. At the time of each ABCD review, the household reappplies for food stamps by completing a food stamp reapplication form. During the contact for the ABD review, the social worker completes the reapplication process. When the contact is not face to face, the reapplication form is mailed to the client to obtain the client's signature.~~

~~(6) Notices. Food Stamp notices used for processing certifications and changes after certification of SAP households are given in (A) (D) of this paragraph.~~

~~(A) SAP processing. The household is notified at the time of ABCD application that food stamp eligibility will be determined using information contained in the ABCD application. Providing the applicant with a copy of an application form meets this requirement.~~

~~(B) Certification or recertification. The notice is computer generated and mailed from the State Office.~~

~~(C) Change in allotment or case closure. The notice is computer generated and mailed by the State Office. Food stamp termination or benefit decrease must be teleprocessed early enough to insure the household receives a ten day advance notification period (when required) before the effective date of the action.~~

~~(D) Expiration notices. Prior to the last month of certification, an expiration notice is computer generated and mailed by the State Office.~~

[OAR Docket #06-759; filed 4-26-06]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

[OAR Docket #06-760]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Eligibility for Benefits  
340:65-3-1. through 340:65-3-2. [AMENDED]  
Subchapter 5. Procedures Relating to Case Changes  
Part 1. General Provisions  
340:65-5-1. [AMENDED]  
(Reference APA WF 05-25)

**AUTHORITY:**  
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 161 et seq. of Title 56 of the Oklahoma Statutes.

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Proposed Public Assistance Procedures permanent rule amendments: (1) require a verifiable Social Security number (SSN) for persons required to provide a SSN; and (2) clarify existing rules to facilitate the delivery of benefits and services to persons who are in need.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS**

**340:65-3-1. Determination of eligibility**

(a) **Eligibility determination.** The determination of eligibility is a continuous process that begins with an application. It includes the final disposition of the application and all subsequent activities related to determining continuing eligibility. The client has the right and the responsibility to participate in the eligibility determination and is relied on as the first source of information.

(b) **Application forms.** A signed application is required to determine initial and continuing eligibility for benefits. The client completes:

(1) Form FSS-1, Comprehensive Application and Review, to apply for:

- (A) food stamp benefits;
- (B) State Supplemental Payment (SSP);
- (C) Supplemental Security Income-Disabled Children's Program (SSI-DCP);
- (D) Temporary Assistance for Needy Families (TANF); or
- (E) Medicaid benefits; or

(2) Form FSS-1 or K-2, Application for Child Care Services, to apply for child care benefits.

(c) **Signatures.** The client, guardian, or someone acting on the client's behalf such as an authorized representative or someone with power-of-attorney must sign Form FSS-1 or K-2. For TANF applications, if a client and spouse are living

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together, both must sign the application form. The client may voluntarily withdraw the request for assistance or services either before or after signing the application form. A client who is:

- (1) eligible for Medicare signs the application using the name on his or her Medicare Health Insurance Benefits (HIB) card; or
- (2) not eligible for Medicare signs the application using the name shown on his or her Social Security card.
- (d) **Worker responsibilities.** The worker is responsible for:
  - (1) advising the client during the application process:
    - (A) of the Oklahoma Department of Human Services (OKDHS) responsibility for reaching a decision and notifying the client of eligibility or ineligibility within the appropriate time limits;
    - (B) of his or her right to request a fair hearing, either orally or in writing, and be represented at the hearing by any person the client chooses if there is a:
      - (i) delay beyond the established time limits for determining eligibility; or
      - (ii) disagreement with any action taken on the case;
    - (C) of his or her legal responsibility for reporting all facts pertinent to eligibility;
    - (D) of the types of changes the client must report within ten calendar days;
    - (E) of the penalty for failure to report changes;
    - (F) of information needed to establish eligibility. When requesting information or verification from the client, the worker uses Form ADM-92, County Client Contact and Information Request, and gives the client at least ten calendar days to respond to the request; [OAC 340:65-3-2.1]
    - (G) of the assistance OKDHS can give in establishing eligibility;
    - (H) that by signing the application he or she is giving OKDHS permission to obtain information from sources other than the client; and
    - (I) that he or she must cooperate with state and federal officials if his or her case is selected for a Quality Control review;
  - (2) collecting information necessary for determining the client's initial and continuing eligibility. Information considered verified upon receipt if that information is not questionable or inconsistent with known facts, and the provider of the information is the primary source of the information, is the:
    - (A) client's statement concerning:
      - (i) residency;
      - (ii) relationship;
      - (iii) age;
      - (iv) living in the home of a relative payee;
      - (v) minor parent living in the home of a relative;
      - (vi) Social Security number (SSN);
      - (vii) citizenship;
      - (viii) non-liquid resources;

- (ix) household members;
  - (x) school attendance; and
  - (xi) third party insurance;
- (B) unearned income information obtained through:
- (i) Beneficiary and Earnings Data Exchange System (BENDEX), from the Social Security Administration (SSA);
  - (ii) Supplemental Security Income (SSI)/State Data Exchange System (SDX), from SSA;
  - (iii) Unemployment Insurance Benefits (UIB), from the Oklahoma Employment Security Commission (OESC);
  - (iv) workers' compensation documents from Workers' Compensation Court; and
  - (v) alien status information obtained through Systematic Alien Verification for Entitlements (SAVE), from the United States Citizenship and Immigration Services (USCIS);
- (3) contacting other persons who may be able to help in establishing eligibility if the client is unable to participate in the eligibility determination because of physical or mental disability, inability to speak English, or other difficulties;
  - (4) recognizing expressed or implied needs;
  - (5) determining whether there is a need for crisis intervention;
  - (6) making appropriate referrals;
  - (7) ensuring all of the client's social services needs are addressed and met; and
  - (8) denying the application if sufficient facts are available to substantiate ineligibility.
- (e) **Requirement for SSN.** A verifiable SSN or application for a SSN is required for every person whose needs are included for food stamp, SSP, SSI-DCP, or TANF benefits. The requirement for a verifiable SSN also applies to all persons whose needs are included for Medicaid benefits, except newborn children deemed eligible and ~~illegal~~ aliens who are residing in the United States unlawfully.
- (1) The worker accepts the client's statement to document the SSN unless the information is inconsistent or there are other facts or observations which cause the worker to question the statement.
    - (A) Persons for whom a SSN is required but not available must be referred to the appropriate SSA office for SSN enumeration. Form ADM-101, SSN Enumeration Referral, is used to refer persons to the SSA office for a SSN application. The return of Form ADM-101 to the ~~county OKDHS office~~ human services center validates the application(s) or indicates which persons have not provided to SSA appropriate original evidence of age, identity, and citizenship.
    - (B) Parents of newborns who participate in Enumeration at Birth (EAB) receive from hospital personnel Form SSA-2853-OP3, Message From Social Security. This receipt form is verification the newborn was enumerated at birth.

(2) An application for assistance is denied or the person's needs are not included for benefits if the person fails or refuses to furnish or to apply for a SSN.

(A) For TANF purposes, the person's needs are included; however, a 25% payment standard reduction penalty is imposed until an application for or a SSN is provided.

(B) For food stamp benefit and Medicaid purposes, only the needs of the person for whom a SSN is not provided or applied for are not included.

340:65-3-2. Definitions

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

"Applicant" means a person who directly or through someone acting responsibly on his or her behalf requests a formal determination of eligibility for one or more programs.

"Application process" means the process by which the applicant's request is formalized. It can consist of a face-to-face interview by the social services specialist worker during which the applicant provides information regarding his or her situation, the completion of an electronically transmitted document which is signed electronically, or a paper application form. Any person who fraudulently represents facts, acts without authority, or exceeds his or her authority to perform a transaction may be prosecuted under all applicable criminal and civil laws.

"Client" means a person who is applying for or receiving services, cash assistance, or other benefits.

"Date of application" means, for:

(A) child care benefit applications, the date the applicant or someone acting on his or her behalf completes the child care interview and provides all necessary verification, including the name of the child care provider the applicant wishes to use.

(B) Temporary Assistance for Needy Families (TANF) and Medicaid, the date that the applicant or someone acting on his or her behalf signs or electronically submits the application form. If the application is initiated outside the Agency of Oklahoma Department of Human Services (OKDHS), the application date is the date the application form is stamped into the county office human services center. The application date for a newborn can be retroactive to the date of birth if application is made prior to the end of the month following the month of delivery or release from the hospital, whichever is later.

(A*i*) If an oral request is received prior to the date of signature on the application, the date of the oral request is entered in red above the signature date. The date of the oral request is the date of application.

(B*ii*) Care must be taken to protect the application date for an applicant who accepts an appointment to return at a later date to complete and sign

the application form. In this instance the application date is the date of the original request and is handled the same as an oral request.

(C*iii*) The oral request date is protected only if the application is signed within 30 calendar days. If the individual fails to sign the application within 30 calendar days, no application request is considered made. The individual's contact with the Agency OKDHS is documented in the record or as information and referral only if a record does not exist. If the individual subsequently contacts the Agency OKDHS after the 30 calendar days and completes the application process, the application date is the date the application is completed and signed.

(D*iv*) Form MS-MA-5, Notification of Needed Medical Services, is an application for medical benefits.

"Inquiry" means a request for information but does not imply a request for assistance.

"Near real-time (NRT) benefit processing" means applications for assistance are processed within two working days of receiving verification needed to determine eligibility for assistance.

"Recipient" means a person who receives services, cash assistance, or other benefits.

SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES

PART 1. GENERAL PROVISIONS

340:65-5-1. Case changes

All changes, except applications and certifications, must be processed by the deadline to be effective the first day of the month following the deadline. A computer-generated notice is sent to advise the recipient of any increase or decrease in benefits. Advance notice of adverse action may be required.

(1) Advance notice required - when fraud is not probable. If the reason for the suspension, termination, or reduction is other than one of the items listed under paragraph (3) and there is no indication of probable fraudulent acts on the part of the client, a computer-generated notice is sent to the client.

(A) If advance notice is required, action must be taken by the date shown on Schedule I, of DHS Oklahoma Department of Human Services (OKDHS) Appendix B2, Deadlines for Case Actions, to be effective on the first day of the following month.

(B) The recipient has ten calendar days following the issuance of the advance notice to present information to show that the action is incorrect.

(C) If the recipient requests a fair hearing during the ten-day period, he or she can request continuation or reinstatement of benefits at the same level during the period of the fair hearing. The social services

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~~specialist worker~~ is responsible for explaining to the client that if benefits are continued and the appeal is not decided in the client's favor, he or she will be expected to repay the benefits. If the ~~appeal is denied by the Appeals Committee~~ denies the appeal, the benefits are continued through the end of the month in which the final decision on the fair hearing is reached. The ~~county office~~ human services center is responsible for taking the action needed to carry out the decision of the Appeals Committee. The Appeals Committee sends a letter of decision to the client.

(2) **Advance notice required if fraud is probable.** When the suspension, termination, or reduction in benefits is necessary because of probable fraudulent acts on the part of the recipient and the actual facts have been verified, the same policies and procedures as in subparagraph (1) of this Section apply except the advance notice period is five calendar days instead of ten calendar days.

(3) **Advance notice not required.** Advance notice of action is not required if the suspension, termination, or reduction in benefit resulted from:

(A) death of a recipient or Temporary Assistance for Needy Families (TANF) payee when there is not a relative available to serve as a new payee;

(B) transfer from one category of assistance to another without a resulting decrease or interruption in assistance payments;

(C) benefit reduction because the spouse included in the TANF benefit is being removed and certified for a State Supplemental Payment for the ~~Aged aged, Blind-blind, or Disabled disabled~~ without a resulting decrease in assistance to the family or interruption in assistance;

(D) approval of care in a skilled nursing facility or intermediate care facility;

(E) certification of assistance in another state with no interruption in the assistance payment;

(F) an automatic increase in benefits brought about by federal legislation, such as to all beneficiaries of Social Security, Railroad Retirement, or ~~Veteran's~~ Veterans' benefits;

(G) admission of the recipient to a public institution where his or her needs are fully supplied;

(H) receipt ~~by the Agency~~ of a clear written statement signed by the recipient that states he or she no longer wishes assistance or that gives information which requires termination or reduction of assistance and the recipient has indicated in writing that he or she understands this will cause a reduction or termination of his or her assistance payment;

(I) the recipient's whereabouts are being unknown and ~~the Agency's OKDHS~~ mail directed to him or her has been returned by the post office indicating no known forwarding address. The recipient's benefit must be made available to him or her if his or her whereabouts become known during the payment period covered by the returned benefit; or

(J) a TANF child being removed from the home as a result of a judicial determination or ~~is~~ voluntarily placed in foster care by the legal guardian for a period in excess of 30 days.

[OAR Docket #06-760; filed 4-26-06]

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

[OAR Docket #06-761]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Administration

Part 3. Operations

340:100-3-36. [NEW]

340:100-3-38. [AMENDED]

Subchapter 5. Client Services

Part 3. Service Provisions

340:100-5-22.6. [NEW]

Subchapter 6. Group Home Regulations

Part 17. Residents' Funds

340:100-6-76. [AMENDED]

(Reference APA WF 05-21)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Section 1020 of Title 56 of the Oklahoma Statutes (O.S.); and Sections 1409, and 1430.1 through 1430.41 of Title 10 O.S.

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n/a

#### ANALYSIS:

Proposed Developmental Disabilities Services Division (DDSD) permanent rule amendments: (1) provide guidance for DDSD medical staff regarding illness or injury of a visitor or guest at the facility or office; (2) add respite, homemaker, respite homemaker, and alternative group homes to the list of specialized training requirements; (3) establish rules regarding the provision of alternative group home services; and (4) require compliance with other DDSD rules.

#### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

**SUBCHAPTER 3. ADMINISTRATION**

**PART 3. OPERATIONS**

**340:100-3-36. Emergency first aid for employees and visitors**

Emergency first aid procedures are employed to assist employees or visitors involved in an accident or injury on the grounds of a Developmental Disabilities Services Division (DDSD) program or office.

- (1) The employee or visitor seeks treatment at a community health facility for an injury of a non-serious nature.
- (2) For a serious but non-life threatening injury, the employee or visitor is made comfortable at the site of the incident, and an ambulance called immediately.
- (3) For an emergency medical situation in which it is judged that the employee or visitor's life is endangered, an ambulance is called immediately, and the facility's medical or first aid personnel are called as a source of volunteer medical emergency help until the person can be transported to a community health facility.
- (4) The injured employee's or visitor's immediate family is notified in the case of a serious or life threatening situation.
- (5) When an injury occurs on OKDHS property, an incident report is completed and the injury is reported in accordance with OAC 340:2-15-5.

**340:100-3-38. Community staff training**

(a) **Application.** The rules in this Section apply to Developmental Disabilities Services Division (DDSD) staff, to foster care providers, and to agencies contracting for the delivery of residential supports as defined in OAC 340:100-5-22.1, habilitation training services, group home services, assisted living services, employment or vocational services, or in-home supports, through DDSD state funds or a Home and Community-Based Waiver as described in OAC 317:40-1-1.

- (1) Training requirements for staff of public facilities operated by DDSD are outlined in OAC 340:100-3-37.
- (2) DDSD community staff, provider agency employees, and foster care providers complete a course of instruction specific to their job duties. Training requirements are found for staff providing:
  - (A) residential supports and group home services in OAC 340:100-3-38.1;
  - (B) employment or vocational services in OAC 340:100-3-38.2;

- (C) supports in the family's home or the individual's own home, other than residential supports, in OAC 340:100-3-38.3;
- (D) specialized foster care in OAC 340:100-3-38.4;
- (E) DDSD case management services in OAC 340:100-3-38.6;
- (F) program coordination services in OAC 340:100-3-38.7;
- (G) employment program manager services in OAC 340:100-3-38.8; ~~and~~
- (H) DDSD or provider agency supervisory or management support in OAC 340:100-3-38.9; and
- (I) respite, homemaker, or respite homemaker services in OAC 340:100-3-38.12.

(3) Staff providing services through the In-Home Supports Waiver ~~follow rules covering complete~~ requirements that are given at OAC 340:100-3-38.5.

(b) **Mission.** The mission of training within DDSD is to support the values and philosophies of DDSD and to enhance the competencies of DDSD staff, provider agency employees, and specialized foster care providers. The mission is accomplished by:

- (1) providing pertinent training in a timely and cost effective manner;
- (2) continuously evaluating the relevancy of the training curricula based upon the expressed needs of people served, their families, training participants, trainers, and providers of service;
- (3) maintaining a network with other agencies who provide training to ensure consistency and availability;
- (4) using state-of-the-art technology and techniques to make training as effective as possible; and
- (5) establishing and maintaining a monitoring system which ensures statewide consistency and quality of all training.

(c) **Training advisory committee.** The DDSD director appoints a committee to advise DDSD in the development, revision, and delivery of training to DDSD staff, provider agency employees, and specialized foster care providers.

- (1) The committee meets quarterly and is composed of representatives from each area to include:
  - (A) DDSD training staff;
  - (B) service providers, including direct support staff;
  - (C) service recipients or their family members; and
  - (D) case management staff.
- (2) The committee members:
  - (A) communicate training-related information to their peers and solicit participation in training projects;
  - (B) assist in determining training needs;
  - (C) assist in developing and implementing policies for the DDSD statewide training system;
  - (D) participate in evaluating training proposals and contracts;
  - (E) review training curricula; and

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- (F) monitor, as requested, the delivery of training, including observation of instructors and solicitation of external reviewers.
- (d) **Training curricula.** Training courses and curricula used to fulfill DDS training requirements must meet the criteria given in this subsection.
- (1) To fulfill the training requirements of this Section, any training course, curriculum, or method must be approved by the DDS director of human resource development unless the course is:
- (A) ~~a conference sponsored by DDS;~~
  - (B) designed and offered by a professional training or education organization to enhance the management skills of supervisors; or
  - (C) offered by a regional, state, or national professional organization such as:
    - (i) The Association for the Severely Handicapped (TASH);
    - (ii) The Council on Quality and Leadership in Supports for People with Disabilities (Council); or
    - (iii) the American Association on Mental Retardation (AAMR).
- (2) Trainers of approved courses must be licensed, certified, or otherwise qualified based on the requirements of the course or by approval of the DDS director of human resource development.
- (3) Competency-based courses require a specified level of proficiency to receive credit for satisfactory completion. Competencies are based upon specific identified outcomes. The trainer of each course communicates the required level of proficiency to participants at the beginning of each course.
- (4) Each curriculum developed or sponsored by DDS is reviewed at least every two years to ensure that the curriculum is:
- (A) reflective of current best practice;
  - (B) in line with Oklahoma Department of Human Services (OKDHS) ~~policy rules~~; and
  - (C) reflective of changes in the service delivery system.
- (e) **New employee training requirements.** No later than 30 days following the date of hire, foster care providers, provider agency staff providing direct supports or supervising, at any level, the delivery of direct supports, and all DDS employees must complete the first available DDS-approved foundation training course and the approved effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff person's work location following the person's date of hire.
- (f) **Classroom expectations.** DDS training staff and contract training staff are authorized to dismiss a participant(s) or observer(s) from a class for the reasons explained in this subsection.
- (1) Dismissal from a training class may occur for:
- (A) sleeping in class, defined as an inability to remain awake, alert, and participate actively in the training;
  - (B) disruptive behavior, defined as:
    - (i) inappropriate comments during class which would be considered rude, insensitive, or derogatory;
    - (ii) whispering or talking to other participants during class;
    - (iii) conducting activities unrelated to the class topic;
    - (iv) being called out of class frequently; or
    - (v) leaving class frequently other than at designated break times;
- (C) tardiness or absence.
- (i) Tardiness is defined as:
- (I) arriving at class more than 30 minutes late on the first day of class;
  - (II) arriving at class more than 15 minutes late on subsequent days of the same class from the time the class actually starts; or
  - (III) missing a total of more than 30 minutes of any day's presentation.
- (ii) Participants may be granted no more than 30 minutes the first day of class to allow for difficulty in locating the building or parking, except in courses ~~which that~~ require a specific number of training hours to meet certification requirements;
- (D) incomplete preparation. Dismissal from the class occurs for any participant who has not completed required prerequisite courses or preparatory materials prior to attending. Some courses require that:
- (i) other courses be completed before attending. For example, new employee training must be completed before the job-specific training can be taken; or
  - (ii) specific pre-course activities be completed before attending. For example, a pre-course competencies checklist is required to be completed before taking the Employment Training Specialist Orientation course; or
- (E) violating confidentiality requirements, as stated in OAC 340:100-3-2 and other applicable rules.
- (2) If dismissal from the class occurs, the trainer notifies the participant's agency and the trainer's supervisor as soon as possible and maintains a brief written summary of the incident.
- (A) Dismissed participants do not receive credit for the class and are required to re-enroll and satisfactorily complete the entire course or module to receive credit.
  - (B) The trainer must give approval before re-enrollment is allowed. Appeals of the trainer's decision are made to the DDS director of human resource development.
- (3) No children, friends, or family members of participants may attend class unless also enrolled as participants.
- (4) Persons receiving services from DDS, family members, advocates, DDS staff, and provider agency staff may observe training classes unless they engage in activities considered to be disruptive to the class. Persons

receiving services from DDSO who wish to participate in the training and who need staff support must be accompanied by a staff member(s) who is not enrolled in the training.

(5) When other people come to class in place of enrolled participants, or in addition to enrolled participants, they are allowed to remain, if the trainer determines there are adequate materials and space.

(g) **Course availability.** The DDSO Human Resource Development Unit and contract training providers work to ensure the availability of all courses by taking into account:

- (1) location;
- (2) time of day; and
- (3) day of the week.

(h) **Class closings due to inclement weather.** The rules in this subsection apply to all classes provided by DDSO training staff or contract training providers.

(1) If the public schools in the town where the class is to be held are closed due to bad weather, class will not be held. The provider agency is responsible to enroll the staff member in the next available class.

(2) If provider agency staff plan to attend an out-of-town class, but the schools are closed at the staff person's work location, the agency may determine that it is not safe for the staff person to travel. The agency is responsible to call the enrollment number for the class on the next work day to notify the training provider of this decision. The trainer enrolls the staff person in the next available class, and the staff person is not penalized for not attending. The letter confirming re-enrollment serves as notification of the next available class.

(3) If a class is cancelled due to bad weather, the enrolled staff person is expected to notify the provider agency of his or her potential availability to work.

(4) If a provider agency or staff person is uncertain about weather conditions or cancellations, they must call the enrollment telephone number for the particular class.

(i) **Quality assurance.** To ensure consistency with state laws and regulations and current best practices, training provided by DDSO staff, service providers, or contract agents, and other classes required by DDSO are observed and monitored on a regular basis.

(1) The components of the monitoring system are listed in (A) through (E) of this paragraph.

(A) The DDSO director of human resource development attends and monitors training classes on a random basis throughout the year.

(B) DDSO training supervisors and contract training coordinators observe each trainer directly under their supervision at least twice a year.

(i) At least one review must include foundation training, if applicable.

(ii) Each review is at least one half training day, which is three hours in length.

(iii) The reviews:

(I) cover the range of primary training topics offered by each trainer;

(II) are conducted in both metropolitan and rural areas of ~~the state~~ Oklahoma, when applicable; and

(III) include announced and unannounced observations.

(iv) The supervisor or coordinator reviews the training classes as a participant rather than as an observer, whenever possible.

(v) Direct feedback is given to the trainer following the class in both written and verbal form.

(vi) A copy of the written review is also sent to the DDSO director of human resource development.

(vii) If significant areas of concern are noted, the trainer and immediate supervisor develop a specific plan of correction ~~which~~ that may include such measures as retraining, increased supervision of classes, or co-training. A copy of the plan of correction is sent to the DDSO director of human resource development.

(viii) The supervisor or coordinator may request an unannounced review by another supervisor, coordinator, or trainer.

(ix) Exceptional performance is noted in writing with a copy to the trainer's personnel file and a copy to the director of human resource development.

(C) Provider agencies notify the DDSO area training staff at least the day before the class of the location and time when offering in-house training required in accordance with this Section. DDSO may provide unannounced monitoring at any time.

(D) To ensure that contract trainers support the DDSO mission, values, and philosophies, as well as demonstrate mastery of the subject matter and good training skills, each DDSO trainer is assigned to monitor a specific number of contract trainers per year.

(i) Each DDSO trainer is assigned to monitor contract trainers based upon the DDSO trainer's particular areas of expertise and interest.

(ii) The DDSO trainer reviews each assigned contract trainer at least one time per year for a minimum of one half training day, which is three hours.

(iii) The review is unannounced.

(iv) The DDSO trainer provides written and oral feedback to the contract trainer following the class.

(v) A copy of the written report is provided to the contract trainer, contract trainer's supervisor, and DDSO director of human resource development.

(vi) If significant areas of concern are noted, the contract trainer and immediate supervisor develop a specific plan of correction which may include such measures as retraining, increased supervision of classes, or co-training. A copy is

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sent to the DDSD director of human resource development.

(vii) Exceptional performance is noted in writing with a copy to the trainer's personnel file and a copy to the director of human resource development.

(viii) DDSD training staff review the primary training programs and other sensitive training programs provided by contract training staff.

(E) Service recipients, family members, and advocates, as well as organizations with expertise in disability issues or training may be invited to review training classes or portions of classes.

(i) These reviews may be announced or unannounced.

(ii) Service recipients, family members, friends, advocates and guardians, or organizations provide feedback to the trainer, the trainer's supervisor, and the DDSD director of human resource development.

(2) Classes found to violate the requirements given in this Section including material covered, testing procedures, or DDSD ~~policy~~ rule requirements may result in:

(A) corrective discipline for OKDHS employees;

(B) revocation of approval to provide training; or

(C) sanctions against the provider in accordance with OAC 340:100-3-27.

(3) Any participant or agency with concerns about course content, a course instructor, or availability of a course immediately notifies the supervisor of the course or instructor. If resolution of the issue does not occur, the participant or agency notifies the DDSD director of human resource development.

(4) Each class used to fulfill the training requirements in this Section ~~which~~ that is offered by DDSD, contract training agents, or provider agencies offers participants the opportunity to provide feedback. Feedback options include:

(A) end-of-class evaluation forms;

(B) periodic surveys; or

(C) focus group discussions.

(5) DDSD case management staff access the training data system described in OAC 340:100-3-38.11 as a mechanism to ensure that staff in the homes and day program sites of people they serve have completed the new employee and annual training requirements. When staff are not trained as required by this Section, the case manager initiates the problem resolution process specified in OAC 340:100-3-27.

(6) Case managers and providers report to the DDSD director of human resource development any training system issues inhibiting fulfillment of the requirements of this Section.

### SUBCHAPTER 5. CLIENT SERVICES

#### PART 3. SERVICE PROVISIONS

##### **340:100-5-22.6. Alternative group homes**

(a) **Legal basis.** Authority to operate alternative group homes is found in Section 1020 of Title 56 and Section 1175.6b of Title 22 of the Oklahoma Statutes (O.S.). Administrative and program requirements for alternative group homes, in addition to those described in OAC 317:40-5-152 and OAC 340:100-6 are given in this Section.

(b) **General information.** Alternative group homes serve up to four individuals.

(1) Service recipients have:

(A) serious behavioral or emotional challenges or community protection issues in addition to mental retardation and require continuous supervision and assistance in order to remain in the community; or

(B) been charged with a felony crime, determined by the district court to be dangerous, and placed by the district court in the custody of the public guardian.

(2) To ensure the safety of the service recipient and others, alternative group homes provide more restrictive measures than other community residential settings.

(c) **Provider approval criteria.** Providers of alternative group home services must demonstrate a history of effective services and supports to persons with serious behavioral or emotional challenges or community protection issues. Provider approval requires review of historical information, if available, from Developmental Disabilities Services Division (DDSD) Quality Assurance Unit and area office(s). Each prospective provider submits written documentation of:

(1) history of services to people who present serious behavioral or emotional challenges or community protection issues, including:

(A) past experience;

(B) number of persons served;

(C) the provider's perspective on the greatest challenges in serving persons eligible for alternative home services; and

(D) the provider's philosophy for service provision;

(2) fiscal information as requested to determine financial viability, including the anticipated budget related to the rate for alternative group home services;

(3) service provision plans, including:

(A) anticipated number of homes;

(B) location;

(C) floor plans;

(D) gender to be served;

(E) population to be served; and

(F) availability of psychological services, psychiatric services, and vocational services in the proposed location;

(4) plans for staffing and program coordination; and

(5) staff qualifications, including any additional training to be provided.

(d) **Eligibility to receive services.** To be eligible for services in an alternative group home, the person must:

(1) have been placed in the custody of the public guardian as provided in Section 1175.6b or Section 1175.6c of Title 22 of the O.S.; or

(2) meet the criteria for intermediate care facility for the mentally retarded (ICF/MR) level of care; and

(A) require 24-hour, on-site, awake staff supervision to ensure safety; and

(B) be found by the DDS programs administrator of community services or designee to have serious behavioral or emotional challenges or community protection issues such as:

(i) evidence of commitment of a sexually violent offense or predatory act or a crime of sexual violence including, but not limited to:

(I) rape;

(II) lewd or indecent acts or proposals made to a child, as defined in Section 1123 of Title 21 of the O.S.; or

(III) forcible sodomy, as defined in Section 888 of Title 21 of the O.S.;

(ii) a history of stalking or opportunistic behavior which demonstrates a likelihood to commit a sexually violent or predatory act;

(iii) a documented pattern of acts of violence toward others;

(iv) experience ongoing, highly disruptive behavioral episodes that:

(I) are dangerous as defined by Section 1175 of Title 22 of the O.S.; and

(II) require close supervision and frequent intervention by staff;

(v) evidence of commitment of one or more violent offenses, such as:

(I) murder or manslaughter;

(II) attempted murder;

(III) arson;

(IV) assault;

(V) kidnapping; or

(VI) use of a weapon to commit a crime; or

(vi) severe ongoing self-injurious behavior.

(e) **Services provided.** Services are designed to assist service recipients in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in a home and community-based setting.

(1) Services include supports to meet the needs of each service recipient including, but not limited to:

(A) residential habilitation such as assistance with the acquisition, retention, or improvement in skills related to activities of daily living, such as:

(i) personal grooming and cleanliness;

(ii) bed making and household chores;

(iii) eating and the preparation of food; and

(iv) social and adaptive skills necessary to enable the service recipient to reside in a shared home;

(B) program supervision and oversight including 24-hour availability of response staff to meet schedules or unpredictable needs in a way that promotes maximum dignity and independence, while providing for supervision and safety;

(C) implementation of community protection precautions and individual program plans as outlined in subsection (f) of this Section;

(D) recreational and leisure activities, including individual and group activities;

(E) assistance in money management;

(F) health care services provided in accordance with OAC 340:100-5-26 and 340:100-5-26.3; and

(G) medication administration performed in accordance with OAC 340:100-5-32.

(2) In addition to the services listed in paragraph (1) of this subsection, services for wards of the public guardian are designed to ensure the service recipient is not dangerous to self or others.

(f) **Alternative group home program requirements.** In addition to compliance with applicable rules of the Oklahoma Health Care Authority (OHCA) and DDS, alternative group homes meet the requirements in this subsection. The provider agency ensures that:

(1) staff implement security precautions protecting the service recipient and neighbors, children, vulnerable adults, animals, and others;

(2) staff implement outcomes and action steps detailed in the Plan to assist service recipients to function safely in the community and avoid criminal activity;

(3) collaboration and coordination occur with DDS staff, employment providers, therapists, and other agencies and individuals such as law enforcement, corrections officers, schools, employers, mental health workers, and the public guardian if the individual has been placed in the custody of the public guardian;

(4) program designs and behavior support practices beyond those contained in this Section comply with OAC 340:100-5-50 through 340:100-5-58;

(5) written agency policies comply with DDS rules;

(6) effective security and supervision of service recipients in the residence and in the community is provided;

(7) contingency plans are developed and implemented for:

(A) emergency relocation of a service recipient who has created a danger or who is in danger;

(B) emergency staffing in the event changes are required to protect staff or others;

(C) general emergencies requiring evacuation of the whole home, such as fire or weather emergencies, as addressed in OAC 340:100-5-22.1; and

(D) elopement;

(8) legal and court requirements are followed, including adherence to state laws governing registered sexual offenders;

(9) the health care coordinator or other knowledgeable staff member accompanies each service recipient to a medical or psychiatric appointment, taking current data summaries that indicate the rate of occurrence of medication-responsive symptoms or behaviors over the last one to three months. For visits to the physician prescribing psychotropic medication(s), the summary

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- covers symptoms or behaviors listed on OKDHS Form DDS-67, Semi-annual Psychotropic Medication Review;
- (10) staff meet training requirements of OAC 340:100-3-38;
- (11) specific offense patterns are considered and addressed when determining appropriate program locations. In addition to the requirements of OAC 340:100-6-12 and OAC 340:100-6-30, the location of the home must be approved in writing by the DDSD director or designee prior to implementation of services;
- (12) cabinets are kept locked if they contain any knives or other sharp objects that could be used as weapons or any items specifically identified by the Team as dangerous;
- (13) staff provide arm's-length supervision to each service recipient when outside the home unless another supervision pattern is specifically described in the Plan and approved by designated DDSD State Office staff;
- (14) door and window alarms are used;
- (15) a fenced yard with a locked gate, unless the requirement for a locked gate is waived in writing by the DDSD director or designee; and
- (16) other necessary restrictive procedures as detailed in the Plan are implemented, that may include:
- (A) restricted views from, or into, windows, doors, and other openings;
  - (B) restricted access to certain areas; and
  - (C) in the case of wards of the public guardian, restrictions deemed necessary to keep the service recipient and public safe.
- (g) **Weapons.** Dangerous or deadly weapons are not permitted in the home or on the premises. Provider agency staff are prohibited from assisting any service recipient to obtain or possess dangerous or deadly weapons. Dangerous or deadly weapons include, but are not limited to:
- (1) guns, BB guns, air rifles, or other firearms;
  - (2) crossbows;
  - (3) paint guns;
  - (4) arrows;
  - (5) explosives;
  - (6) stun guns; and
  - (7) knives, except cooking and eating utensils.
- (h) **Prohibited substances.** Illegal substances and alcohol are not permitted in the home.
- (i) **Medicaid eligibility.** The service recipient and guardian, with necessary support from the provider agency, establish and maintain Medicaid eligibility, if possible.
- (j) **Natural supports.** Individuals who agree to provide natural supports to a service recipient living in an alternative group home are responsible to:
- (1) work with the Team to develop a schedule, support strategies, or other agreement(s) for support. Each Plan contains a description of any natural support to be provided which ensures the safety and welfare of the service recipient and the community. No arrangement can be made for natural supports that would violate existing court orders, security agreements, or individual planning for community protection;

- (2) keep commitments made regarding supports; and
  - (3) document or report to the program coordinator or case manager regarding the supports provided.
- (k) **Refusal to participate.** If a service recipient or legal guardian refuses to participate in service delivery as described in the Plan:
- (1) the provider continues to implement the Plan as written;
  - (2) the provider immediately notifies the DDSD case manager of the need for a Team meeting;
  - (3) the case manager takes immediate action to convene the Team to address the situation; and
  - (4) steps given in OAC 340:100-3-11 are followed.
- (l) **Record keeping.** In addition to the requirements of OAC 340:100-3-40, records of service recipients must include:
- (1) documentation of the registration of the service recipient with appropriate law enforcement authorities, if required, as well as documentation of subsequent notification to DDSD of registration;
  - (2) documentation of all agreements or plans with other agencies or individuals who support the service recipient, including guardian and family members, which must include requirements for supervision of the service recipient when staff is not present;
  - (3) documentation of any refusal by the service recipient to follow conditions of the Plan, Protective Intervention Plan, or treatment recommendations of treatment professionals; and
  - (4) Form DDS-55, Monthly Summary of Physical Management Procedures, as required by OAC 340:100-5-57.1 which is submitted for each home to the DDSD area positive support field specialist by the 10th day of the following month.
- (m) **Transportation.** Providers of alternative group home services ensure that transportation is:
- (1) available as needed for medical emergencies, appointments, day programs, and community activities in accordance with OAC 317:40-5-103; and
  - (2) supervised as described in this Section in accordance with the needs of each service recipient.
- (n) **DDSD-initiated transition.** The DDSD programs administrator for community services or designee may initiate the transition process for a person receiving alternative group home services who can be effectively served in another residential environment.
- (o) **Transition.** All transitions from alternative group homes must be approved by designated DDSD State Office staff. State Office residential staff may adjust the transition date if necessary.

## SUBCHAPTER 6. GROUP HOME REGULATIONS

### PART 17. RESIDENTS' FUNDS

**340:100-6-76. Protection of resident's funds**

To protect each resident's funds, the group home: follows requirements of OAC 340:100-3-4.

- (1) shall reserve a portion of each resident's monthly income as a personal needs allowance for use by the resident;
- (2) shall at the time of admission, provide each resident and his representative, if any, with a written statement explaining the resident's rights regarding personal funds and listing services for which the resident will be charged, and obtain a signed acknowledgment from each resident and his representative, if any, that he has received the statement;
- (3) may accept funds from a resident in accordance with DHS policy for safekeeping and managing, if the group home receives written authorization from the resident and his/her representative, if any;
- (4) shall maintain and allow each resident and his representative access to a written record of all financial arrangements and transactions involving the individual resident's funds;
- (5) shall provide each resident and his representative, if any, with a written itemized statement, at least quarterly and on request, of all financial transactions involving the resident's funds;
- (6) shall keep any funds received from a resident for safekeeping in an account separate from the group home's funds and shall maintain such funds as required by this section;
- (7) shall maintain a separate financial record for each resident;
- (8) shall ensure that each resident's personal funds account is reconciled at least monthly by an individual who does not have authority to disburse funds from or responsibility to deposit funds to the account;
- (9) shall deposit any resident income into the resident's account within seven days of receipt;
- (10) shall ensure that, if resident funds are held in an interest bearing account, all interest accrues to the resident;
- (11) shall ensure that each resident's cash which is not in the resident's possession is properly protected against theft;
- (12) shall ensure that provider employees do not engage in any prohibited financial transaction with any resident, including buying or selling property, loaning funds, trading articles, accepting gifts with a cumulative annual value greater than \$100;
- (13) shall assist each resident in avoiding financial exploitation by others;
- (14) shall return to the resident, upon written request by the resident and his/her representative, if any, all or any part of the resident's funds given the home for safekeeping, including the interest accrued from deposits;
- (15) shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the group home has written authorization from the resident and his/her representative, if any, to handle it;

- (16) unless otherwise provided by State law, upon the death of a resident, shall provide the administrator or executor of the resident's estate with a complete accounting of all the resident's personal property including any funds of the resident being held by the group home; and
- (17) if the group home is sold, shall provide the buyer a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new provider.

[OAR Docket #06-761; filed 4-26-06]

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

[OAR Docket #06-781]

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PERMANENT final adoption

**RULES:**

- Subchapter 3. Administration of Plans
- 360:10-3-4. [AMENDED]
- 360:10-3-20. [AMENDED]
- 360:10-3-33. [NEW]
- Subchapter 5. Coverage and Limitations
- Part 11. Medicare Supplement
- 360:10-5-75. [AMENDED]
- 360:10-5-77. [AMENDED]

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**Superseded rules:**

- Subchapter 3. Administration of Plans
- 360:10-3-30. [NEW] - Superseded by 360:10-3-33. [NEW]

**Gubernatorial approval:**

June 30, 2005

**Register publication:**

22 Ok Reg 2757

**Docket number:**

05-1183

# Permanent Final Adoptions

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Changes to Chapter 10 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

## CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2007:**

## SUBCHAPTER 3. ADMINISTRATION OF PLANS

### 360:10-3-4. Cancellation of coverage

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, coverage may be cancelled.

(a) **Cancellation of coverage due to non-payment of premium.** If payment is not received by the end of the month in which the payment is due, coverage shall be canceled effective the end of the month for which the last premium was received. The Board may reinstate coverage within sixty [60] days after the date the Board canceled coverage, if it is shown that the failure to pay premiums was not due to the member's negligence, subject to payment of any required premiums. The employee shall be notified in writing by the Board of cancellation of ~~coverage~~ coverage and provided an opportunity for a hearing.

(b) **Cancellation of coverage due to insufficient funds.** In the event the member's payment is returned or refused due to insufficient funds or closed account, coverage may be cancelled unless the check is returned due to no fault of the member.

(c) **All coverage canceled.** If coverage is canceled for either of the reasons listed above all coverage will be terminated. When the employee is eligible to re-enroll, all Plan limitations apply and evidence of insurability is required to enroll in any life coverage.

(4) Cancellation of coverage for Medicare members. If payment is not received by the twentieth [20<sup>th</sup>] of the month, Medicare members will be notified of the delinquency and given thirty [30] days to make the payment. If payment is not made within the thirty [30] day grace period, coverage will be terminated effective the first of the following month.

### 360:10-3-20. Rights of eligible former employees to continue in the Group Health and Dental Insurance Program

(a) Health, dental and vision coverage may be elected or retained at the time of termination of employment from an employer who participates in that health, dental or vision coverage, if the following conditions are met:

(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan.

(2) The election must be received by the Board no later than thirty [30] days after the date of termination of service.

(3) Group coverage must be continuous in order to waive the pre-existing conditions or orthodontia limitations when retaining or electing coverage.

(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected:

(1) The coverage may not be reinstated at a later date, except as permitted for former State employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement.

(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:

(1) During an Open Enrollment Period; or

(2) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added within thirty [30] days after acquiring the new ~~dependent[s]; or dependent[s].~~ For a new spouse/dependent who is Medicare eligible, the spouse/dependent may be added to coverage at the first Option Period after the marriage.

(3) If the dependent has lost other group health or dental insurance coverage and notice has been given to the Board within thirty [30] days after the loss of the other coverage. In this situation, coverage will begin without penalty for pre-existing conditions and orthodontia limitations, provided group coverage was in effect and there is no break in coverage.

(d) During an Option Period, covered former employees may make changes to their existing benefits but not add additional benefits with the exception of vision coverage.

(e) If an eligible former employee has a spouse who is participating in the Program as an employee of a participating entity, the former employee may transfer his or her health, dental and vision coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:

(1) Coverage must remain continuous; and

(2) All eligible dependents must be insured unless they have other verifiable group coverage.

(3) The eligible former employee, at a later date, may defer or transfer his or her insurance coverage from dependent status back to former employee status if coverage with the Program has remained continuous, and the former employer of the eligible former employee continues to participate in the Program.

(f) An individual who has retained health, dental or vision coverage who is returning to active employment for a participating entity and meets the eligibility criteria for an active employee is entitled to transfer his present coverage to that employer as long as the employer is a participant in the benefit transferred. The employee may retain his present life coverage

and may add life coverage so long as the total amount of life coverage does not exceed the guaranteed issue amount. Evidence of insurability must be submitted and approved for any amount exceeding guaranteed issue or the amount previously held in retirement, whichever is greater.

(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for an active employee is not entitled to coverage through that employer.

(h) In the event an otherwise eligible former employee returns to active employment who did not retain health coverage upon termination of employment, he must meet the eligibility requirements of a new employee in order to obtain coverage through the employer. Such individuals must work for three years in order to qualify for retaining any benefits not previously elected upon ceasing active employment when they re-retire. This includes members who terminated from employers not participating in the Insurance Program when they originally ended employment.

**360:10-3-33. Basic disclosure plan for Medicare beneficiaries**

(a) The following words and terms as defined by the Board, when used in this section, shall have the following meaning: "Medicare beneficiary" means individuals eligible for HealthChoice Medicare plan coverage who are also entitled to Medicare benefits as designated by the United States Social Security Administration.

(b) In order to assure Medicare beneficiaries with an understanding of the medical and pharmacy benefits provided by, and the operation of, the HealthChoice Medicare plans, the Oklahoma State and Education Employees Group Insurance Board (hereinafter the Board) shall maintain, adopt, and implement a basic disclosure plan for Medicare beneficiaries. This basic disclosure plan includes but is not limited to informational materials such as:

(1) A Medicare beneficiary benefits handbook providing a summary of medical and pharmacy benefits available under the Board's Medicare HealthChoice plan. Such handbooks shall be updated when material benefits or covered services change, or when reductions occur. A separate notification of material changes will be sent to all Medicare beneficiaries in a timely fashion prior to the updating of the Medicare beneficiary benefits handbook.

(2) A pre-enrollment package which shall be provided to all plan eligible Medicare beneficiaries. The pre-enrollment package shall, within a reasonable person's determination, be written in clear and understandable language providing the Medicare beneficiary detailed and necessary information upon which to make a selection of coverage for an upcoming plan year.

(3) A confirmation of benefit coverage form which will be distributed in a timely fashion after enrollment of a Medicare beneficiary, and by which HealthChoice shall notify the Medicare beneficiary of the plan he will be covered under, for the upcoming year. The confirmation of benefit form shall further detail any identified pre-existing exclusions, and provide a description of an appeal process.

(4) An explanation of benefit determination letter explaining the outcome of each medical or pharmacy claim processed for payment or denial. In the case of denial the explanation of benefit determination letter shall provide information of the appeals process available to the Medicare beneficiary.

(5) Material which provides all Medicare beneficiaries with basic disclosure information on special enrollment rights, medical child support orders, and any Medicare service or benefit that the Board by law has been directed to provide.

**SUBCHAPTER 5. COVERAGE AND LIMITATIONS**

**PART 11. MEDICARE SUPPLEMENT**

**360:10-5-75. Medicare Supplement ~~provision~~and Medicare Part D Prescription Drug Plan (PDP)**

Participants in the State and Education Employees Group Health Plan who are retired, vested or in any of the other nonactive categories, and their covered dependents eligible for Medicare will be assumed to have both Parts A and B of Medicare. Benefits payable under ~~this program~~the Medicare Supplement will be determined in accordance with ~~such~~this assumption. The Medicare Supplement is either connected with a Medicare Part D Prescription Drug Plan or contains pharmacy benefits that are considered creditable coverage by Medicare.

**360:10-5-77. Limitations of Medicare supplement**

The Medicare supplement health coverage is a supplement to the coverage provided by Medicare.

- (1) This supplement applies only after Medicare benefits are determined.
- (2) Coverage is limited to Medicare's scheduled amount.

[OAR Docket #06-781; filed 4-28-06]

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

[OAR Docket #06-782]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
360:15-1-2. [AMENDED]  
360:15-1-12. [AMENDED]  
360:15-1-18. [AMENDED]

**AUTHORITY:**  
Oklahoma State and Education Employees Group Insurance Board; 74 O.S., Sections 1332

# Permanent Final Adoptions

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**DATES:****Comment Period:**

February 6, 2006

**Public Hearing:**

February 6, 2006

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February 24, 2006

**Submitted to Governor:**

February 27, 2006

**Submitted to House:**

February 27, 2006

**Submitted to Senate:**

February 27, 2006

**Gubernatorial approval:**

April 6, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 25, 2006

**Final adoption:**

April 25, 2006

**Effective:**

January 1, 2007

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Changes to Chapter 15 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

**CONTACT PERSON:**

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2007:**

**360:15-1-2. Definitions**

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

**"Base compensation"** means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.

**"Benefit period"** means the first day of the benefit period will be the day benefits commence as defined at 360:15-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 360:15-1-11(d). A recurrent disability as defined at 360:15-1-7 will not alter the beginning date of the benefit period.

**"Disability"** means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty-one [31] consecutive days or longer. After the first twenty-four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of

disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers compensation or social security are not considered prima facie evidence of disability for this plan.

**"Eligibility period"** means the first thirty-one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period.

**"Elimination period"** means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.

**"Employee"** means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability Program or who meet each and every requirement of this Disability Program.

**"Furlough"** means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.

**"Illness"** means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the program.

**"Injury"** means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the program.

**"Participation"** means participation in the Disability Program shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability and to employees of other entities and counties which have adopted a resolution to join the Disability Program. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty-one [31] consecutive days.

**"Physician"** means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.

**"Pre-existing condition"** means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her entry on duty [EOD]

date. The term "pre-existing condition" shall also include any condition which is related to such injury or illness.

"Years of service" means time spent as an active employee performing full-time duties for remuneration with an entity participating in the insurance plan. ~~Time spent working for full or partial wages after an insured's last established disability date will not be counted toward years of service for disability benefit purposes.~~ Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.

**360:15-1-12. Benefit offsets**

(a) **Offset by benefits received from other sources.** The disability benefit due from this plan shall be offset by benefits received from other sources. These sources are:

- (1) Any sick leave benefits for which the employee is eligible.
- (2) Social Security benefits as follows:
  - (A) Any amount of primary disability benefits provided under the United States Social Security Act for which the employee is eligible because of this disability; and
  - (B) Any amount of primary and/or family retirement benefits provided under the United States Social Security Act which the employee receives.
  - (C) The following benefits under the Social Security Act are not to be considered offsets under this program:
    - (i) Social Security benefits effective prior to the established date of disability, unless awarded as a result of the same disability;
    - (ii) Social Security widow's/widower's benefits not connected to the claimant's disability; and benefits awarded under the Supplemental Security Income Program.
- (3) Any benefits received under the provisions of State of Oklahoma or county retirement systems, except those benefits which began prior to onset of disability.
- (4) Benefits related to the Disability provided by another group plan. Such benefit becomes due as a result of the disability and not by a voluntary election to receive the benefit. This does not include:
  - (A) plans funded entirely by employee contribution;
  - (B) plans where payment of these benefits reduce the benefit the claimant would be due at a normal retirement age; or
  - (C) payments for conditions established one [1] year or more, prior to the established date of this disability claim. This does not include a profit-sharing

plan, a 401K, a thrift plan, an Individual Retirement Account, stock ownership plan, tax sheltered annuity or any benefits from a non-qualified deferred compensation plan.

- (5) Benefits related to this disability that are provided under any state's Worker's or Workman's Compensation Law, any occupational disease law, or any other similar act or law.
- (6) Any salary, wages, holiday pay, commissions or similar earnings the employee receives from any gainful employment, including salary increases as well as shared or annual leave payment-payment[s]. Neither longevity pay nor one-time bonuses are considered offsets. ~~Longevity pay is not considered an offset.~~
- (7) Subrogation (loss of earnings for employee only).
- (8) 50% of any earnings while partially disabled or during rehabilitative employment prior to final release.
- (9) Any overpayment of previous disability payments.
- (10) Any unemployment compensation benefits.

(b) **Non-reduction of benefits due to increases in other benefits.** Once a disability benefit begins, monthly benefits will not be further reduced due to any statutory or cost of living increases payable from pension or pension disability programs, Social Security or Workers' Compensation.

(c) **Lump sum payments.** If any benefits from the sources mentioned in (a) of this section are paid in a lump sum, the Board will prorate the benefits on a monthly basis, either over the period for which the benefit is established or over the actuarially expected life time of the employee, if no time period is established.

(d) **Payment of any overpayment or underpayment.** Benefits will be estimated if they have not yet been awarded, have not been denied or have been denied and the denial is being appealed. Any overpayment or underpayment that results from estimating these benefits will be repaid by the responsible party after the actual benefit is determined.

**360:15-1-18. Suspension or termination of benefits**

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act ~~or~~ and these rules, disability benefits may be suspended or terminated for failure to:

- (1) Fully cooperate with or implement the rehabilitation plan;
- (2) Submit to examination by a physician selected by the Board;
- (3) Supply recertification by a physician;
- (4) Cooperate in the repayment of overpayments; or
- (5) Otherwise comply with the requirements of this plan.

[OAR Docket #06-782; filed 4-28-06]

# Permanent Final Adoptions

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

[OAR Docket #06-814]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

390:1-1-2.1. [NEW]

390:1-1-9. [NEW]

390:1-1-10. [NEW]

390:1-1-11. [NEW]

### AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

### DATES:

#### Comment period:

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March 1, 2006

#### Submitted to Senate:

March 1, 2006

#### Gubernatorial approval:

April 17, 2006

#### Legislative approval:

Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

#### Final adoption:

April 27, 2006

#### Effective:

July 1, 2006

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

Proposed additions to this chapter would expand the agency's acceptance and use of electronically submitted signatures, photographs and records; inform the public of the address and hours of operation for the agency; and allow use of a nationally recognized credit card as a method of payment.

### CONTACT PERSON:

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

#### **390:1-1-2.1. Definitions**

In addition to terms defined in 70 O.S., Section 3311 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Acceptable electronic signature technology" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Authorized signature" means a manual, electronic or digital identifier uniquely linked to an individual, or if representing an agency, the agency head or person authorized by the head of the agency to sign documents submitted to CLEET.

"CLEET" means the Council on Law Enforcement Education and Training, and its administrative officers and personnel.

"Council" means the appointed members of the Council on Law Enforcement Education and Training, as defined in Title 70 O.S., Section 3311.

"Director" means the Director of the Council on Law Enforcement Education and Training, or designated agent.

"Electronic photograph" means a photograph created, generated, sent, communicated, received or stored by electronic means.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

"Nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by the issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in the state.

#### **390:1-1-9. Official office and location for information**

(a) Unless otherwise specified in this Title, the address for CLEET is: CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.

(b) The normal business hours of CLEET are 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

#### **390:1-1-10. Electronic signatures, photographs and records**

(a) CLEET may issue and receive electronic signatures, photographs, and records as defined in this Chapter.

(b) Information received electronically is subject to verification and may be denied if CLEET is unable to validate the source.

(c) CLEET reserves the right to request signatures, photographs and records in a particular format.

**390:1-1-11. Credit card payments**

- (a) CLEET may accept credit cards as defined in this chapter as a method of payment.
- (b) CLEET shall determine which nationally recognized credit cards will be accepted.

[OAR Docket #06-814; filed 5-4-06]

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 2. ADMINISTRATIVE  
PROCEDURES**

[OAR Docket #06-815]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:2-1-8. [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

**DATES:**

**Comment period:**

January 17 - February 22, 2006

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**Adoption:**

February 24, 2006

**Submitted to Governor:**

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March 1, 2006

**Gubernatorial approval:**

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**Legislative approval:**

Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

**Final adoption:**

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**Effective:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The proposed amendment would set forth the requirement that the elements in the decision rendered by the hearing examiner in an administrative hearing include the Conclusions of Law.

**CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**390:2-1-8. Hearing examiners**

(a) **Exercise of authority.** Hearing Examiners shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including but not limited to, the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Rule upon the institution of discovery procedures as appropriate;
- (4) Convene a hearing as appropriate, regulate the course of the hearing, examine any witness in order to clarify issues; maintain decorum and exclude from the hearing any disruptive persons;
- (5) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any person whose presence might have a chilling effect on testifying witness;
- (6) Rule on all motions, witness and exhibit lists and proposed findings;
- (7) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;
- (8) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and non-repetitious;
- (9) Make inquiries of the parties or witnesses for the purpose of clarification or fact findings to insure a fair and impartial decision;
- (10) Identify and document Findings of Fact and Conclusions of Law and render~~Render~~ decisions pursuant to the particular action taken.

(b) **Disqualification of hearing examiner.**

- (1) In the event that a Hearing Examiner considers himself/herself disqualified, he/she shall withdraw from the case, stating on the record the reasons why and shall immediately notify CLEET of the withdrawal.
- (2) Any party may file a motion requesting the Hearing Examiner to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.
- (3) The Hearing Examiner shall rule on the motion.

[OAR Docket #06-815; filed 5-4-06]

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

[OAR Docket #06-816]

**RULEMAKING ACTION:**

PERMANENT final adoption

# Permanent Final Adoptions

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## RULES:

390:10-1-2. [AMENDED]

390:10-1-5. [AMENDED]

## AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

## DATES:

### Comment period:

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### Public hearing:

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Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

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### Effective:

July 1, 2006

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Proposed rule changes to this chapter would clarify the requirement that applicants who are denied an extension of time to complete basic academy training be required to attend in the first training opportunity made available by CLEET in order to comply with 70 O.S. Section 3311 (D)(3). The section concerning requirements for certification would clarify the training and testing requirements for peace officers who have been inactive for five (5) or more years.

## CONTACT PERSON:

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

## PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

### 390:10-1-2. Minimum certification and employment standards

(a) For the purposes of the rules of this Chapter and 70 O.S. Section 3311, a peace officer is defined as a duly appointed or elected law enforcement officer who is paid for working more than twenty-five (25) hours per week and whose duties minimally include all of the following on a full-time basis:

- (1) Preserving the public peace;
- (2) Preventing crime;
- (3) Protecting life and property;
- (4) Enforcing laws and ordinances of this state and its political subdivisions; and
- (5) Executing arrest warrants and search warrants.

(b) All persons hired or elected as peace officers shall meet the employment and training standards set forth in this chapter as set forth in Section 3311 of Title 70 of the Oklahoma Statutes. Calculation of said employment shall be based on cumulative periods of employment.

(c) The Council, or its designee, may grant an extension of the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes, upon written application by the employing agency, and when good cause is shown, as determined by the Council or its designee.

(d) In the event any officer so appointed or elected fails to comply with the employment and training standards and an extension of time is not granted, the employing agency shall comply with 70 O.S. Section 3311(D)(3) at the first opportunity made available by CLEET.

(e) Students are expected to complete the first basic academy in which they are enrolled. In the event a student cannot complete their initial academy, the student can complete the course work in another academy if such work can be completed within a two year period from the date of hiring or appointment as a peace officer. If reentry exceeds two years, students will be required to start the academy over again without regard to previous classwork completed. Exceptions may be made by the Director, or Director designee, for students who have been granted extensions of time as authorized by Section 3311, Paragraph D, 3 of Title 70 of the Oklahoma Statutes.

### 390:10-1-5. Requirements for certification

(a) No person may be certified as a peace officer under the laws and the rules of this chapter until the following requirements have been met.

(1) The agency employing an officer seeking certification, or in the case of an elected official, the elected official himself must certify to CLEET that the employment standards set forth in 70 O.S. Section 3311 (D)(E)(F)(J) have been met. This certification shall be in a format accepted by CLEET.

(2) Having met the employment standards set forth herein, an officer must certify to CLEET that he or she is physically able to fully participate in and complete all phases of the CLEET Basic Peace Officer Certification Academy. This certification shall be in writing on forms to be provided by CLEET. CLEET shall reserve the right to refuse training to persons found to be physically unable to complete all phases of basic certification training.

(3) The head of the agency employing an officer enrolling in a CLEET Basic Certification Academy, shall first certify to CLEET that the officers's employing agency will fully assume all medical expenses incurred by said officers as a result of any injury or illness incurred during basic certification training.

(4) Any officer seeking peace officer certification must successfully complete all phases of a CLEET Basic Certification Academy, or a CLEET - approved basic certification academy.

(5) Every full-time peace officer, certified by the Council, who has been inactive for five (5) or more years, upon re-entry to full-time status, must complete ~~forty (40) hours~~

~~of legal~~ refresher training and successfully pass a written examination as prescribed by the Council, within one (1) year of employment.

(A) Trainees must achieve a score of seventy percent (70%) or higher on the examination.

(B) Any trainee that fails the examination will be permitted to retake that examination within five (5) business days of the first examination.

(C) If the trainee fails the retake examination, the trainee's agency head must petition the Director in writing, to receive additional training and examination opportunities.

(b) The Council on Law Enforcement Education and Training, pursuant to relevant provisions of the Americans With Disabilities Act, will not discriminate against persons capable of performing essential functions required in peace officer training programs with or without reasonable accommodation.

[OAR Docket #06-816; filed 5-4-06]

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

[OAR Docket #06-817]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

- Subchapter 1. Basic Academy Programs
  - 390:15-1-2. [AMENDED]
  - 390:15-1-3. [AMENDED]
  - 390:15-1-9. [AMENDED]
  - 390:15-1-13. [AMENDED]
  - 390:15-1-19. [AMENDED]
- Subchapter 3. Collegiate Officer Program
  - 390:15-3-3. [AMENDED]
  - 390:15-3-6. [AMENDED]
  - 390:15-3-7. [AMENDED]
- Appendix A. Academy City Agreement Form [REVOKED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Subchapter one amendments would correct the reference to Cardiopulmonary Resuscitation or CPR as a separate area of instruction and testing from the First Aid functional area in the basic academy curriculum and remove reference to the standards of the American Red Cross and American Heart Association. 390:15-1-9 proposed change would amend expectations and standards for instructors participating in CLEET basic academy and continuing education courses. Amendment 390:15-1-19 would remove the formatting restrictions for requests presented to the Council and reference to Appendix A as a sample format agreement. Appendix A would be revoked.

Subchapter three proposed amendments would address First Aid and Cardiopulmonary Resuscitation or CPR training and testing in the Collegiate Officer Program. Amendments would clarify testing requirements for the course offerings which contain a portion of the CLEET Basic Academy instructional goals and objectives.

**CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**SUBCHAPTER 1. BASIC ACADEMY PROGRAMS**

**390:15-1-2. Curriculum and courses of study**

(a) The Council shall formulate and promulgate a program of instruction for peace officer certification, comprised of fundamental law enforcement skills and knowledge, which shall be designated as the Basic Peace Officer Certification Academy, known herein as the Basic Academy.

(b) Major block curriculum changes, and/or changes in the total number of hours of the Basic Academy, shall only be made upon the consideration of public input and CLEET's constituency's opinion. CLEET shall seek constituency opinion for major block changes, and/or changes in the total number of Basic Academy hours by requesting input from the Council via an agenda item at a regular or special Council meeting and through one or more of the following: 1) written or oral communication requesting input from local law enforcement chiefs, sheriffs, and agency heads; 2) requesting input from local law enforcement chiefs, sheriffs, and agency heads, at CLEET Regional Meetings; 3) requesting input from the Advisory Council to the Council on Law Enforcement Education and Training via an agenda item at a regular or special meeting.

(c) The curriculum of the Basic Academy was established upon a job-task analysis conducted in 1987 as a joint project of CLEET and the University of Oklahoma. The curriculum shall include functional areas as prescribed by the Council. Functional areas shall include, but shall not be limited to the following:

- (1) Orientation/Legal Matters

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- (2) First Aid
  - ~~(3) Cardiopulmonary Resuscitation~~
  - (43) Firearms
  - ~~(54) Criminal Investigation~~
  - ~~(65) Custody Control and Arrest~~
  - ~~(76) Traffic~~
  - ~~(87) Patrol~~
  - (98) Community Relations
  - ~~(109) Law Enforcement Driver Training~~
- (d) The Basic Academy shall meet the hourly and course of study requirements as provided by O.S. 70 Section 3311 et seq.
- (e) Each topic of instruction to be taught as a separate unit within the functional area shall have specifically defined performance objectives. A performance objective shall be defined as a task to be performed, or knowledge to be gained, by a trainee as part of the training process. Performance objectives shall serve as a foundation for student performance expectations and shall be the primary gauge against which the progress and achievement of each trainee is measured and tested.
- (f) Additional hours of independent study may be required to fulfill one or more functional area requirements.

### 390:15-1-3. Examinations and testing; remedial training; missed time

- (a) For objectives that demand performance of observable behavior by a trainee, the test method, where appropriate, shall be performance oriented and shall duplicate, to the extent possible, realistic job situations.
- (b) For objectives that demand mastery of cognitive material, the test method shall involve a written examination and, wherever possible, the written examination should test a trainee's ability to apply methods, concepts, and techniques taught in the classroom.
- (c) Examinations shall be given at designated intervals during the Basic Academy to determine trainee achievement of objectives.
- (d) Successful achievement on each cognitive examination or performance test shall be 70% or higher with the exceptions of the First Aid Test ~~and CPR~~ which requires a score of 80% or higher.
- (e) Re-examination scores will be recorded on individual profile forms of peace officers.

### 390:15-1-9. Council instructors

- (a) Instructors who teach in the Basic Academy shall possess CLEET recognized instructor training, or shall possess professionally recognized training and experience in the assigned subject area.
- (b) Basic Academy instructors shall adhere to the performance objectives and lesson plans in all cases, except when changes in the law, or other circumstances dictate that more current instructional material be substituted. In such cases, proper revisions shall be made to the lesson plan in question as soon as possible. Such changes shall be forwarded to the appropriate instructors and to all Council-approved Basic Peace Officer Certification Academy coordinators in a timely manner.

(c) CLEET shall establish written guidelines for CLEET, contract, adjunct and volunteer instructors regarding classroom demeanor and attire. All instructors who are scheduled to teach for the Council in a Basic Academy program shall be provided with and comply with the written guidelines.

(1) Instructors who are lodging or visiting facilities owned, operated, or rented by CLEET may not use or bring any alcoholic beverages, intoxicants, or any controlled dangerous substances, onto the property, grounds, or into the facilities.

(2) It shall be prohibited for any instructor to attend any training session while under the influence of any of the above named substances.

(3) Instructors who arrive at lodging, eating, classroom, or training facilities, who appear impaired, may be subject to standard field sobriety testing, or other tests, and to disciplinary action.

### 390:15-1-13. Academic requirements

- (a) In order to successfully complete the basic academy program, trainees must achieve a score of seventy percent (70%), or higher, in all examinations and proficiency tests, except that First Aid ~~and CPR~~ requires a score of Eighty percent (80%) or higher ~~which is consistent with the standards of the American Red Cross, or American Heart Association.~~
- (b) Any trainee who fails a specific block examination will be permitted to retake that block examination within five (5) business days of the first examination.
- (c) If the trainee fails the retake examination the trainee will be required to repeat the entire block of instruction and pass the block examination (third test).
- (d) If the trainee fails the block examination a third time, the trainee's agency head may petition the Director to request that the trainee repeat the block of instruction for a third time and take the examination for a fourth time.
- (e) If a trainee successfully completes all academic blocks but still needs to complete a proficiency block, the trainee may take the certification examination. However, the examination will be maintained in CLEET files until the required proficiency blocks are successfully completed.
- (f) If a trainee fails to complete an academic block of instruction the trainee will not be allowed to take the certification examination until the academic block is successfully completed.
- (g) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) ~~work-~~ ing business days. If a trainee fails the certification examination a second time, the trainee's agency head must petition the Director in writing, to request a third attempt. A third failure will necessitate reenrollment into a basic academy.
- (h) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to two remedial training courses at a later time. If the trainee does not successfully complete remedial training, the trainee's agency head must petition the Director in writing, to request any further training.

(i) Petitions for further testing or training, except for the Firearms Block, shall be made within fifteen (15) ~~working~~business days of the date of the trainee's academic or proficiency failure. Such petitions should articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.

(j) If the trainee fails a proficiency test in the Firearms Block, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor within ninety (90) calendar days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, in writing, notify the Director of CLEET that the student is ready to be scheduled for firearms proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms. Should the trainee not attain the required proficiency, the employing agency administrator must, within fifteen (15) ~~working~~business days of such failure, petition the Director of CLEET for further testing or training. Such petitions must articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.

(k) Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

(l) Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed, the impact upon the instructional staff and class to remediate the trainee, and options for the student to make up the missed time. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc.

(m) Unexcused absences or repeated tardiness may require makeup work during a current or future academy, and may result in administrative discipline.

(n) Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

(o) It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

(p) Each applicant is required to attend all class sessions, subject to previously stated exceptions. Lost time due to unexcused tardiness or absenteeism must be made up in a subsequent academy to complete the requirements for certification.

(q) If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed and notarized release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

(r) If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited. In that event, peace officer certification will not be granted until such time that the trainee is physically or medically able to satisfy all certification requirements.

(s) Extensions of time to complete the requirements for certification may be granted at the Director or designee's discretion.

### **390:15-1-19. Council-approved Basic Peace Officer Certification training**

(a) Municipalities and counties who obtain Council approval to conduct Basic Peace Officer Certification training for their own personnel are authorized to retain monies pursuant to 20 O.S. Section 1313.2.

(b) Any municipal or county law enforcement agency that desires to obtain Council approval of said agency's Basic Peace Officer Certification training program must make written application to the Council, providing satisfactory evidence that the agency will conduct such training in accordance with the Council's prescribed minimum training standards, and utilize hiring practices in accordance with minimum employment standards designated by law, and in accordance with the rules of this chapter; that the agency maintains adequate training facilities and equipment; and that the agency will provide qualified instructors.

(c) ~~This application shall be submitted on forms to be provided by the Council, and shall include a written agreement between the Council and the agency making application. The Director shall make written notification of the Council's approval or denial of the application. If approved, the notification shall include an agreement between the Council and the agency making application.~~ This agreement shall set forth the responsibilities of each party to the agreement, pursuant to 70 O.S. Section 3311 and 20 O.S. Section 1313.2. ~~The general format of said agreement is found in Appendix A of this Chapter.~~

(d) Applications for Council approval to conduct Basic Peace Officer Certification training shall minimally include the following information:

(1) **Justification.** The agency making applications must demonstrate to the Council that there is significant need for that agency to conduct its own basic training program. Such need shall be based on a local training demand that is beyond the scope and capacity of the Council's Basic Academy Program, as demonstrated through local turnover rates, complexities of local training needs, or other justifying factors. No agency shall receive Council approval to conduct its own basic law enforcement certification training, unless it can attest that it will conduct at least one (1) Basic Peace Officer Certification Class, consisting of not less than ten (10) trainees, annually.

(2) **Employment standards.** The agency making application shall report to CLEET, under oath, that all persons to be trained have satisfactorily met the peace officer employment standards set forth by 70 O.S. Section 3311, and in accordance with rules set forth by the Council, on forms to be provided by the Council.

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(3) **Program documentation.** The agency making application shall submit the following information not less than thirty (30) calendar days prior to the beginning of each Basic Peace Officer Certification Academy to be conducted:

(A) The name of the person designated as the Director or coordinator of that agency's Basic Peace Officer Certification training program;

(B) The proposed course schedule, clearly indicating the inclusion of CLEET mandated functional areas and units of instruction;

(C) The instructors for each unit of instruction;

(D) A statement as to the process of examination and testing to be used, and the process of evaluating instructors.

(E) Upon timely notification, CLEET shall administer the Basic Peace Officer Certification Examination to trainees of CLEET-approved Basic Peace Officer Certification Academies who are otherwise qualified to take the examination.

(e) Agencies conducting Council approved Basic Peace Officer Certification Training shall submit the following documentation to CLEET within fifteen (15) calendar days following the completion of each basic academy class:

(1) A final roster of graduates and their social security numbers;

(2) Trainee Academic and proficiency scores from all examinations and proficiency tests, including the Peace Officer Certification Examination.

(3) A final course schedule clearly indicating the actual instructors of each unit of instruction.

(4) A formal request that all trainees who successfully completed the Basic Academy class be granted full-time peace officer certification.

(f) Instructors who teach in Council approved Basic Peace Officer Academies shall possess CLEET recognized instructor training, or shall possess professionally recognized training and experience in their assigned area of instruction.

(g) CLEET shall issue identification cards and certificates as evidence of peace officer certification to trainees who successfully complete Council-approved Basic Peace Officer Academies, and who have been certified by their employing agency to be otherwise qualified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes.

(h) The Council may revoke academy status for failure to adhere to the CLEET rules and if the Council deems it can meet the agency's training needs.

(b) COP institutions shall be required to appoint a COP Director.

(c) CLEET shall require a COP to extend over a two semester period of time in order to accommodate course prerequisites.

(d) CLEET may waive course work completed by students, at a COP institution, between January 1, 1993 and the implementation date of the COP program by the Council.

(e) COP are required to meet minimum curriculum requirements as set forth in 390:15-1-2.

(f) All academic COP testing shall be subject to the sponsoring institution's testing and grading system, except in no case shall a passing grade be lower than 70 percent. First Aid, ~~CPR~~ and skills area testing shall meet the minimum grading requirements set forth by CLEET.

(g) CLEET shall support the student attendance policy of any COP institution with the exception that skills area testing requires 100 percent attendance.

## 390:15-3-6. Curriculum mandates

(a) COP courses shall include, but are not limited to, instruction in the following topical areas:

(1) Orientation/Legal Matters

(2) First Aid

~~(3) CPR~~

~~(4) Firearms~~

~~(5) Criminal Investigation~~

~~(6) Traffic~~

~~(7) Custody Control~~

~~(8) Patrol~~

~~(9) Community Relations~~

~~(10) Law Enforcement Drivers Training~~

(b) CLEET shall make such course goals and objectives, as well as current Basic Academy lesson plans, available to all COP institutions. COP institutions may utilize a collegiate accredited First Aid course and a collegiate accredited CPR course as a substitute for CLEET's First Aid course.

## 390:15-3-7. Course testing

(a) With the exception of First Aid, which requires a minimum score of 80 percent, cognitive courses of study require as a minimum passing standard, a course average of 70 percent or higher. All academic COP course testing shall be subject to the higher education institution's testing and grading system with the exception that under no circumstances shall a course grade of less than 80 percent for First Aid, and no less than 70 percent for other course offerings, be considered a passing score for a course offering which contains a portion of the CLEET basic Academy instructional goals and objectives.

(b) COP skills training courses shall meet the minimum grading standards set forth for the CLEET Basic Academy skills training programs.

## SUBCHAPTER 3. COLLEGIATE OFFICER PROGRAM

### 390:15-3-3. CLEET oversight and program administration

(a) CLEET shall require institutions offering the COP to request and receive accreditation from the Executive Director of the Council.

APPENDIX A. ACADEMY CITY AGREEMENT FORM AGREEMENT [REVOKED]  
AGREEMENT

Whereas, the Council on Law Enforcement Education and Training, hereinafter referred to as the Council, is authorized and directed under the laws of the State of Oklahoma to establish rules as to minimum employment and training standards for the certification of law enforcement officers in this state, as set forth in 70 O.S., Section 3311; and

Whereas, municipalities and counties who wish to retain Two Dollars (\$2.00) from monies collected pursuant to 20 O.S., Section 1313.2 may do so only when Basic Peace Officer Certification academies are conducted for its personnel in accordance with the guideline established by the Council under law; therefore,

- 1) The \_\_\_\_\_ of \_\_\_\_\_ does hereby acknowledge receipt of the duly promulgated rules established by the Council pertaining to Basic Peace Officer Certification, as published and attached hereto; and
- 2) Agrees to conduct its Basic Peace Officer Certification Program in accordance with said laws and rules; and
- 3) Agrees to submit to the Council, in writing and under oath, the employment and training documentation prescribed by the Council, in its entirety and not less than fifteen days following to the commencement of any Basic Certification Academy Class.

Pursuant to satisfactory compliance with said laws and rules pertaining to Basic Peace Officer Certification, the Council or its designee will grant approval to the \_\_\_\_\_ of \_\_\_\_\_ to conduct Basic Peace Officer Academies for its own personnel, and to grant peace officer certification to trainees who successfully meet said employment and training standards.

Council approval as described herein shall authorize the \_\_\_\_\_ of \_\_\_\_\_ to retain Two Dollars (\$2.00) from monies collected pursuant to 20 O.S., Section 1313.2 for use in conducting its law enforcement and judicial training functions.

[OAR Docket #06-817; filed 5-4-06]

# Permanent Final Adoptions

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #06-818]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

390:25-1-8. [AMENDED]

### AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

### DATES:

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#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

This proposed change is needed to modify the documentation requirements for accredited courses by requiring instructors to maintain control of teaching materials instead of submitting actual course materials to CLEET.

#### CONTACT PERSON:

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

### **390:25-1-8. Outside law enforcement schools and seminars**

#### **(a) Centralized peace officer training records.**

(1) CLEET shall maintain a centralized depository of training records for each full-time, certified peace officer in the State of Oklahoma. Schools and Seminars attended by such officers may be entered into their individual training files upon request.

(2) Local "in-service" training or informational sessions of less than one (1) hour shall not be entered.

(3) Requests for individual training record entries shall be in format approved by CLEET.

(4) Such requests shall minimally contain the following documentation:

(A) The date(s), location and title of the school or seminar; and

(B) An official school Attendance Roster, showing the name, Social Security number, and employing agency of each full-time, certified officer in attendance; and

(C) One of the following:

(i) The name and address of the instructor(s); or

(ii) A copy of the completion or attendance certificate issued by the school, and the requesting officer's name, Social Security number, and employing agency.

#### **(b) Local training incentive accreditation.**

(1) For the purposes of this sub-section, "ACCREDITATION" ~~shall only mean~~ means that CLEET will ~~attest to any interested party that a particular school or seminar was conducted by a qualified instructor(s), and that trainee attendance, instructional methods, curriculum, and related materials were managed and documented in accordance with professional training standards.~~ assign a course accreditation number and send a confirmation letter to the agency requesting such accreditation for a lesson plan submitted by that agency. It will be the responsibility of the agency requesting accreditation to retain the lesson plan and all supporting material. All lesson plans and supporting materials on file with the agency requesting an accreditation number will be considered by CLEET to be copyrighted. Regarding any law enforcement concepts, practices, methods, techniques, products, or devices as might be taught, promoted, or otherwise espoused in outside schools or seminars, there is no intent, expressed or implied, that "accreditation" indicates or in an way conveys "CLEET ~~Approval~~ approval" of such concepts, practices, methods, techniques, products, or devices, unless such approval is explicitly stated by CLEET.

(2) For the purpose of qualifying for training or educational pay increases, or for other training incentives which might be initiated by law enforcement agencies, and for which CLEET accreditation is a requisite, the rules and procedures set forth in (3) and (4) of this subsection shall apply.

(3) Requests for local training incentive accreditation for any outside school or seminar, shall be made in writing in a format approved by CLEET and shall minimally contain the following information:

(A) ~~An outline, lesson plan, or~~ A description of the subject of the school or seminar;

(B) A resume' or summary of each known instructor's qualifications, describing his or her training and experience in the particular subject.

[OAR Docket #06-818; filed 5-4-06]

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

[OAR Docket #06-819]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:30-1-4. [AMENDED]

390:30-1-6. [AMENDED]

390:30-1-7. [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

**DATES:**

**Comment period:**

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Revisions are needed to reflect the address change for the agency and correct a statutory reference.

**CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**390:30-1-4. Conduct of business**

(a) All persons affected by the rules of this Chapter shall be knowledgeable of and conduct business in accordance with all federal, state and local laws, and the rules of this Chapter.

(b) Interested parties may obtain information or submit comments related to the rules of this Chapter by writing to ~~the Council on Law Enforcement Education & Training, Post Office Box 11476, Oklahoma City, Oklahoma 73136 0476, or by calling (405) 425-2750. Our administrative offices~~

~~are located at: Robert Lester Law Enforcement Training Center, 3530 North Martin Luther King Avenue, Oklahoma City, Oklahoma 73136 0476. CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.~~

**390:30-1-6. Application for certification**

(a) Any person, group, or organization, public or private, that utilized canine teams for the purposes of detecting controlled dangerous substances, as a public service or for private gain, shall be required to annually obtain CLEET certification for such canine teams. Certification as to the demonstration abilities of any such canine team shall be based on evaluation of the canine team's performance during field tests to be designated and conducted jointly by CLEET and OBNDD.

(b) Persons wishing to seek CLEET CDS detector canine team certification may receive an application and instructions by calling or making a written request to CLEET administrative offices ~~in Oklahoma City.~~

(c) Applicants must submit the application and appropriate test fee to CLEET not less than fifteen (15) days prior to testing.

(d) All applications must be completely filled out and be accompanied by two (2) full-body, color photographs of the applicant canine team and any other information required by CLEET. The photographs shall include the full side-body of the dog and the face of the handler.

(e) Normally, no more than ten (10) applicant dogs shall be scheduled for testing on any date.

(f) Upon completion of CDS detector canine team testing, the owner/handler of each dog shall be informed as to the examiner's evaluation of the canine team's performance.

(g) Canine teams that fail to successfully complete the CDS detector tests in accordance with the required standards of performance may not be retested until sixty (60) days from the last attempt, and must submit the retest fee to CLEET prior to testing.

(h) Canine teams that successfully complete CDS Detections tests in accordance with the required standards of performance shall be notified in writing by CLEET.

(i) When CLEET has determined that all application procedures are fully complete; the applicant canine team has met all required performance standards; and the correct certification fee has been received, a CDS detector canine team certificate shall be issued by CLEET.

(j) Any time a certified CDS detector canine team is being employed or otherwise utilized in CDS detection activities, the CLEET CDS detector canine team certificate, or a copy thereof, shall be immediately available for inspection by any interested party.

(k) CLEET CDS detector canine team certification shall remain effective for one (1) year from the date it was issued.

(l) CDS detector canine teams shall be recertified annually. Application for renewal and the process of testing and performance evaluation shall be conducted in the same manner as the original certification. Application for recertification should be initiated not less than fifteen (15) days prior to the expiration date of the previous certificate.

(m) All CDS detector canine team certifications that are not renewed shall be inactivated by CLEET. If a renewal of an

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expired certification is not initiated by the canine team within thirty (30) days from the expiration date of the certificate, the canine team shall be required to remit the full two hundred dollars (\$200.00) certification test fee to reinstate the certification status of the canine team concerned. Application and testing procedures in such cases shall be conducted in the same manner as an original certification.

(n) When any canine team certified under these laws and rules will no longer be utilized in the performance of CDS detection activities, the owner of such dog or the handler shall notify CLEET in writing.

(o) CDS detector canine teams owned by or used solely by a bona fide law enforcement agency for CDS detection activities in the service of the public shall be exempt from the certification fees herein, but shall be required to certify such canine teams annually in accordance with the laws and the rules of this section, unless such canine teams are certified annually by the United States Custom Service.

## **390:30-1-7. Denial of certification**

(a) Canine teams may be denied certification for any of the following reasons:

- (1) Incomplete application.
- (2) Fraudulent application.
- (3) Failure to satisfy certification standards as utilized for the certification of CDS detector dogs.
- (4) Failure to remit the proper certification fees.

(b) Any dog or handler denied certification shall be entitled to an administrative appeal pursuant to 390:2.

(c) CLEET may investigate any complaints involving the use of a canine team certified or required to be certified by ~~70 O.S. 3311 (L) (1) (2)~~ 70 O.S. 3311 (K) (1) (2).

[OAR Docket #06-819; filed 5-4-06]

## **TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 31. BOMB DETECTOR DOG CERTIFICATION**

[OAR Docket #06-820]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

390:31-1-1. through 390:31-1-7. [NEW]

### **AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

### **DATES:**

#### **Comment period:**

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Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

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#### **Effective:**

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

n/a

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

n/a

#### **ANALYSIS:**

70 O.S. Section 3311.L authorizes the Council to promulgate rules regarding the certification of canine teams in the state trained to detect explosives, explosive materials, explosive devices and materials which could be used to construct an explosive device. This new chapter is needed to establish the requirements and procedure for obtaining certification of canine teams for the purpose of detecting explosives.

#### **CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

### **390:31-1-1. Purpose**

The purpose of the rules of this Chapter is to set forth the standards and procedures needed to implement and enforce the provisions of laws regarding the certification and recertification of canines trained to detect explosives, explosive materials, explosive devices and materials which could be used to construct an explosive device, and to protect the interest of the public and parties who contract for such services.

### **390:31-1-2. Definitions**

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

"Canine team" means the handler and the explosives detector dog.

"Bomb detector canine team" means the handler and the explosives detector dog.

"Bomb detector dog" means a dog trained to detect the scent of explosive substances in a variety of environments.

"Certification/recertification" means confirmation, through field performance testing, of a detector dog's ability to detect explosive substances in accordance with standards designated by CLEET.

"CLEET" means administrative staff of the Council on Law Enforcement Education and Training.

"Dog" means animals of the canine or "canidae" family.

"Explosives detector canine team" means the handler and the bomb detector dog.

"Explosives detector dog" means a dog trained to detect the scent of explosive substances in a variety of environments.

"Explosive" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

"Handler" means a person who has received training in the handling of explosives detector dogs, and is in control of the dog being tested.

"NAPWDA" means North American Police Work Dog Association.

"NEDCP" means the TSA National Explosives Detection Canine Program.

"TSA" means Transportation Security Administration.

"USPCA" means United States Police Canine Association, Inc.

**390:31-1-3. Statutory requirements and fees**

(a) Every canine team in the state trained to detect explosive substances shall be certified, by test, in the detection of such explosive substances and shall be recertified annually so long as the canine team is used for such detection purposes. The certification test and annual recertification test provisions of this section shall not be applicable to canine teams that are owned by a law enforcement agency and that are certified and annually recertified in the detection of explosives by the North American Police Work Dog Association, TSA National Explosives Detection Canine Program or United States Police Canine Association, Inc.

(b) No canine team will be dual certified in controlled dangerous substances and bomb detection.

(c) Each application shall be accompanied by the required fee established in 70 O.S. Section 3311 (L). These fees are non-refundable.

(d) Payment must be in the form of a money order, cashiers check, or if presented in person, United States Currency. Checks and money orders should be made to CLEET.

**390:31-1-4. Conduct of business**

(a) All persons affected by the rules of this Chapter shall be knowledgeable of and conduct business in accordance with all federal, state and local laws, and the rules of this Chapter.

(b) Interested parties may obtain information or submit comments related to the rules of this Chapter by writing to: CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.

**390:31-1-5. Standards for certification**

The following agency or organization certification standards are recognized as a valid test for certification and annual recertification of the Bomb detector canine team:

(1) North American Police Work Dog Association (NAPWDA)

(2) United States Police Canine Association, Inc. (USPCA)

(3) TSA National Explosives Detection Canine Program (NEDCP)

(4) Other standards reviewed and accepted by the Bomb Dog Advisory Council

**390:31-1-6. Application for certification**

(a) Any person, group, or organization, public or private, that utilize canine teams for the purposes of detecting explosive substances, as a public service or for private gain, shall be required to annually obtain CLEET certification for such canine teams. Certification as to the demonstration abilities of any such canine team shall be based on evaluation of the canine team's performance by an approved testing organization.

(b) Persons seeking CLEET Bomb Detector Canine Team Certification may receive an application and instructions by calling or making a written request to CLEET administrative offices.

(c) Applicants must submit the application fee to CLEET with the application.

(d) All applications must be completed and be accompanied by two (2) full-body, color photographs of the applicant canine team and any other information required by CLEET. The photographs shall include the full side-body of the dog and the face of the handler.

(e) Upon completion of Bomb detector canine team testing CLEET shall be notified in writing that the canine team has successfully completed all Explosives Detection test requirements and the test examiner has documented evaluation of the canine team's performance.

(f) Canine teams that fail to successfully complete the Bomb detector tests in accordance with the required standards of performance may not be retested except as provided for by the standards for retesting established by the agency or organization which conducted the initial test.

(g) When CLEET has determined that all application procedures are complete; the applicant canine team has met all required performance standards; and the correct certification fee has been received, a Bomb Detector Canine Team Certificate shall be issued by CLEET.

(h) Any time a certified Bomb detector canine team is being employed or otherwise utilized in explosives detection activities, the CLEET Bomb Detector Canine Team Certificate, or a copy thereof, shall be immediately available for inspection by any interested party.

(i) CLEET Bomb Detector Canine Team certification shall remain effective for one (1) year from the date it was issued.

(j) Bomb Detector Canine Teams shall be recertified annually. Application for renewal and the process of testing and performance evaluation shall be conducted in the same manner as the original certification. Application for recertification should be initiated not less than fifteen (15) days prior to the expiration date of the previous certificate.

(k) All Bomb detector canine team certifications that are not renewed shall be inactivated by CLEET. If a renewal of an expired certification is not initiated by the canine team within thirty (30) days from the expiration date of the certificate, the canine team shall be required to remit the full certification test

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fee to reinstate the certification status of the canine team. Application and testing procedures in such cases shall be conducted in the same manner as an original certification.

(l) When any canine team certified under these laws and rules will no longer be utilized in the performance of explosives detection activities, the owner of such dog or the handler shall notify CLEET in writing.

(m) Bomb detector canine teams owned by or used solely by a bona fide law enforcement agency for Explosives detection activities in the service of the public shall be exempt from the certification fees herein as provided in 70 O.S. Section 3311 (L), but shall be required to certify such canine teams annually in accordance with the laws and the rules of this section, unless such canine teams are certified and annually recertified in the detection of explosives and materials by the United States Department of Defense.

## **390:31-1-7. Denial of certification**

(a) Canine teams may be denied certification for any of the following reasons:

- (1) Incomplete application
- (2) Fraudulent application
- (3) Failure to satisfy certification standards as utilized for the certification of Bomb detector canine teams
- (4) Failure to remit the proper certification fees

(b) Any dog or handler denied certification shall be entitled to an administrative appeal pursuant to 390:2.

(c) CLEET may investigate any complaints involving the use of a canine team certified or required to be certified by 70 O.S. 3311 (L) (1) (2).

*[OAR Docket #06-820; filed 5-4-06]*

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

*[OAR Docket #06-821]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

- Subchapter 1. General Provisions  
390:35-1-4. [AMENDED]
- Subchapter 5. License Requirements  
390:35-5-2. [AMENDED]  
390:35-5-3. [AMENDED]  
390:35-5-5. [AMENDED]
- Subchapter 7. Application Procedure  
390:35-7-1. [AMENDED]  
390:35-7-4. [AMENDED]
- Subchapter 11. Insurance and Bond Requirements  
390:35-11-3. [AMENDED]
- Subchapter 13. Use of Firearms  
390:35-13-2. [AMENDED]

### **AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S.,

Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

### **DATES:**

#### **Comment period:**

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Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

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

n/a

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

n/a

#### **ANALYSIS:**

Subchapters one, seven and 13 amendments are needed to inform the public of the address change for the agency. Subchapter five amendments are required to reflect changes in the statute for annual continuing education training for security guards and exempting retired full-time peace officers from the psychological evaluation that is required for armed security guard applicants. Changes in this chapter would also address fingerprints submitted electronically through a system approved by CLEET, and accept submission of electronically captured photographs. Subchapter 11 changes are needed to explain the original bond form is issued with a Notification of Bond Coverage and Power of Attorney. An original or copy of both documents must be provided when the bond is newly issued as proof of bond. Renewal of bonds are not issued a Power of Attorney document, therefore only the Notification of Bond Coverage is required.

#### **CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **390:35-1-4. Compliance with laws and rules**

(a) All licensees and approved schools shall be knowledgeable of and conduct operations in accordance with all federal, state, and local laws; and rules and regulations of CLEET. A commission, by clear and convincing evidence, of any criminal offense, may be grounds for an action against any person falling within the jurisdiction and purview of 59 O.S., Section 1750.1 et seq, if such offense reflects negatively on the licensee's or school's moral character.

(b) Any statute of the United States or of the State of Oklahoma now existent, or duly enacted in the future, shall supersede any conflicting provision of this Chapter to the extent

of such conflict, but shall not affect the remaining provisions herein.

(c) Any violation of this Chapter and applicable Laws of the State of Oklahoma may result in a written reprimand or the denial, suspension, or revocation of a license, and/or disciplinary penalty or fine.

(d) Interested parties may obtain information or submit comments related to this Chapter by writing to the Private Security Division of the Council on Law Enforcement Education and Training, P.O. Box 11476, Cimarron Station, Oklahoma City, Oklahoma 73136, telephone (405) 425 2775. Offices are located at the Robert R. Lester Training Center, 3530 North Martin Luther King Avenue, in Oklahoma City, Oklahoma. CLEET, Private Security Division, 2401 Egypt Road, Ada, Oklahoma, 74820-0669.

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-2. Security guard, armed security guard, and private investigator licenses

(a) Applicants for security guard, private investigator, or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.5.

(b) Applicants for Armed Security Guard or firearms authorized licenses must further:

- (1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.
(2) Successfully complete the firearms phase of private security training;
(3) Be twenty-one (21) years of age, and
(4) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.

(c) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

(d) No licensee shall brandish, point, exhibit, or otherwise display a firearm at any time, except as authorized by law, and the rules of this Chapter.

(e) Private Investigators must complete eight (8) hours of continuing education training from an approved source, each year to maintain their license. This training will be reported to CLEET at the time of license renewal. Firearms requalification courses will not count towards mandate training. Approved sources are:

- (1) College credit hours, fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report;
(2) Established Entities (Recognized county, state, and federal associations, vo techs), one hour of training will be granted for each hour attended. Proof of attendance needed is a copy of a certificate or sign in roster from the sponsor; or

(3) CLEET Accredited Schools, Seminars, and Conferences, one hour of mandate training credit will be granted for each hour of instruction (minimum four (4) hour course). For approval to conduct mandate training, sponsors must:

- (A) Submit a written request for program accreditation to CLEET;
(B) Provide course outline, and course objectives;
(C) Provide Resume for Instructors; and
(D) After training, submit a roster of attendees completing the training to CLEET.

(e) Continuing education training is required for renewal of an individual license.

(1) Private Investigators must complete a minimum of eight (8) hours of continuing education training from an approved source, each year to maintain their license.

(2) Security Guards must complete a minimum of four (4) hours of continuing education training from an approved source, each year to maintain their license.

(3) A person holding both a security guard license and private investigator license or a combination license must complete a total of eight (8) hours of continuing education training each year to maintain their license.

(4) Any expenses incurred for continuing education courses by any licensee shall be the responsibility of the licensee.

(5) For purposes of continuing education requirements, "year" shall mean three hundred sixty five (365) calendar days from the date the license was issued, and each successive three hundred sixty five (365) day period.

(6) Firearms requalification courses will not count towards mandate training. Approved sources for mandated training are:

- (A) College credit hours. Fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report;
(B) Established Entities (Recognized county, state, and federal associations, professional associations, vocational-technical schools). One hour of training will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license. Proof of attendance needed is a copy of a certificate, sign-in roster, electronic notification or other proof from the sponsor accepted by CLEET; or
(C) CLEET Accredited Schools, Seminars, and Conferences. One hour of mandate training credit will be granted for each hour of instruction. For approval to conduct mandate training, sponsors must:
(i) Submit a written request for program accreditation to CLEET;
(ii) Provide course outline, and course objectives;
(iii) Provide Resume for Instructors; and
(iv) After training, submit a roster of attendees completing the training to CLEET.

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- (D) Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first year of an initial license.
- (7) Continuing education training may be reported to CLEET as it is completed or at the time of license renewal. Verification of the minimum hours of yearly training will be made by CLEET when the licensee requests renewal. A licensee will be subject to the following disciplinary sanctions for failure to comply with the mandate training requirements:
- (A) Written Reprimand
  - (B) Denial
  - (C) Suspension
  - (D) Revocation and/or
  - (E) Disciplinary penalty or fine
- (8) If a licensee fails to obtain the minimum number of hours of training in a given year, but provides proof of attendance in any other year, a penalty shall be imposed in accordance with Appendix C of this chapter.
- (9) For purposes of the penalty prescribed in Appendix C of this chapter for the failure to obtain mandated continuing education training, each violation in a two year license period will be considered separate counts of a single offense.
- (10) No training hours can be carried forward from one two year license period to the next two year license period.
- (11) A renewal license will be issued only after CLEET receives a request for renewal, the renewal fee, current photographs, verification of current insurance or bond coverage, verification of the minimum hours of continuing education training for each year of the license period and payment of any penalties for the failure to obtain the minimum number of continuing education training hours.
- (12) A licensee who has timely submitted a request for renewal with payment and has failed to meet the minimum yearly training requirements will be issued a Notice of CLEET's intent to impose a disciplinary action for failure to meet the mandated training requirements in compliance with Chapter 2 of this Title.
- (13) A Notice of Action for failure to meet the minimum yearly continuing education requirements shall provide that the licensee may temporarily continue to work for forty-five (45) days. The temporary work provisions of the Notice may be extended or cancelled by CLEET, as necessary to complete the administrative hearing process.
- (f) Any person seeking an Oklahoma Security Guard or Private Investigators license, who has been licensed by a state whose training and standards have been deemed comparable to and approved by the Oklahoma Council on Law Enforcement Education and Training may obtain a license by reciprocity, under the following conditions:
- (1) The applicant must meet the minimum license requirement standards set forth by Oklahoma Law including fingerprint requirements. Such fingerprints requirement may be waived by CLEET where a verified records check has been made within a reasonable period of time in the context of existing law requiring fingerprint checks.

- (2) The applicant must have an active license in the original licensing state, and not be subject to any administrative action regarding the active status in the licensing state.
- (3) The applicant receiving a license by reciprocity in Oklahoma shall at all times while working as a security guard or private investigator in Oklahoma be subject to all laws regarding security guards and private investigators including all applicable fees for such license.
- (4) Reciprocity may be granted only from the state in which the applicant was originally licensed and not from any intervening state by reciprocity to the original licensing state.
- (5) The applicant must sign a statement of irrevocable consent that service of process, in any complaint or disciplinary action filed against the applicant, arising out of the applicant's private investigative activities in the reciprocating state, may be made by the delivery of such process on the administrator of the private investigation regulatory agency in his/her/its state of residence.
- (6) An armored car employee who is primarily employed by an armored car company in another state, and is properly licensed by that state to carry a weapon while acting in the services of that company in the home state, and meets the minimum home state requirements, would be exempt from other requirements of 59 O. S. Section 1750.1 et seq. during such time as the armored vehicle from that state is actively engaged in interstate commerce within Oklahoma pursuant to 15 U.S.C. Section 5901, the "Armored Car Industry Reciprocity Act of 1993."

### **390:35-5-3. Conditional licenses**

- (a) Conditional licenses may be issued only to employees of security or investigative agencies.
- (b) Conditional licenses may be issued to such employees when the following requirements have been met:
  - (1) Receipt of an applicant's completed license application form. An application form shall be considered complete when all applicable spaces have been filled in properly, and it has been signed and notarized;
  - (2) Receipt of two (2) properly completed, CLEET-issued "applicant" fingerprint cards or fingerprints submitted electronically through a fingerprint system approved by CLEET;
  - (3) Receipt of correct license fees;
  - (4) Receipt of three (3) personal photographs, in color and of the prescribed size or submission of a photograph electronically such as a digital photograph or scanned photograph;
  - (5) Receipt of proof of bond or liability insurance coverage, in the prescribed amount.

### **390:35-5-5. Peace officer exemptions and non-exemptions**

- (a) If a peace officer who is ordinarily exempt from licensing chooses to become licensed as a security guard or private

investigator shall comply with 59 O.S. Section 1750.1 et seq., and these rules in all respects.

(b) The peace officer exemption shall not apply in the following applications of the Act:

- (1) When a peace officer contracts with an employer to provide other guards;
- (2) When a peace officer is employed to provide security services through a "contractor";
- (3) When a peace officer is employed as a private investigator, as defined by the Act;
- (4) No peace officer or reserve peace officer may wear his official police uniform and insignia while working in a capacity of a licensed security guard, except when the policies of his employing law enforcement agency, and the agency in whose jurisdiction he is so privately employed, allow him to do so;
- (5) CLEET certified peace officers, whether full-time or reserve, may be given comparable training credit for successful completion of their CLEET basic peace officer or basic reserve officer certification training, when applying for a private security license;
- (6) Active, full-time peace officers are exempt from the psychological evaluation that is required for armed security guard applicants. Retired, full-time peace officers are exempt from the psychological evaluation for a period of one (1) year from the date of their retirement. This exemption shall apply to any person who possesses CLEET peace officer certification, except when such person has been terminated from a law enforcement agency for failure to exercise appropriate judgement, restraint, and self-control in the use of force, or when there exists clear and convincing evidence of such;
- (7) Reserve peace officers are not exempt from the psychological evaluation required for an armed security guard license, unless they are in the active service of a law enforcement agency as a reserve peace officer at the time of application.
- (8) Reserve peace officers are not exempt from security guard, armed security guard, or private investigator licenses, and must be licensed while employed as such;
- (9) When working as a licensed security guard, armed security guard, or private investigator, peace officers and reserve peace officers may possess firearms only to the extent of the authority allowed under law, as applied to licensed armed security guards.

## **SUBCHAPTER 7. APPLICATION PROCEDURE**

### **390:35-7-1. Requests for applications**

(a) ~~Any person who wishes to apply for a license under the Act, may do so in writing or by telephone, to: Council on Law Enforcement Education and Training, Private Security Division, P.O. Box 11476, Oklahoma City, Oklahoma 73136-0476, (405) 425-2775. An application may be requested at the following address: CLEET, Private Security Division, 2401 Egypt Road, Ada, Oklahoma, 74820-0669.~~

(b) When such request is received, requests will be handled in the most expeditious and cost effective manner.

### **390:35-7-4. Background investigation of applicants**

(a) The requirements of the Act will necessitate an investigation into the personal history, employment history, and moral character of each applicant. Local, state, and federal criminal indices will be examined in the normal processing of applications for evidence of any prior criminal record. In addition to those offenses set forth in the Statutes, convictions of crimes set forth in Appendix A of this Chapter, shall be deemed as disqualifying convictions.

(b) Failure to provide the information necessary to complete this background investigation, including certified copies of judgement and sentence, shall preclude any further processing and shall result in denial of said application.

(c) Fingerprint cards or electronically captured fingerprints submitted by an applicant which have been rejected by the Oklahoma State Bureau of Investigation (OSBI) or Federal Bureau of Investigation (FBI), have failed to meet the statutory requirement of 59 O. S. Section 1750.6 (A)(1) for providing "classifiable fingerprints to enable the search of criminal indices for evidence of prior criminal record".

(1) Upon notice to CLEET from the OSBI or FBI that fingerprints have been rejected, CLEET shall send written notice to the applicant requesting resubmission of fingerprints.

(2) Failure to resubmit fingerprints within thirty (30) days of the request for resubmittal shall preclude any further processing and shall result in denial, suspension or revocation of any license held by the applicant.

(3) Upon the third rejection of fingerprints by the OSBI or FBI or the expiration of one-hundred-eighty days (180) days, whichever occurs first, from the original date of issuance of any license, such license shall be suspended or revoked until such time that classifiable fingerprints have been submitted and criminal history reports have been received from OSBI and FBI.

## **SUBCHAPTER 11. INSURANCE AND BOND REQUIREMENTS**

### **390:35-11-3. Liability coverage**

(a) Licensed security guards, armed security guards, and private investigators shall be individually responsible for obtaining and maintaining their own liability insurance or surety bond when they leave the employment of an agency, and/or when they are self-employed.

(b) No private security license issued in accordance to 59 O.S., Section 1750.1 et seq. shall be valid when the licensee fails to maintain the prescribed liability coverage.

(c) Proof of insurance shall be provided CLEET by submitting a certificate of insurance, such as the Accord Form; or a copy of the policy, or a copy of the bond; or a letter from the issuing company. Regardless of the method chosen, the proof submitted shall at least contain the following information:

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- (1) Name of insured
  - (2) Name and address of insurer
  - (3) Policy limits, coverages, and amounts
  - (4) Effective dates of policy-
  - (5) If covered by a bond, the original bond proof of coverage must include an original or copy of the Notification of Bond and Power of Attorney. Proof of renewal of the bond does not require a copy of the Power of Attorney, only submission of the Notification of Bond.
- (d) Any company providing insurance or surety bonds must be licensed to do business in the State of Oklahoma.
- (e) Every licensee shall ensure that their insurance or bond will not be cancelled or modified unless ten (10) days prior written notice is submitted to CLEET.
- (f) A violation of the rules of this subchapter will constitute grounds for immediate suspension or revocation of a license, and/or disciplinary penalty or fine.

## SUBCHAPTER 13. USE OF FIREARMS

### **390:35-13-2. Reporting the discharge of firearms**

(a) The discharge of a firearm by a licensee, pursuant to Section 1750.9 (C) of the Act, shall be reported by phone immediately by the licensee to CLEET, Private Security Division, ~~P. O. Box 11476, Oklahoma City, Oklahoma 73136-0476, telephone number (405) 425-2775~~ during working hours (8:00 a.m. to 4:30 p.m. Mon-Fri). If other than during working hours, calls and reports shall be made the next working day to CLEET. The telephonic report shall include:

- (1) Name of licensee discharging firearm;
  - (2) Name of employer;
  - (3) Location of incident;
  - (4) A brief narrative of what happened;
  - (5) Whether death, personal injury or property damage resulted; and
  - (6) Whether the incident is being or was investigated by a law enforcement agency.
- (b) CLEET, when deemed appropriate, shall immediately proceed to the scene of the incident and the investigation shall include, but not be limited to:
- (1) Name, address, telephone number and license number of licensee discharging firearm;
  - (2) Name, address and telephone number of employing agency, if employed by an agency;
  - (3) Name of person making the report;
  - (4) Exact location, date and time of the incident and indicate if the location was residential, business or rural;
  - (5) A detailed description of what happened;
  - (6) Name of any person(s) killed or injured and the extent of any property damage;
  - (7) Name, address and telephone number of any witnesses;
  - (8) If incident was investigated by a law enforcement agency, the name of the investigating officer and employing agency;
  - (9) Whether criminal charges were filed or anticipated against the licensee; and

- (10) Any disciplinary action taken by the employer.
- (c) The employing agency shall assure that the involved licensee completes a "Report of Firearm Discharge", to be forwarded by the licensee to CLEET.
- (d) Within twenty-four (24) hours after the firearms discharge incident, a separate written report shall be made to CLEET by each, the licensee who discharged a firearm and the employing agency. If the licensee is self-employed, he shall be personally responsible for reporting any discharge of firearms.

[OAR Docket #06-821; filed 5-4-06]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING

### CHAPTER 40. OKLAHOMA SELF-DEFENSE ACT

[OAR Docket #06-822]

#### **RULEMAKING ACTION:**

PERMANENT final adoption

#### **RULES:**

390:40-1-4. [AMENDED]

390:40-7-1. [AMENDED]

#### **AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

#### **DATES:**

##### **Comment period:**

January 17 - February 22, 2006

##### **Public hearing:**

February 22, 2006

##### **Adoption:**

February 24, 2006

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

March 1, 2006

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

March 1, 2006

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

March 1, 2006

##### **Gubernatorial approval:**

April 17, 2006

##### **Legislative approval:**

Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

##### **Final adoption:**

April 27, 2006

##### **Effective:**

July 1, 2006

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

n/a

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

n/a

#### **ANALYSIS:**

These amendments are needed to reflect the address change for the agency.

#### **CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

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

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

390:40-1-4. Compliance with laws and rules

- (a) All SDA Firearm Instructors shall be knowledgeable of and conduct operations in accordance with all federal, state, and local laws; and rules and regulations of CLEET.
(b) Any statute of the United States or of the State of Oklahoma now existent, or duly enacted in the future, shall supersede any conflicting provision of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.
(c) Any violation of this Chapter and applicable Laws of the State of Oklahoma may result in denial, suspension, or revocation of instructor certification.
(d) Interested parties may obtain information or submit comments related to this Chapter by writing to the Council on Law Enforcement Education and Training, SDA, P.O. Box 11476, Oklahoma City, Oklahoma 73136, telephone (405) 425-2760. Offices are located at the Robert R. Lester Training Center, 3530 North Martin Luther King Avenue, in Oklahoma City, Oklahoma. CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.

SUBCHAPTER 7. INSTRUCTOR APPLICATION PROCEDURE

390:40-7-1. Requests for applications

- (a) Any person who wishes to apply for a SDA Firearm Instructor Approval Certification under the Act, may do so in writing or by telephone, to: CLEET - SDA, P.O. Box 11476, Oklahoma City, Oklahoma 73136-0476, (405) 425-2760 or CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.
(b) When such request is received, requests will be handled in the most expeditious and cost effective manner.

[OAR Docket #06-822; filed 5-4-06]

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

[OAR Docket #06-823]

RULEMAKING ACTION: PERMANENT final adoption

- RULES:
390:45-1-3. [AMENDED]
390:45-1-4. [AMENDED]
390:45-1-5. [AMENDED]
390:45-1-6. [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

DATES:

Comment period: January 17 - February 22, 2006

Public hearing: February 22, 2006

Adoption: February 24, 2006

Submitted to Governor: March 1, 2006

Submitted to House: March 1, 2006

Submitted to Senate: March 1, 2006

Gubernatorial approval: April 17, 2006

Legislative approval: Failure of legislature to disapprove the rules resulted in inactive approval on April 27, 2006.

Final adoption: April 27, 2006

Effective: July 1, 2006

SUPERSEDED EMERGENCY ACTIONS: n/a

INCORPORATIONS BY REFERENCE: n/a

ANALYSIS:

The proposed amendments to this chapter are needed to reflect the address change for the agency and implement statutory language allowing a retired Reserve Officer to obtain a permit. Attorney General Opinion 2005 OK AG 45 found that CLEET should establish rules to define what constitutes the status of being "retired" for a Reserve peace officer and establish standards for reviewing statements to determine if each contains sufficient statements of facts establishing that a Reserve peace officer is retired. This clarification is needed because most Reserve Officers serve in a voluntary capacity without salary and do not participate in a formal retirement system.

CONTACT PERSON:

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

390:45-1-3. Definitions

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

"Act" means the Oklahoma Firearms Act Title 21 O.S., Section 1289.8. and applicable sections of the Oklahoma Self-Defense Act Title 21 O.S., Sections 1290.1 et seq.

"Applicant" means a person applying for a retired peace officer's firearms permit under the provisions of the Act.

"CLEET" means the Council on Law Enforcement Education and Training, and its administrative officers and personnel.

"Concealed handgun" means a loaded or unloaded pistol carried hidden from the detection and view of another person either upon or about the person, in a purse or other container

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belonging to the person, or in a vehicle which is operated by the person or in which the person is riding as a passenger.

"**Council**" means the appointed members of the Council on Law Enforcement Education and Training, as defined in Title 70 O.S., Section 3311.

"**Director**" means the Director of the Council on Law Enforcement Education and Training, or his designated agent.

"**Peace Officer**" means any peace officer as defined in 21 O.S. Section 99, and who is authorized to carry a firearm in the performance of official duties. The term does not include ~~reserve officers~~, auxiliary, private security, private investigators or military police.

"**Pistol**" means any derringer, revolver, or semi-automatic firearm which:

(A) has an overall length of less than sixteen (16) inches and is able to be fully concealed from detection and view,

(B) is capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury,

(C) is designed to be held and fired by the use of a single hand, and

(D) uses either gunpowder, gas or any means of rocket propulsion to discharge the projectile.

"**Retired**" means any fire marshal inspector, state, county, or municipal peace officer of this state or any federal law enforcement officer who meets the criteria and definition in 21 O.S. Section 1289.8.

"**SDA**" means the Oklahoma Self-Defense Act.

"**State**" means the State of Oklahoma.

### 390:45-1-4. Compliance with laws and rules

(a) All permit holders shall be knowledgeable of and conduct operations in accordance with all federal, state, and local laws; and rules and regulations of CLEET.

(b) Any statute of the United States or of the State of Oklahoma now existent, or duly enacted in the future, shall supersede any conflicting provision of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.

(c) Any violation of this Chapter and applicable Laws of the State of Oklahoma may result in denial, suspension, cancellation or revocation of the permit.

(d) Interested parties may obtain information or submit comments related to this Chapter by writing to ~~CLEET RFP, P.O. Box 11476, Oklahoma City, Oklahoma 73136, telephone (405) 425-2760. Offices are located at the Robert R. Lester Training Center, 3530 North Martin Luther King Avenue, in Oklahoma City, Oklahoma.~~ CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.

### 390:45-1-5. Eligibility requirements

(a) Each retiree shall meet the following criteria to obtain and retain a firearms permit:

(1) State, county, or municipal peace officer of this state or any federal law enforcement officer.

(2) ~~Have obtained retired peace officer status from an appropriate retirement system or provides a statement of verification of status as a retired peace officer pursuant to 21 O.S. Section 1289.8(C)(1).~~ Have obtained retired peace officer status:

(A) From an appropriate retirement system; or

(B) If the applicant did not participate in a retirement system, the officer must have worked for the minimum number of years required to vest in the retirement system appropriate for the type of law enforcement agency from which the officer retired or served.

(3) Possess no physical or mental impairment which would preclude proper and safe handling of a sidearm.

(4) Not have a conviction or currently be subject to any pending criminal prosecution for any felony offense, drug related offense, aggravated assault and battery or any offense involvement involving impairment by drugs or alcohol.

(5) Have no preclusions listed in 21 O.S. Section 1290.10 or 1290.11.

(b) A state and national criminal history search will be conducted by the OSBI every four (4) years to verify the applicant still meets the requirements for the permit.

### 390:45-1-6. Application procedure

(a) Any person who wishes to apply for a permit under the Act, may do so in writing ~~or by telephone, to: CLEET RFP, P.O. Box 11476, Oklahoma City, Oklahoma 73136 0476, (405) 425-2760.~~ to CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.

(b) The completed application form shall constitute a sworn affidavit signed by the applicant attesting to eligibility requirements and notarized.

(c) All applicants must submit a statement from the appropriate retirement system verifying the status of the person as a retired ~~full-time~~ peace officer of the jurisdiction and effective date of retirement or if the retired officer does not participate in a retirement system, a statement from the appropriate law enforcement agency verifying the status of the person as a retired ~~full-time~~ peace officer of that jurisdiction and the reason why the retired officer does not participate in a retirement system.

(d) For officers not participating in a retirement system, years of service will be cumulative and determined by CLEET records. Any claimed service not reflected in CLEET records must be supported by a written statement verified by the appropriate agency administrator.

(e) Retired reserve officers must meet the eligibility requirements provided in 390:45-1-5.

(d~~f~~) All information on the application or any related document must be complete and accurate to the best of the applicant's knowledge.

[OAR Docket #06-823; filed 5-4-06]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 50. PENALTY ASSESSMENT FEES

[OAR Docket #06-824]

RULEMAKING ACTION: PERMANENT final adoption

RULES: 390:50-1-4. [AMENDED]

AUTHORITY: Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

DATES: Comment period: January 17 - February 22, 2006

Public hearing: February 22, 2006

Adoption: February 24, 2006

Submitted to Governor: March 1, 2006

Submitted to House: March 1, 2006

Submitted to Senate: March 1, 2006

Gubernatorial approval: April 17, 2006

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Final adoption: April 27, 2006

Effective: July 1, 2006

SUPERSEDED EMERGENCY ACTIONS: n/a

INCORPORATIONS BY REFERENCE: n/a

ANALYSIS: This amendment is needed to reflect the address change for the agency.

CONTACT PERSON: Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

390:50-1-4. Reporting requirements

(a) Every court in the state shall submit a written report as set forth in 20 O. S., §1313.2.

(1) Each report shall be accompanied by the required fee established in 20 O. S., §1313.2 et seq.

(2) A report of no activity must be made if fees were not collected for the reporting period.

(b) Payments should be made to CLEET and mailed to: CLEET, P. O. Box 11476, Oklahoma City, Oklahoma 73136-0476. CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669.

(c) Cities and towns may be required periodically to verify by survey whether they have established law enforcement activity.

[OAR Docket #06-824; filed 5-4-06]

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

[OAR Docket #06-876]

RULEMAKING ACTION: PERMANENT final adoption

RULES: Chapter 1. Administration [AMENDED]

AUTHORITY: Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415.

DATES: Comment period: January 17, 2006 through February 17, 2006

Public hearing: February 17, 2006

Adoption: March 10, 2006

Submitted to Governor: March 14, 2006

Submitted to House: March 14, 2006

Submitted to Senate: March 14, 2006 Gubernatorial approval: April 25, 2006

Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2006.

Final adoption: May 10, 2006

Effective: July 1, 2006

SUPERSEDED EMERGENCY ACTIONS: N/A

INCORPORATIONS BY REFERENCE: Incorporated standards:

2006-2007 Joint Commission on Accreditation of Health Care Organizations (JCAHO) Comprehensive Accreditation Manual for Behavioral Health Care (CAMBHC); 2006-2007 JCAHO Standards for Behavioral Health Care (SBHC); 2006 CARF Commission on Accreditation of Rehabilitation Facilities (CARF) Behavioral Health Standards Manual; and, American Osteopathic Association (AOA) 2005 Accreditation Requirements for Healthcare Facilities Manual.

Incorporating rules: 450:1-9-7. Procedures for completion of certification process

Availability: 8:00 a.m. to 5:00 p.m., Monday through Friday at the Provider Certification Division of the ODMHSAS, 2401 N.W. 23rd, Suite 85, Oklahoma City, OK 73017, 405/522-3800.

ANALYSIS: In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance regulatory oversight of service provision and supervision, incorporate standards for conducting human subject research, delete redundant or superfluous language, and correct scrivener's errors.

CONTACT PERSON: Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

## SUBCHAPTER 1. GENERAL INFORMATION

### 450:1-1-1.1. Definitions

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

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

**"AOA"** means American Osteopathic Association.

**"Board"** means the Oklahoma State Board of Mental Health and Substance Abuse Services.

**"CARF"** means Commission on Accreditation of Rehabilitation Facilities (CARF).

**"Certification"** means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates approval to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

**"Certified facility"** means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

**"Certification report"** means a written notice of the deficiencies developed by ODMHSAS Provider Certification.

**"COA"** means Council on Accreditation of Services for Families and Children, Inc.

**"Contractor"** or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

**"DSM"** means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

**"Entities"** or **"entity"** means sole proprietorships, partnerships and corporations.

**"Facilities"** or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, ~~domestic violence shelters and programs, sexual assault programs, treatment programs of batterers~~ and programs for assertive community treatment.

**"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.

**"Institutional Review Board"** or **"IRB"** means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

**"IRB approval"** means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

**"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.

**"Levels of performance"** or **"level of performance"** means units of service by types of service.

**"Minimal risk"** means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

**"ODMHSAS"** or **"Department"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

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

**"Probationary certification"** means a certification status granted for a period less than three (3) years.

**"Reimbursement rates"** means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract, and which are reported to ODMHSAS on the Integrated Client Information System ("ICIS").

**"Research"** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

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

**"Service area"** means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S. § 3-302(1)].

**"Site Review Protocol"** means an ODMHSAS internal document used by ODMHSAS staff as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Board for its consideration and action.

**"Units"** or **"unit"** means an hour, or part of an hour, or group of hours, or a 24 hour day during which a specific service is rendered.

**450:1-1-2. Applicability**

This, and all subsequent chapters are applicable, unless otherwise specifically noted in a chapter, subchapter, part or section of Oklahoma Administrative Code Title 450, to the Oklahoma Department of Mental Health and Substance Abuse Services, the State Board of Mental Health and Substance Abuse Services, and:

- (1) all employees and institutions and facilities of ODMHSAS (43A O.S. §§ 3-101 and 3-107); and
- (2) all facilities (43A O.S. §§ 1-103(7), 3-306.1, ~~3-314.1~~, 3-315, 3-319 and 3-415) under contract with ODMHSAS; and
- (3) all facilities subject to certification by ODMHSAS (43A O.S. §§ 3-306.1, ~~3-314.1~~, 3-315, 3-317, 3-319, 3-415, 3-416); and
- (4) institutions, organizations and individuals subject to certification by ODMHSAS to provide alcohol drug substance abuse courses (43A O.S. §§ 3-451 through 3-453); and
- (5) agencies and individuals subject to certification by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation [47 O.S. §§ 11-902(G) and 6-212.2; 43A O.S. § 3-460]; and
- (6) individuals subject to certification to be a behavioral health case manager pursuant to 43A O.S. § 3-318.

**450:1-1-5. Objectives**

The objectives of the ODMHSAS are as follows:

- (1) The provision of quality mental health, and substance abuse ~~and domestic violence and sexual assault services~~, within the resources available, to those persons, and their families, receiving services from the facilities either operated by, certified by or under contract with ODMHSAS.
- (2) The services by mental health, and substance abuse, ~~and domestic violence and sexual assault~~ providers be rendered in an environment of safety, dignity and with respect to the rights of those persons and their families.
- (3) Adherence to and compliance with applicable state and federal statutes, including but not limited to Title 43A of the Oklahoma Statutes and the Public Health Services Act (42 U.S.C.) by all facilities operated by, under contract with, and certified by ODMHSAS.

**450:1-1-7. Requests for agency public information**

Any person making a request pursuant to 450:1-1-6 shall comply with the following:

- (1) The request must be in writing and may be mailed to Oklahoma Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277, or sent via facsimile to (405) 522-3650, 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) Whenever possible, requests shall be made to the division or area of the Department that maintains the records. Requests by attorneys in formal litigation must go through the Legal Division. Requests for personnel records that are not confidential must go through the Human Resources Management Division. Requests for records regarding facilities or programs certified by the Board must be directed to the Provider Certification Division. Requests for records regarding persons or entities contracting with the Department must be directed to the Contracts Division. Requests from the media for records must go through the Communications Division. Requests for records regarding Board meetings must go through the Office of the Commissioner. If the division or area that maintains the records is unknown to the party making the request, the request should be directed to the Legal Division.

(4) 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.

(5) Mental health and substance abuse treatment records ~~and client records of a domestic violence or sexual assault program~~ are confidential and not subject to release by statutes and federal regulations including, but not limited to, 43A O.S. §§ 1-109, 3-313, 3-422 and 3-423; 63 O.S. § 1-1502; and 42 CFR, Part 2.

(6) Certain ODMHSAS 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 ODMHSAS; 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 Department, 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.

(7) 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.

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## SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, ~~DOMESTIC VIOLENCE AND SEXUAL ASSAULT~~ AND RESIDENTIAL CARE SERVICES

### PART 1. ELIGIBILITY TO CONTRACT

#### 450:1-3-1. Purpose

The purpose of this Part is to delineate the criteria for eligibility for entities to contract with the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) for the provision of mental health, substance abuse, ~~domestic violence or sexual assault~~, and residential care services to the public as permitted or required under Title 43A of the Oklahoma Statutes.

#### 450:1-3-3. Applicability

This part is applicable to all entities presently under contract with ODMHSAS to provide mental health, substance abuse, ~~domestic violence and sexual assault~~, and residential care services; and to all entities which may either be, or desire to be, considered for such contracts.

### PART 3. CONTRACTS AND CONTRACTING PROCESSES

#### 450:1-3-14. Purpose

The purpose of this Part is to describe the contracts and contracting processes of ODMHSAS for the provision of mental health, substance abuse, ~~domestic violence or sexual assault~~, and residential care services to the public.

#### 450:1-3-15. Applicability

This Part is applicable to all entities presently under contract to provide mental health services, substance abuse services, ~~domestic violence and sexual assault services~~, community-based structured crisis services, and residential care services, and to all entities which may either be, or desire to be, considered for such contracts.

#### 450:1-3-21. Contract renewal

(a) Contracts for community mental health services, substance abuse services, ~~domestic violence and sexual assault services~~, community-based structured crisis services and residential care services are considered during the third (3rd) and fourth (4th) quarter of the ODMHSAS fiscal year, for contracting in the following fiscal year.

(b) Consideration for renewal shall include a review of performance of the current contract including, but not limited to, measurable outcome indicators, target populations served, levels of performance of specific services, having deficiencies or no more than 20% of the standards reviewed, the existence of any patients' rights violations, and cost effectiveness of the delivery of services.

(c) If ODMHSAS determines the contractual relationship shall be renewed, it shall be in a new contract for the upcoming fiscal year and may or may not contain the same terms, conditions, form and format as the previous contract.

#### 450:1-3-22. Contractor reimbursement rates

Reimbursements to contractors for mental health, substance abuse, ~~domestic violence and sexual assault~~, and residential care services shall be considered and set in the manner described as follows:

(1) Contractors shall annually, or as otherwise prescribed, submit to ODMHSAS a uniform cost report in the form and format determined by ODMHSAS, and within time-frames established by ODMHSAS.

(2) ODMHSAS staff shall review and analyze these cost reports, requesting where deemed necessary the submission of supporting clarifying information within fifteen (15) days of said request.

(3) ODMHSAS staff may recommend to the Board fixed uniform rates for services, taking into consideration variables such as average costs, appropriate inflationary factors, capitation methods, performance outcome measures, staff credentials and available funding.

(4) Prior to submitting to the Board the proposed rates or changes to existing rates, the following shall occur:

(A) The ODMHSAS shall provide written notice of an open hearing on the proposed fixed rates to each applicable contractor of record.

(B) The ODMHSAS shall conduct, and make a summary of, the scheduled open hearing.

(5) Consideration of the proposed fixed rate by the Board shall not occur until the Director of Department of Central Services has been provided with, pursuant to 74 O.S. § 85.7:

(A) Thirty (30) days written notice of the Board Meeting to consider the uniform rates of reimbursement;

(B) A copy of the Board Meeting agenda item(s) concerning the proposed rate(s); and

(C) All supporting documentation and materials regarding the reimbursement rates being proposed.

(6) The Board shall, at the meeting referenced in (5)(A) and (B) of this section, separately consider each proposed fixed and uniform rate of reimbursement. These rates, if adopted, shall then take effect on a date determined by the Board when the rates are considered for adoption; and remain in effect until subsequent Board action.

(7) All revisions shall be examined, proposed, considered and adopted pursuant to this section.

### SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL ADMINISTRATIVE PROCEEDINGS

#### 450:1-5-1. Individual proceedings

(a) Article II of the Administrative Procedures Act ("APA"), 75 O.S. §§ 308a, *et seq.*, governs individual proceedings by

ODMHSAS or the Board for revocation, and suspension ~~and non-renewal~~ of certification or for reprimand of certified facilities.

(b) Further, this chapter sets forth the procedural aspects of individual proceedings and hearings provided for in accordance with the Administrative Procedures Act.

**450:1-5-5. Petition and notice in individual proceedings**

(a) **Petition and Notice.** In the event the ~~Board or ODMHSAS~~ Commissioner determines action should be taken, an individual proceeding may be initiated by filing a petition and notice with the Hearing Clerk for ODMHSAS, who shall be designated by the Commissioner, 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. The petition and notice shall provide the action shall commence and become effective fifteen (15) calendar days after receipt of said notice by the respondent, unless the respondent timely files a written request for a hearing with ODMHSAS.

(b) **Request for hearing.** A request for hearing will be timely filed if said request is in writing and received by the Hearing Clerk of ODMHSAS within ten (10) calendar days of the date the party received the petition and notice. If a timely written request for a hearing is not filed by the respondent, the allegations in the petition shall be deemed confessed by the respondent and the action will become final as set forth herein. If the written request for hearing is timely filed, such hearing shall be scheduled before ~~the Commissioner~~ or an Administrative Hearing Officer at least fifteen (15) days from the date said request is filed, and the parties shall be notified of the date, time and place of the hearing. If an emergency exists, a hearing may be conducted without the filing of a petition and without waiting fifteen (15) days.

**450:1-5-5.4. Prehearing conference**

A pre-hearing conference may be ordered and scheduled by the ~~Commissioner~~ or the Hearing Officer on his own motion or upon the request of any party. The ~~Commissioner~~ or Hearing Officer may authorize the conference to occur by teleconference. The subjects and objectives of the pre-hearing conference shall be similar to those for pretrial proceedings in district courts.

**450:1-5-6. Continuances**

(a) **Continuance by ODMHSAS.** The ~~Commissioner~~ 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 ~~Commissioner~~ or the Hearing Officer determines that the public interest requires otherwise.

**450:1-5-7. Discovery**

(a) **Purpose.** Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's case. This section is intended to provide a simple method of discovery.

(b) **Explanation.** Discovery is a process apart from the hearing whereby a party may obtain information from another person which has not otherwise been provided. This information is obtained for the purpose of assisting the parties in developing, preparing and presenting their cases.

(c) **Methods.** Discovery shall be conducted generally in accordance with Section 315 of the APA and as set forth in the Oklahoma Discovery Code. Additionally, the ~~Commissioner~~ or the Hearing Officer may enter specific orders directing the conduct of discovery.

**450:1-5-8. Protective orders**

(a) The ~~Commissioner~~ or the Hearing Officer at the hearing or at anytime upon application of a party, with or without notice, 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. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed. Disclosure of ~~client~~ consumer identification shall only be ordered pursuant to state and federal law.

(b) The ~~Commissioner~~ or the Hearing Officer may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this rule.

**450:1-5-9. 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. As an officer of the court, an attorney authorized to practice law in Oklahoma may also issue and sign subpoenas. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code, 12 O.S. § 2004.1.

(b) **Failure to obey.** The ~~Commissioner~~ or the ~~Petitioner~~ Either party 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 Commissioner~~ or the Hearing Officer may, in his or her discretion,

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~~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 ~~Commissioner or~~ Hearing Officer will rule on the motion.

### 450:1-5-10. Conduct and record of hearing

(a) **Open to public.** Every hearing before ODMHSAS shall be conducted by the ~~Commissioner or~~ designated Hearing Officer. All hearings shall be open to the public unless a protective order is entered for protection of consumer confidentiality; however, upon motion of a party to the proceeding, the 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 ODMHSAS 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.

### 450:1-5-11. Hearing officers

(a) **Exercise of authority.** The Commissioner shall appoint at least one individual who is a licensed attorney to act as the Administrative Hearing Officer in individual proceedings filed before the Department of Mental Health and Substance Abuse Services.

(b) The Administrative Hearing Officer shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. He or she shall have all powers necessary to that end unless otherwise limited by law, including but not limited to, the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule upon objections and offers of proof and receive relevant evidence;
- (3) Rule upon the institution of discovery procedures as appropriate;

(4) Convene a hearing as appropriate, regulate the course of the hearing, examine any witness in order to clarify issues; maintain decorum and exclude from the hearing any disruptive persons;

(5) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any person whose presence might have a chilling effect on testifying witness;

(6) Rule on all motions, witness and exhibit lists and proposed findings;

(7) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(8) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and non-repetitious;

(9) Make inquiries of the parties or witnesses for the purpose of clarification or fact findings to insure a fair and impartial decision;

(10) Render decisions pursuant to the particular action taken;

(11) May require, or allow, the filing of briefs by the parties, and may designate the order and time for filing briefs and reply briefs;

(12) Close the record when all interested parties have had the opportunity to be heard and to present evidence; and

(13) Issue ~~proposed final~~ findings and orders.

### (c) Disqualification of hearing officer.

(1) The Administrative Hearing Officer shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration, stating on the record the reasons therefore, and shall immediately notify all parties of the withdrawal.

(2) Any party may file a motion requesting the Administrative Hearing Officer withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for the disqualification. The Administrative Hearing Officer shall rule on said motion.

### 450:1-5-14. ~~Proposed Order~~

(a) **Issuance and services of ~~final~~ order.** Not more than twenty (20) calendar days after conclusion of the hearing, the ~~Commissioner or the~~ Hearing Officer shall issue a proposed order with findings of fact and conclusions of law. If ODMHSAS proves its allegations in the petition and notice by clear and convincing evidence, ~~the Commissioner or the~~ Hearing Officer shall issue an order sustaining the allegations. If ODMHSAS does not meet its burden, the ~~Commissioner or~~ Hearing Officer shall issue an order in favor of the respondent(s). The Hearing Clerk shall file and serve the proposed order on ODMHSAS and respondent(s) by certified mail, return receipt requested.

(b) **Appeal.** A party may appeal a Final Hearing Officer's Order as provided in the APA to the ODMHSAS Board.

(1) Request for hearing. The Hearing Officer's order shall become final unless a party files and serves a written request for hearing by the ODMHSAS Board with the Hearing Clerk within fifteen (15) calendar days of the filing of the order.

(2) Briefs and exceptions. In the event a hearing by the Board is requested, all parties will be given the opportunity to file briefs and exceptions to the Hearing Officer's Order.

(3) Hearing. When a request for hearing is filed, the matter will be set on the agenda for the next Board meeting, unless the request is filed fifteen (15) calendar days or less prior to the next scheduled Board meeting, in which case it will be set for the on the agenda of the following meeting. The party requesting the hearing shall file any brief it wishes the Board to consider along with the request for hearing. The other party will then have ten (10) days to file its response. At the Board meeting, the parties shall be permitted to present oral argument. The length of oral argument shall be determined by the chair of the Board. Upon conclusion of oral argument by the parties, the Board may convene in executive session to deliberate the matter.

(4) Issuance of decision. The Board shall issue its decision within thirty (30) calendar days after the hearing before the Board.

(5) Appeal. A party may appeal the Board's decision as provided in the APA.

**SUBCHAPTER 7. CHARGES AND ELIGIBILITY FOR ODMHSAS SERVICES**

**450:1-7-1. Purpose**

The purpose of this Subchapter is to set forth the rules of the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) with regard to the charges for services within ODMHSAS operated facilities ~~and the rates of reimbursement to contractors with ODMHSAS.~~

**450:1-7-4.1. Charges, ODMHSAS operated facilities**

At least annually ODMHSAS shall review all charges for services provided at its facilities, and, if warranted, shall propose a change in the rate of charges for any services(s), based upon the cost of providing said services, or changes in the method/form of reimbursement under the U.S. Social Security Act Titles for Medicare and Medicaid.

**SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES**

**450:1-9-1. Applicability of certification**

This subchapter applies to all entities which are subject to certification by the Board, as set forth in 43A O.S. § 3-306.1 (Community Mental Health Centers); ~~§ 3-314.1 (Domestic Violence Shelters and Programs, Sexual Assault Programs~~

~~and Batterers Treatment Programs); § 3-315 (Community Residential Mental Health Facilities); § 3-317 (Community-based Structured Crisis Centers); § 3-415 (Alcohol and Drug Treatment Programs) and § 3-319 (Programs of Assertive Community Treatment).~~

**450:1-9-3. Purpose of certification**

The purpose of certification is to assess a facility's responsibility to the ~~client~~ consumer, and delivery of acceptable services to the ~~client~~ consumer. Responsibility to the ~~client~~ consumer is demonstrated through the provision of suitable facilities, trained staff and needed services which are accessible, safe and confidential. In addition to the above is the demonstration of the willingness and ability of the governing authority and staff to provide the planning, budgeting and management of resources necessary to the continued existence and effectiveness of the facility/services.

**450:1-9-4. Reviewing authority**

(a) The Board may certify community mental health centers, community residential mental health facilities, ~~domestic violence shelters and programs, sexual assault programs, batterers treatment programs,~~ community-based structured crisis centers, alcohol and drug treatment programs and programs of assertive community treatment as cited in Section 450:1-9-1, and directs that such shall be carried out as stated in this subchapter.

(b) The Commissioner of ODMHSAS may grant Temporary Certification to respond to unplanned changes that create an emergency need for service provision in the ODMHSAS delivery system for services operated by or funded by ODMHSAS.

(1) Provider Certification shall conduct a site review at the designated facility which must meet the minimal compliance requirements as cited in 450:1-9-7.

(2) The application procedure for completion of the certification process shall be accomplished in accordance with 450:1-9-6 and 450:1-9-7.

(3) The Temporary Certification status granted to the facility must be presented at the next ODMHSAS Board meeting for Board review and confirmation. ~~The Board has the authority to revoke the Temporary Certification.~~ In the event the Board does not confirm the Temporary Certification status, the Department shall initiate revocation proceedings pursuant to 450:1-9-8.

**450:1-9-5. Qualifications for certifications of facilities, and programs and individuals**

(a) Qualifications for certification are as follows:

(1) Compliance with applicable Standards and Criteria as set forth in the Chapter of OAC Title 450 regulating the area for which certification is being sought is required to qualify for certification. Specific Standards and Criteria are:

(A) Chapter 16, Standards and Criteria for Community Residential Mental Health Facilities;

(B) Chapter 17, Standards and Criteria for Community Mental Health Centers;

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- (C) Chapter 18, Standards and Criteria for Alcohol and Drug Treatment Programs;
  - (D) ~~Chapter 19, Standards and Criteria for Domestic Violence and Sexual Assault Services;~~
  - (~~E~~) Chapter 21, Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors;
  - (~~FE~~) Chapter 22, Certification of Alcohol and Drug Assessment and Evaluation Programs Related to Driver's License Revocation;
  - (~~GE~~) Chapter 23, Standards and Criteria for Community-based Structured Crisis Centers;
  - (~~HG~~) Chapter 50, Certification of Behavioral Health Case Managers; and
  - (~~HH~~) Chapter 55, Standards and Criteria for Programs of Assertive Community Treatment.
- (2) An applicant for certification must also comply with applicable statutory licensing provisions. (b) A certified Community Mental Health Center that provides alcohol and drug treatment services in the course of its outpatient or inpatient services, but has no designated or specialized alcohol and drug abuse treatment program component, shall not be subject to additional certification under the Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.
- (c) A certified Community Mental Health Center providing alcohol and drug abuse treatment services as a designated or specialized program component shall be subject to certification under the Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.
- (d) Certified Services for the Alcohol- and Drug-dependent providing community mental health services shall be subject to certification as a community mental health center in OAC 450, Chapter 17.

### 450:1-9-6. Procedures for application for certification

- (a) Applications for certification as a community mental health center, community residential mental health facility, ~~domestic violence shelter or program, sexual assault program or batterers' treatment program~~, community-based structured crisis center, alcohol and drug treatment programs, and programs of assertive community treatment must be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS and include the following:
- (1) A fully completed ODMHSAS application for certification form signed by authorized officials;
  - (2) The necessary written documentation or supporting evidence required on the application for certification form; and
  - (3) The required certification fee in the form of a check or money order, payable to the Oklahoma Department of Mental Health and Substance Abuse Services.
- (b) The following fees are required:
- (1) Applicants for certification as a community mental health center must submit \$150.00 with an initial application and \$150.00 with each renewal application; and

- (2) Applicants for certification as an alcohol and drug treatment program shall submit \$100.00 with an initial application and \$100.00 with each renewal application; and
- (3) ~~Applicants for domestic violence shelters or programs, sexual assault programs and batterers' treatment programs shall submit \$100.00 with an initial application and \$100.00 with each renewal application. Fees paid by applicants are not refundable.~~

(c) The application for certification form, required written documentation and fee must be submitted to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

(d) The application may require a listing of all services provided by the applicant, as well as specifics about the applicant including but not limited to governing authority, administrative, fiscal, all locations or sites where applicant will provide services and types of services to be provided.

(e) If, after being certified, a facility desires to add a service location within the facility's currently certified service area or to extend certification services to a separate a different service area, approval may be granted by the Commissioner upon submission of the required documentation to the Provider Certification Division.

(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by the Commissioner of ODMHSAS.

(2) The required written documentation or supporting evidence includes, but is not limited to:

- (A) ~~a completed review form;~~
- (~~B~~) fire & safety inspection;
- (~~CB~~) facility policies and procedures;
- (~~DC~~) zoning compliance; and
- (~~ED~~) compliance with Title 43A O.S. §3-417.1, if applicable.

(f) At the time of the next triennial review of the facility's main office certification, ~~those any~~ locations which ~~extend certification extends service provision~~ to separate a different service areas will require a separate certification application and will be reviewed on a schedule separate and apart from the certification schedule of the main office.

(g) If after being certified, a facility desires to offer a new type of service or new level of care, the facility must submit an application for certification, the required documentation and fee to the ODMHSAS Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

### 450:1-9-7. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the applicant and ODMHSAS staff, and consists of:

- (1) a review by ODMHSAS of all application materials;
- (2) an on-site review of the facility and completion of the applicable site visit protocol by ODMHSAS;

- (3) a review of all records deemed applicable by the ODMHSAS ;
  - (4) development and dissemination of report materials by ODMHSAS;
  - (5) development and review of any needed plans of correction;
  - (6) applicable follow-up on-site reviews; and
  - (7) presentation by ODMHSAS staff of the review results and associated recommendations to the Board or Commissioner or designee.
- (b) **Initial applications.** All initial applications for certification shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the applicant is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules, based on the initial on-site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Commissioner. In such case, re-application will be accepted after three (3) months have passed since issuance of the notification of denial.
- (c) **Length of certification process.** If an applicant for initial certification fails to achieve full certification within six (6) months of being granted temporary certification, the applicant shall not receive full certification and a recommendation of revocation of the existing certification will be ~~made to the Board~~ initiated at the direction of the Commissioner or designee. In such case, re-application for certification shall be made in accordance with the requirements of 450:1-9-7 and 450:1-9-12. If the applicant requests withdrawal of the certification status because of the circumstances cited above, the applicant may reapply three months after receipt of the written request by the Provider Certification Division.
- (d) **Renewal applications.**
- (1) ODMHSAS will, prior to the renewal date, notify facilities the application for renewal of certification is due.
  - (2) The facility shall submit its application for renewal before the expiration of its certification.
  - (3) Renewal applications for certification shall be reviewed for completeness by ODMHSAS staff. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction ~~will shall~~ not be requested and revocation of the certification status will be ~~recommended to the Board~~ initiated at the direction of the Commissioner or designee.
  - (4) If, after being granted conditional certification, an applicant for renewal fails to achieve full certification within four (4) months, the applicant shall not receive full certification and a ~~recommendation of~~ revocation of the certification status ~~will shall~~ be ~~made to the Board~~ initiated at the direction of the Commissioner or designee.
- (e) **Site reviews.**
- (1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant.
- (2) Only one follow-up site review will be conducted on facilities receiving Temporary or Conditional Certification for the purpose of determining compliance with standards and the plan of correction.
  - (3) For a facility granted Temporary Certification, the follow-up site review will be conducted on standards not applicable during the initial certification visit, and a minimum of five (5) records shall be made available for review.
  - (4) The follow-up site review to Conditional Certification will be conducted to review implementation of the plan of correction. Failure to come into compliance with applicable rules and implement the plan of corrections shall result in a recommendation that the Conditional Certification status be revoked.
  - (5) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.
    - (A) A facility must be prepared to provide evidence of compliance with each applicable standard.
    - (B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects ~~client~~ consumer safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension of certification may be made by the Commissioner of ODMHSAS.
  - (f) **Accreditation status.** The ODMHSAS may accept accreditation granted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation of Services for Families and Children, Inc. (COA), or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards as identified in the site review—protocol. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including survey reports of all visits by the accrediting organization, any reports of subsequent actions initiated by the accrediting organization, any plans of correction, and the dates for which the accreditation has been granted.
  - (g) **Deficiencies.** A deficiency shall be cited for each rule not met by the facility.
  - (h) **Report to applicant and plan of correction.**
    - (1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the on-site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.
    - (2) The facility must submit a written plan of correction for each deficiency for approval within two (2) weeks of the receipt of the Certification Report. Approval of the plan of correction shall be required before the completed application for certification will be presented to the Board. However, if the facility is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested.

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### (i) Notification of Departmental recommendation for certification.

(1) After completion of the on-site review and report on the Application for Certification, ODMHSAS staff shall prepare a recommendation on the certification status or application ~~for the Board.~~

(2) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the Board, the ODMHSAS staff shall notify the applicant of:

(A) the recommendation, and

(B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented; ~~and,~~

~~(C) the requirement of a facility receiving a recommendation of denial, revocation, conditional or temporary to have a representative present.~~

(3) Achievement of certain scores is a prerequisite for consideration of a specific certification status but may not be the sole determinant. Individual deficiencies that meet the criteria in 450:1-9-9 may be grounds for suspending or revoking certification or denying applications for certification.

(4) Consideration of certification may be deferred while additional information regarding a facility's compliance status is reviewed.

(5) The minimum compliance scores for recommendation of a certification status to the Board are:

(A) **Certification with Commendation.** Facility is in compliance with 100% of the applicable rules.

(B) **Certification.** Facility achieves compliance with 100% of the applicable rules after on-site correction(s).

(C) **Conditional Certification.** Facility is in compliance with 51% of the applicable rules.

(D) **Temporary Certification.** Facility is in compliance with 51% of the applicable standards and rules.

### (j) Actions on Non-Certified Providers. If at the initial site review it is found the facility is providing services:

(1) The review will be continued including the review of clinical records.

(2) The facility must comply with the requirements cited in 450:1-9-7 to continue the certification process.

(3) If the applicant achieves less than 100% compliance, full certification must be achieved ~~with~~ within four (4) months.

(4) Upon successful completion of the process, Probationary Certification status will be recommended for no more than one (1) year.

(5) The desire for continued certification after the Probationary Certification period will require the submission of a new application for each of the next two (2) years. The requirements in 450:1-9-7 shall apply. A recommendation for Certification for one (1) year will be made to the Board.

(6) If during this three-year period the facility is found non-compliant with Title 43A O.S. § 3-301, Unified Community Mental Health Services Act, or 43A O.S. §3-401 Oklahoma Alcohol and Drug Abuse Services Act, the

non-compliance will result in revocation of certification. Re-application for certification will be accepted one year after revocation.

### (k) Actions on certification applications. ODMHSAS staff shall make one of the following recommendations to the Board:

(1) Certification with commendation;

(2) Certification;

(3) Conditional certification;

(4) Temporary certification; or

(5) Probationary Certification; ~~or~~

~~(6) Revocation.~~

(l) ODMHSAS shall forward recommendation for revocation of certification to the Commissioner. If the ~~Board~~ Commissioner approves a recommendation to revoke certification, an individual proceeding shall be initiated pursuant to Subchapter 5.

### 450:1-9-8. Duration of certification status

(a) Certification status of either "Certification with Commendation" or "Certification" shall be for the period of:

(1) Three (3) years for Community Mental Health Centers, Alcohol and Drug Treatment Programs, Community-based Structured Crisis Centers, ~~Domestic Violence Shelters or Programs, Sexual Assault Programs, Treatment Programs for Batterers,~~ and Programs of Assertive Community Treatment.

(2) One (1) year for Community Residential Mental Health Facilities.

(b) Conditional certification granted to applicants for renewal shall be for a period not to exceed four (4) months. During that period, a follow-up site review will be conducted to ensure cited deficiencies have been corrected as provided in the plan of correction or to demonstrate continued correction and compliance with the previously cited deficiencies.

(c) Certification or conditional certification granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, that the Board may waive this requirement and make the certification or conditional certification effective immediately.

(d) Temporary certification granted to applicants for initial certification of a facility, location or level of service shall be for a period of six (6) months and shall become effective immediately following Board or Commissioner action. During that period, a follow-up site review will be conducted to ensure any deficiencies cited during the initial site visit have been sufficiently corrected and to assess the facility's compliance with remaining applicable standards necessary to meet the requirements for certification.

(e) Certification is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring application for certification by the new ownership. If the certified facility is owned by a corporation the following applies:

(1) If the corporation is not-for-profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal

expiration of terms in accordance with the By-Laws of the Board of Directors, shall require the facility to be recertified.

(2) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.

(3) It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification as set forth in (1) and (2) of this subsection; and to request the application materials for recertification.

(f) Certification may be suspended, or revoked ~~or not renewed~~ with the bases for such action being delineated in Section 450:1-9-9 of this Subchapter.

**450:1-9-9. Bases for a decision to issue administrative sanction of suspension, or revocation**

(a) A determination that the certification status shall be reduced, suspended, or revoked or that a reprimand be issued, may be made upon the following bases:

- (1) failure to comply with certification standards;
- (2) failure to comply with appropriate statutory licensing provisions;
- (3) violation of ~~client~~ consumer rights or ~~client~~ consumer confidentiality;
- (4) endangerment of the safety, health, and/or the physical or mental well-being of a ~~client~~ consumer served by the program;
- (5) failure to comply with accreditation, inspection, safety, or building code regulations required by local, state, or federal authorities and laws;
- (6) defrauding a ~~client~~ consumer, potential ~~client~~ consumer, or third party payer;
- (7) inappropriate conduct by program staff or its governing authority;
- (8) utilization of treatment techniques which endanger the safety, health, and mental health or physical well-being of program ~~clients~~ consumers; or
- (9) any other just cause.

(b) Determinations to initiate proceedings for suspension, ~~reduction,~~ ~~or~~ revocations or to issue reprimands are made by the ~~Board~~ Commissioner of ODMHSAS.

(c) The facility's certification status continues unless the facility fails to timely file a written request for a hearing as cited in OAC450:1-5-5 or an order sustaining the allegations made by ODMHSAS is issued by the appointed Hearing Officer.

**450:1-9-9.1. Appeal of an issued administrative sanction**

(a) Any determination of the ODMHSAS regarding the suspension or revocation of a certification may be appealed by the aggrieved party to the ODMHSAS Board.

(b) Appeal. The proposed order shall become final unless a party files and serves a written request for an appeal to the

Board with the Hearing Clerk within fifteen (15) calendar days of the filing of the proposed order.

(c) Briefs and exceptions. In the event an appeal to the Board is requested, all parties will be given the opportunity to file briefs and exceptions to the proposed order.

(d) Hearing. When a request for an appeal is filed, the matter will be set on the agenda of the next Board meeting, unless the request is filed fifteen (15) calendar days or less prior to the next scheduled Board meeting, in which case it will be set on the agenda of the following meeting. At the Board meeting, the parties shall be permitted to present their briefs and oral argument; the length of oral argument shall be determined by the chair of the Board. Upon conclusion of oral argument by the parties, the Board may convene in executive session to deliberate the matter.

(e) Issuance and service of order. Within thirty (30) calendar days after the appeal hearing before the Board, the Board shall issue an Order stating the findings of fact made and the conclusions of law reached, and specifying the action to be taken. The Hearing Clerk shall file the Order and serve it on the parties; the respondent(s) shall be served by certified mail, return receipt requested.

(f) Appeal. A party may appeal an Order as provided in the APA.

**450:1-9-10. Contingency for non-action by the Board**

In the event the Board of Mental Health and Substance Abuse Services does not meet during the month a facility's certification is due for consideration, or is unable for any reason to consider the certification in a timely manner, any current certification status shall be automatically extended until the next meeting of the Board, unless to do so would endanger the health, welfare and safety of ~~clients~~ consumers, and there would be a danger of imminent harm.

**450:1-9-12. Reapplication following denial, suspension or revocation of certification**

Reapplication for consideration of certification for any program for which certification has been suspended, ~~or~~ revoked or not renewed will not be accepted or considered unless at least six (6) months has passed since issuance of a ~~Final~~ an Order of suspension, ~~or~~ revocation or non-renewal.

**SUBCHAPTER 11. RESEARCH**

**450:1-11-3. Policy, scientific misconduct allegations**

(a) For any research grants, fellowships or cooperative agreements by the (U.S.) Public Health Service for which the ODMHSAS is either the direct recipient, or involved as a financial pass-through agent, or has any oversight responsibility, the "Model

Policy and Procedures for Responding to Allegations of Scientific Misconduct" published by the (U.S.) Public Health Service, Office of Research integrity, April 1995 (or any revisions/successor document thereto) shall be utilized by

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ODMHSAS for responding to allegations of scientific misconduct.

(b) This subchapter shall be distributed to all ODMHSAS operated facilities; and all entities contracting with, ~~and/or certified by ODMHSAS providing Mental Health, and/or Substance Abuse, or both and/or Domestic Violence and Sexual Assault Services.~~

(c) This subchapter and a copy of the "Model Policy and Procedures for Responding to Allegations of Scientific Misconduct" shall be distributed to all ODMHSAS staff involved with, and any person or business entity with which ODMHSAS is involved with, in (U.S.) Public Health Service research grants, fellowships, and/or cooperative agreements.

(d) Pursuant to the "Model Policy and Procedures for Responding to Allegations of Scientific Misconduct", the Research Integrity Officer for ODMHSAS shall be the Chief of the Decision Support Services, ODMHSAS Central Office. All allegations of scientific misconduct shall be made to the Research Integrity Officer.

### **450:1-11-4. Adherence to ethical principles**

All of the ODMHSAS's human subject activities, and all human subject activities of the ODMHSAS IRB designated under the ODMHSAS Federalwide Assurance, regardless of funding source, shall be guided by the ethical principles in The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research of the National Commission of the Protection of Human Subjects of Biomedical and Behavioral Research.

### **450:1-11-5. Compliance with 45 C.F.R. Part 46**

Federally-supported human subject research for which the ODMHSAS IRB provides review and oversight shall comply with 45 C.F.R. Part 46. All human subject research supported by the Department of Health and Human Services (HHS) shall comply with all Subparts of HHS regulations at Title 45 Code of Federal Regulations Part 46 (45 C.F.R. Part 46). All federally-supported human subject research shall also comply with any additional human subject regulations and policies of the supporting federal or state department or agency. All federally-supported human subject research shall comply with any human subject regulations and policies of any relevant regulatory federal or state department or agency.

### **450:1-11-6. Authority of IRB**

Except for research exempted or waived under 45 C.F.R. §46.101 (b) & (i), all human subject research for which the ODMHSAS IRB is responsible shall be reviewed, prospectively approved, and subject to continuing oversight by the ODMHSAS IRB. The ODMHSAS IRB shall have authority to approve, require modifications in, or disapprove the covered human subject research for which it is responsible.

### **450:1-11-7. Informed consent**

Except where specifically waived or altered by the ODMHSAS IRB under 45 C.F.R. § 46.101(i), 46.116 (c) &

(d), or 46.117 (c) of all research for which the ODMHSAS IRB is responsible requires written informed consent, in nonexculpatory language understandable to the subject (or subject's legally authorized representative), including the following basic elements per 45 C.F.R. § 46.116 (a) & (b):

- (1) Identification as research; purposes, duration, and procedures; procedures which are experimental;
- 2) Reasonable foreseeable risks or discomforts;
- (3) Reasonable expected benefits to the subject or others;
- (4) Alternative procedures or treatments, if any, that might be advantageous to the subject;
- (5) Extent of confidentiality to be maintained;
- (6) Whether compensation or medical treatment are available if injury occurs (if more than minimal risk);
- (7) Whom to contact for answers to questions about the research, subjects' rights, and research-related injury;
- (8) Participation is voluntary; refusal to participate, or discontinuation of participation, shall involve no penalty or loss of benefits to which subject is entitled; and
- (9) When appropriate, additional elements per 45 C.F.R. § 45.116.

### **450:1-11-8. IRB Membership**

(a) The ODMHSAS IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by ODMHSAS. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of agency commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) The Commissioner or designee shall appoint IRB members and the IRB chairperson.

(c) Every nondiscriminatory effort shall be made to ensure that the ODMHSAS IRB does not consist entirely of men or entirely of women, including the agency's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(d) The ODMHSAS IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(e) The ODMHSAS IRB shall include at least one member who is not otherwise affiliated with the ODMHSAS and who

is not part of the immediate family of a person who is affiliated with ODMHSAS.

(f) ODMHSAS IRB Members will not participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(g) The IRB may invite individuals with competence in special areas to assist in the review of issues, which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

[OAR Docket #06-876; filed 5-9-06]

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

[OAR Docket #06-877]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 18. Standards and Criteria for Alcohol and Drug Treatment Programs [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 3-306, 3-317, 3-403(1), 3-404, 3-406, 3-415 and 3-416.

DATES:

Comment period:

January 17, 2006 through February 17, 2006

Public hearing:

February 21, 2006

Adoption:

March 10, 2006

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March 14, 2006

Submitted to House:

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March 14, 2006

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April 25, 2006

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Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2006.

Final adoption:

May 10, 2006

Effective:

July 1, 2006

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance services for consumers of substance abuse treatment by organizations operated or certified by or under contract with ODMHSAS, delete redundant or superfluous language, and correct scrivener's errors.

CONTACT PERSON:

Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVIALABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES, 1200 NE 13TH STREET, OKLAHOMA CITY, OKLAHOMA 73152-3277 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 765 O.S. SECTION 255 (B):

SUMMARY:

Substance Abuse Services staff of the Department have restructured the sequence of rules within this chapter to provide greater emphasis on certain areas, and to improve the stream of text. These rules more clearly define treatment service expectations, and continue to address facility safety issues with specific life safety mandates. In addition, pursuant to 59 O.S. §§ 1870 through 1885, these revisions incorporate statutory credentialing qualifications of staff by incorporating licensure and certification requirements for the professional treatment of alcohol and drug use and abuse. These revised rules are available on the ODMHSAS website, http://www.odmhsas.org/, at the above street address, or by phone at 405/522-3810.

[OAR Docket #06-877; filed 5-9-06]

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

[OAR Docket #06-879]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors
450:21-1-3. Definitions [AMENDED]
450:21-1-5. Compliance with laws, rules
450:21-1-6. Applications [AMENDED]
450:21-1-8. Administrative responsibilities, institutions or organizations conducting ADSAC [AMENDED]
450:21-1-10. Ten or 24 hour facilitator certification, qualification and disqualification [AMENDED]
Subchapter 3. Certification Denial or Sanctions
450:21-3-1.1. Fitness of applicants [NEW]

AUTHORITY:

43A O.S. §§ 3-451 through 3-460; 47 O.S. §§ 6-212.2 and 11-902; 22 O.S. § 991c; Oklahoma Board of Mental Health and Substance Abuse Services.

DATES:

Comment period:

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Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2006.

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**Final adoption:**

May 10, 2006

**Effective:**

July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 21 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory mandates, amendment or revocation of rules, clarify certification requirements, delete redundant or superfluous language, and correct scrivener's errors.

**CONTACT PERSON:**

Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## **SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS**

**450:21-1-3. Definitions**

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

**"ADSAC"** means Alcohol and Drug Substance Abuse Course.

**"10 Hour ADSAC Facilitator"** means an individual certified to teach the ten (10) hour ADSAC.

**"24 Hour ADSAC Facilitator"** means an individual certified to teach the twenty-four (24) hour ADSAC.

**"Administrator"** means the person responsible for administering ADSAC within a certified organization or institution.

**"Action Code"** means a numerical designation applied to ADSAC by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC.

**"Certification"** means organization, institution or individual approved by ODMHSAS to conduct ADSAC.

**"Commissioner"** means the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services.

**"Conflict of interest"** means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC ~~Instructor Facilitator~~ Instructor or Facilitator and includes ~~instructors being involved in a business relationship with more than one (1) ADSAC provider organization.~~

**"Consumer"** means an individual, adult or child, who is receiving services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

**"Course"** means multiple classes offering an approved ADSAC curriculum.

**"Curricula"** (plural of Curriculum) See Curriculum.

**"Curriculum"** means a course of study in alcohol and drug substance abuse.

**"Denial"** means a refusal to certify to conduct ADSAC.

**"DPS"** means Department of Public Safety.

**"Equipment"** means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC.

**"Facilitator candidate"** means an individual who has applied to be certified to conduct ADSAC, as either a 10 hour or 24 hour ADSAC Facilitator.

**"Facility"** means building in which ADSAC is conducted.

**"Guest instructor"** means non-certified individual invited to discuss a specific portion of ADSAC curriculum.

**"Instructional material"** means written or printed data distributed to the student during the normal course of an ADSAC schedule, for informational or educational purposes.

**"Intern facilitator"** means a facilitator who has initial approval to conduct ADSAC, either 10 Hour or 24 Hour, but who has not completed internship or training requirements, and is not certified.

**"Lapse"** means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

**"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

**"Offender"** means a person convicted of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges.

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

**"Professional setting"** means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and HIPAA, and without distraction or interruption from adjacent business or activities. **"Recertification"** means the renewal of certification for an institution, or organization, or instructor to provide ADSAC.

**"Revocation"** means cancellation of an existing certification to conduct or instruct ADSAC.

**"Student"** means an individual who pays an enrollment fee to attend ADSAC.

**"Suspend"** means to temporarily cancel certified ADSAC services for a designated period. **"Transtheoretical Model of Change"** or **"TMC"** means a model which identifies distinct stages of change existing for each individual involved in any

educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

**450:21-1-5. Compliance with laws, rules**

(a) All organizations or institutions and facilitators certified by ODMHSAS to conduct ADSAC shall do so in accordance with all applicable laws of the State of Oklahoma and all applicable rules (OAC Title 450) of ODMHSAS.

(b) Each applicant shall declare in writing, in a format and manner prescribed by the Commissioner of ODMHSAS, that he or she has read and understands §§ 3-451 through 3-460 of Title 43A of the Oklahoma Statutes and this chapter and agrees to abide by the terms thereof, along with future amendments thereto, as a condition for obtaining and retaining such approval or certification.

(c) ODMHSAS shall process all applications, and enforce these standards and criteria (rules) in this chapter, and related laws.

(d) Approved organizations, institutions and facilitators shall not make reference to ODMHSAS or DPS in any advertisement. Advertising shall be truthful in all communication with prospective students. Implication of exclusive services by any one organization is prohibited.

(e) All organizations, institutions and facilitators certified to conduct ADSAC must promptly notify ODMHSAS of a change of mailing or physical address within fourteen (14) days of said change.

(f) The fees for those attending ten (10) hour ADSAC shall be one hundred and fifty dollars (\$150.00) per student; and for persons attending the twenty-four (24) hour courses the fee shall be three hundred and sixty dollars (\$360.00).

(g) The ADSAC organization or institution shall pay ODMHSAS ten percent (10%) of each ADSAC fee collected, which ODMHSAS shall remit to the Oklahoma State Treasurer to be credited to the ODMHSAS Revolving Fund.

(h) The payment from the ADSAC fee collected for each participant shall be made to ODMHSAS within thirty (30) days of completion of the course.

(i) A check for the appropriate fee shall accompany the completion roster, unless otherwise stipulated in writing by ODMHSAS.

(j) Each facilitator and school shall annually submit to ODMHSAS a notarized affidavit documenting the number of courses conducted, number of participants, and fees paid for the ADSACs within the previous twelve (12) months.

**450:21-1-6. Applications**

(a) Applications for certification of organizations or institutions and facilitators to conduct 10 hour or 24 hour ADSAC shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS.

(b) ODMHSAS shall give each organization, institution and facilitator candidate requesting certification to conduct 10 hour or 24 hour ADSAC the following:

- (1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;
- (2) A copy of these standards and criteria; and
- (3) The appropriate application(s).

(c) An organization or institution applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:

- (1) Completed application;
- (2) Film approval form(s) for the 10 or 24 Hour ADSAC;
- (3) Instructional materials for the 10 or 24 Hour ADSAC;
- (4) Written verification the applicant is a nonprofit educational institution of higher learning, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;
- (5) Completed certification applications and resumes of proposed facilitators;
- (6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC will be conducted;
- (7) Letters of support from at least two (2) of the following (and who serve the location in which each proposed site is located):

- (A) District or Associate District Judge;
- (B) County Sheriff;
- (C) Municipal Judge;
- (D) District or Assistant District Attorney; or
- (E) ~~Community leader~~ Chief of Police.

(d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.

(e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications except it need not submit items previously submitted and are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).

(f) Renewal of certification of ADSAC organizations or institutions shall be contingent upon submission of renewal application and programmatic history of compliance. The application for renewal shall include all items required for initial certification.

(g) An applicant for initial certification as a facilitator to conduct ADSAC shall provide to ODMHSAS for consideration:

- (1) A letter of recommendation from an administrator of a certified organization or institution;
- (2) A current resume, which shall include:
  - (A) Education background including an official college transcript from an accredited college or university, and

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- (B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).
- (3) A completed application; and
- (4) ~~A Upon initial application and every six (6) years thereafter, a completed Oklahoma State Bureau of Investigation background check and a similar background check from any other state(s) of residence for the past three five (35) years.~~
- (5) Remission of a one hundred dollar (\$100.00) application fee for initial certification.
- (h) ODMHSAS shall consider each applicant for certification in accordance with these ~~standards and criteria rules~~. The Commissioner of ~~Mental Health and Substance Abuse Services~~ ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years (36 months) commencing with the date of issue.
- (i) Faxes will not be accepted as permanent copies for an applicant's file.
- (j) Applications are good for one (1) year from acceptance. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.
- (k) Completed applications must be received by ODMHSAS thirty (30) days prior to the publicly announced training event.
- (l) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 21-1-10, including attending the initial ADSAC facilitator training, and successful completion of the training exam.
- (m) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least 15 days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to 30 days after a change has occurred.

### **450:21-1-8. Administrative responsibilities, institutions or organizations conducting ADSAC**

- (a) Each organization or institution certified to conduct ADSAC shall provide ODMHSAS, in a manner prescribed by the Commissioner of ODMHSAS, a monthly schedule of courses to be conducted. The scheduled courses shall be provided per the submitted course schedule and the course may only be canceled if zero (0) students show up for the course within fifteen (15) minutes after the scheduled course starting time. The course schedule shall be submitted no later than thirty (30) days in advance of any course start and shall include;
- (1) The complete address, street, building name and suite where applicable, city and zip code, where each course will be conducted;
  - (2) The course facilitator;
  - (3) The beginning and ending times of each session of the course; and
  - (4) Enrollment in ten or twenty-four hour classes shall be limited to twenty-four (24) students.

- (b) Each organization or institution certified to conduct ADSAC shall advise ODMHSAS seven (7) days in advance of:
- (1) A 10 Hour or 24 Hour Course cancellation; or
  - (2) A scheduled facilitator change (unless change is due to illness or other instructor emergency); or
  - (3) Any change of the date or hour of the scheduled 10 Hour or 24 Hour Course.
- (c) Failure to offer either a 10 Hour or 24 Hour Course at an approved site for three (3) consecutive months shall constitute a withdrawal from that site and require another application for certification.
- (d) If no students attend the first session of a ten (10) or twenty-four (24) hour course, a second or subsequent session is not required.
- (e) Failure to either provide a scheduled course to one (1) or more attending students, or staff a scheduled course site for up to fifteen (15) minutes after the scheduled course beginning time may result in administrative reprimand, suspension or revocation. Class may be cancelled when zero (0) students show up after fifteen (15) minutes of the scheduled course beginning time.
- (f) ODMHSAS personnel shall be admitted to any course without charge, upon request and display of proper credentials for the purpose of audit and review.
- (g) Certified organizations and facilitators must provide, for each phone number published specific to ADSAC, continuous availability, either in person, by phone, answering machine, electronic voice mail, or engage a professional answering service. Numbers published for the purpose of ADSAC advertisement must not be answered by individuals other than those certified to provide ADSAC services.
- (h) Organizations certified to conduct ADSAC courses shall be responsible for the conduct of the facilitators they employ, and shall have written policies outlining the organization's oversight procedures.

### **450:21-1-10. Ten or 24 hour facilitator certification, qualification and disqualification**

- (a) Minimum qualifications for certification of 10 Hour ADSAC facilitators are as follows:
- (1) Possess a bachelor's degree in behavioral or health-care sciences education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the addiction treatment field.
  - (2) A valid driver's license.
  - (3) Completion of the following in the order listed below:
    - (A) Observe one (1) complete ADSAC conducted by a certified facilitator. This observation must be completed and verified to ODMHSAS prior to attending facilitator training;
    - (B) Attend the instructor training and pass the ODMHSAS Certification Examination for 10 Hour ADSAC Facilitator; and
      - (i) a minimal score to pass the exam shall be eighty (80) percent;

- (ii) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;
  - (iii) the exam shall require the participant to correctly identify the major components of the interactive journaling process; and
  - (iv) the exam shall require the participant to correctly identify rules from this chapter;
- (C) Conduct a complete ADSAC under the supervision of a certified ADSAC facilitator or an ODMHSAS representative.
- (4) The facilitator candidate shall be allowed one (1) year to complete all training requirements. Failure to meet all requirements within one (1) year will result in denial of certification. To be reconsidered, the candidate will be required to re-apply to ODMHSAS.
- (5) Renewal of certification as a 10 Hour ADSAC Facilitator shall be dependent upon renewal application, remission of a twenty-five dollar (\$25.00) application fee for renewal of certification fee, and the accomplishment of minimum standards. These standards are:
- (A) Each facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the date of initial certification.
  - (B) Documentation of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with six (6) hours coming from areas (i) and/or (ii) and six (6) hours coming from area (iii):
    - (i) adult education,
    - (ii) facilitation skills, and
    - (iii) alcohol and other drug training.
- (b) An applicant for Certified Facilitator for the twenty-four (24) hour ADSAC shall meet the following qualifications:
- (1) Be certified as a 10 Hour ADSAC Instructor (in good standing) for at least one (1) year;
  - (2) Observe at least six (6) hours of a 24 Hour ADSAC Course;
  - (3) Present at least six (6) hours of a 24 Hour ADSAC under the observation of a certified 24 Hour ADSAC Facilitator, and receive written recommendation for certification from said observer; and
  - (4) Attend six hours of ODMHSAS 24 Hour ADSAC Facilitator training and pass the ODMHSAS Certification Examination for twenty four (24) Hour ADSAC Facilitator;
- (A) a minimal score to pass the exam shall be eighty (80) percent;
  - (B) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;
  - (C) the exam shall require the participant to correctly identify the major concepts of adult learning and basic facilitation skills; and
  - (D) the exam shall require the participant to correctly identify rules from this chapter;

- (c) Renewal for certification as a 24 hour ADSAC Facilitator shall be dependent upon application for recertification, remission of a twenty-five dollar (\$25.00) application fee for renewal of certification—fee, and the accomplishment of the following:
  - (1) Each facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the initial certification.
  - (2) Documentation of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with six (6) hours coming from areas (A) or (B) and six (6) hours coming from area (C):
    - (A) adult education,
    - (B) facilitation skills, and
    - (C) alcohol/drug training.
- (d) An applicant may not be certified nor certification as an ADSAC facilitator renewed under any of the following conditions:
  - (1) A non-pardoned felony conviction within the last five (5) years;
  - (2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,
  - (3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

**SUBCHAPTER 3. CERTIFICATION DENIAL OR SANCTIONS**

**450:21-3-1.1. Fitness of applicants**

- (a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as a certified ADSAC facilitator and to set forth the criteria by which the Commissioner or designee may determine the fitness of applicants.
- (b) The substantiation of the items below related to the applicant may result in the initiation of suspension or revocation of certification, or denial of, or delay of certification of the applicant. These items include, but are not limited to:
  - (1) Lack of necessary skill and abilities to provide adequate services;
  - (2) Misrepresentation on the application or other materials submitted to the ODMHSAS;
  - (3) A violation of the rules of professional conduct set forth in this Chapter.
  - (4) Evaluations of supervisors or instructors;
  - (5) Evaluation of competency-based project supervisor;
  - (6) Allegations of consumers;

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- (7) Transcripts or other findings from official court, hearing or investigative procedures;
  - (8) Any felony conviction for an offense of violence;
  - (9) Any unpardoned felony convictions within five (5) years;
  - (10) Any felony conviction for a sexual offense; or
  - (11) Any felony conviction for moral turpitude.
- (c) ODMHSAS may require explanation of negative references prior to issuance of certification.

[OAR Docket #06-879; filed 5-9-06]

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

[OAR Docket #06-880]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- 450:22-1-3. Definitions [AMENDED]
- 450:22-1-6. Driver offender assessors and assessment agencies [AMENDED]
- 450:22-1-11. Standardized evaluation instruments [AMENDED]
- 450:22-1-12. Assessment personnel [AMENDED]
- 450:22-1-15. Assessor responsibilities [AMENDED]
- 450:22-1-15.1. Fitness of Applicants [NEW]

### AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 3-453, and 3-460; 47 O.S. §§ 6-212.2 and 11-902; 22 O.S. §§ 991a and 991c.

### DATES:

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Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2006.

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#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 22 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory mandates,

amend or revoke rules, clarify certification requirements, delete redundant or superfluous language, and correct scrivener's errors.

#### CONTACT PERSON:

Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

### 450:22-1-3. Definitions

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

"**ADSAC**" means Alcohol and Drug Substance Abuse Course.

"**Addiction Severity Index**" or "**ASI**" is a multidimensional clinical and research instrument that rates the severity of a substance use or abuse problems for diagnostic evaluation and assesses change(s) in treatment status and outcome.

"**Assessor**" means an individual certified to conduct alcohol and other drug assessments related to driver's license revocations.

"**Assessment**" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

"**Certification**" means ODMHSAS approval for an individual to conduct alcohol and other drug assessments related to driver's license revocations.

"**Certified Alcohol and Drug Counselor**" or "**CADC**" means any person who is certified pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"**Conflict of Interest**" means a conflict between the private interests and public obligations of a certified organization or assessor.

"**Consumer**" means an individual, adult or child, who has applied for, is receiving, or has received services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"**Defendant Questionnaire**" or "**DQ**" is an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent using the American Society of Addiction Medicine, patient placement criteria.

"**DPS**" means the Oklahoma Department of Public Safety.

"**Driver Risk Inventory-II**" or "**DRI-II**" is an assessment or screening instrument, which contains six scales measuring truthfulness, driver risk, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent.

"Juvenile Automated Substance Abuse Evaluation" or "JASAE" is a survey based on adolescent norms to assess alcohol and other drug problem severity using DSM and ASAM guidelines. The JASAE includes attitude, age and life situation in the evaluation process.

"Licensed Alcohol and Drug Counselor" or "LADC" means any person who is licensed pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

~~"Michigan Alcohol Screening Test" or "MAST" is a widely used tool for assessing alcohol abuse. The MAST is a twenty five (25) item questionnaire designed for use in a paper and pencil form or as an interview. The MAST provides a rapid and effective screen for alcohol related problems and alcoholism. The MAST has been shown to be effective in a variety of settings and with a variety of populations.~~

~~"Mortimer Filkins Questionnaire" or "MFQ" is a fifty four (54) question tool that involves a combination questionnaire and interview used together to calculate a total score. The MFQ was designed to identify problem drinkers among DUI/DWI offenders.~~

"Multidimensional Addictions and Personality Profile" or "MAPP" is an instrument designed to identify substance use disorders and other personal adjustment problems related to recidivism risk. The MAPP will assist with the determination of appropriate types and levels of care.

~~"Needs assessment" or "NEEDS" is a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs. Needs is short for needs assessment.~~

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Offender" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug- related revocation or suspension of driving privileges.

"OSBI" means Oklahoma State Bureau of Investigation.

"Professional setting" means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and 45 C.F.R. Parts 160 & 164 (HIPAA), and without distraction or interruption from adjacent business or activities.

"Psychosocial History" means an individual and family history of alcohol and drug abuse, an individual and family psychiatric history and a medical history of the individual and family psychiatric history, and a medical history of the individual.

"SALCE" or "Substance Abuse Life Circumstances Evaluation" is a ninety eight (98)-item survey addressing alcohol and/or drug use based on DSM-IV and ASAM guidelines. The SALCE also assesses attitude and life stressors. The SALCE is normed to the adult population.

"SASSI" or "Substance Abuse Subtle Screening Inventory" is a brief, easily administered psychological screening tool that assists in the identification of individuals with high probabilities of substance use disorder.

"Second Opinion" is a brief, easily administered screening tool designed to assist the ADSAC assessor with placement decisions.

"SUDDS" or "Substance Use Disorders Diagnostic Schedule" is a structured interview consisting of ninety nine (99) items with nine (9) subscales designed to identify relative severity of substance abuse problem in an individual. This instrument exists in both paper and pencil and computer versions.

"TAAD" or "Triage Assessment for Addictive Disorders" is a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

**450:22-1-6. Driver offender assessors and assessment agencies**

(a) Alcohol and other drug assessments shall be provided by individuals or agencies certified by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation. ODMHSAS certified community mental health centers, ODMHSAS certified alcohol and drug treatment programs, and probation offices shall be considered for such certification.

(b) Certified assessment agencies shall:

- (1) Recommend and monitor certified assessors for compliance to applicable rules within Title 450; and
- (2) Provide assessment services only at sites approved by ODMHSAS.

(c) Certified assessors are responsible for:

- (1) Timely reporting assessment data to ODMHSAS;
- (2) Make recommendations based upon ODMHSAS-required assessment instruments;
- (3) Ensure exception findings meet current American Society of Addiction Medicine's (ASAM) over-ride criteria; and
- (4) Providing liaison with ODMHSAS, the courts and other agencies.

(d) Each program certified to conduct assessments for the evaluation related to driver's license revocation shall be responsible for the conduct of assessors they employ, and shall have written policies outlining the program's oversight procedures.

**450:22-1-11. Standardized evaluation instruments**

(a) Standardized evaluation instruments shall be administered in the manner intended and be findings shall be a component of the overall assessment and recommendations.

(b) The standardized evaluation instruments shall include:

- (1) A completed and scored, computerized version Driver Risk Inventory-II (DRI-II) in a face to face structured interview. However, for an offender convicted of a felony or misdemeanor non-driving, alcohol or other drug offense(s), a completed and scored, computerized version Defendant Questionnaire (DQ) shall be used instead of the DRI-II and;

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- (2) A completed and scored Addiction Severity Index (ASI);
- (3) A completed and scored third clinical instrument to support initial findings, shall be chosen by the assessor from the menu of approved third instruments listed below;
  - ~~(A) Substance Abuse Subtle Screening Inventory (SASSI); or~~
  - ~~(B) Substance Abuse Life Circumstances Evaluation (SALCE); or~~
  - ~~(C) NEEDS; or~~
  - ~~(D) Mortimer Filkins; or~~
  - ~~(E) Triage Assessment for Addictive Disorders (TAAD); or~~
  - ~~(F) Substance Use Disorders Diagnostic Schedule (SUDDS); or~~
  - ~~(G) Michigan Alcoholism Screening Test (MAST); and~~
  - (A) Juvenile Automated Substance Abuse Evaluation (JASAE); or
  - (B) Multidimensional Addictions and Personality Profile (MAPP); or
  - (C) Needs Assessment (NEEDS); or
  - (D) Second Opinion; or
  - (E) Substance Abuse Subtle Screening Inventory (SASSI); or
  - (F) Substance Abuse Life Circumstances Evaluation (SALCE); or
  - (G) Substance Use Disorders Diagnostic Schedule (SUDDS); or
  - (H) Triage Assessment for Addictive Disorders (TAAD); and
- (4) A thorough face-to-face interview.
- (5) All third assessment instruments shall be used only in a manner consistent with the instrument design and intent and matching with the level of severity of the offender. An instrument designed for establishing the probability of substance dependence will only be utilized with consumers in which there is an indication of substance dependence.

### 450:22-1-12. Assessment personnel

- (a) An applicant for certification as an assessor shall:
  - (1) Possess a bachelor's degree or above in the behavioral or health sciences. Those certified prior to July 1, 2005 will be allowed to continue certification without a bachelor's degree. All applicants for initial certification after July 1, 2005 must possess a bachelor's degree or above in the behavioral or health sciences. This includes those attempting to renew lapsed certification; and
  - (2) Have at least two (2) years documented full-time experience in drug/alcohol treatment counseling; and
  - (3) Currently be licensed as an LADC or certified as an alcohol and other drug counselor and supervised by an LADC pursuant to Oklahoma state statutes.
  - (4) Be trained or have proven experience in the identification and management of alcohol and other drug abuse problems and clinical interviewing skills; and
  - (5) Complete the ODMHSAS Assessor Training; and

- (b) Applications for certification as an assessor shall be made in writing to the Department on a form in a manner prescribed by the Commissioner, ~~be accompanied by an official education transcript(s)~~ and include the following:

- (1) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and
  - (2) ~~A copy of any applicable diploma or certificate~~ Documentation of current licensure or certification as an alcohol and drug counselor; and
  - (3) Remission of the one hundred dollar (\$100) application fee for initial certification; and
  - (4) An official transcript; and
  - (5) ~~A current OSBI background check or a similar background check from other state(s) of residence for the past five (5) years.~~
  - (6) Faxes will not be accepted as part of a permanent file.
  - (7) Applications are good for one (1) year from acceptance. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.
  - (8) Completed applications must be received by ODMHSAS thirty (30) days prior to the publicly announced training event.
- (c) Before being certified, the applicant shall:
    - (1) Complete the ODMHSAS-approved assessor training;
    - (2) Complete and pass the ODMHSAS assessment skills competency examination;
      - (i) a minimal score to pass the exam shall be eighty (80) percent;
      - (ii) the exam shall require the applicant to correctly identify the major aspects of the Drivers Risk Inventory-revised (DRI-II), the Defendant Questionnaire (DQ) and the Addiction Severity Index (ASI);
      - (iii) the exam shall require the applicant to correctly identify the major components of motivational interviewing;
      - (iv) the exam shall require the applicant to correctly identify rules from this chapter; and
    - (3) Observe one (1) assessment with written permission of the consumer; and
    - (4) Conduct two (2) assessments under the supervision of a certified assessor, with written permission of consumer.
  - (d) Upon completion of the above requirements, the certified assessor providing the supervision shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the Commissioner of ODMHSAS and a copy of one (1) written court report done by the applicant.
  - (e) An assessor applying for renewal must:
    - (1) Complete ODMHSAS renewal application form;
    - (2) Submit documentation of receiving ten (10) continuing education hours in each twelve (12) month period

beginning with the date of original certification. Acceptable continuing education hours shall include subject areas in substance abuse, assessment instruments and interview techniques,; however, they shall not include DUI School Instruction; and

(3) Remit the \$25 application renewal recertification fee for certification.

(f) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification. ~~A person whose certification has expired must make application for an initial certification as set forth in 450:22-1-12.~~

(1) A person whose certification has been expired for less than twelve (12) months must make application for an initial certification as set forth in 450:22-1-12 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.

(2) A person whose certification has been expired for twelve (12) months or more must make application or an initial certification as set forth in 450:22-1-12.

**450:22-1-15. Assessor responsibilities**

Certified assessors shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of assessing an individual if the individual is referred by the court;

(3) Provide information in writing regarding state and local area education and treatment resources specific to each area in which the consumer resides, to each individual assessed appropriate to the referral recommendations in a format prescribed by the Commissioner of ODMHSAS;

(4) Manage and distribute all reports according to confidentiality laws under 42 CFR, Part 2, as well as all ~~and~~ 45 C.F.R. Parts 160 & 164 (HIPAA) regulations;

(5) Assure there is no conflict of interest by:

(A) referring individuals to those agencies in which the assessor has no vested interest; and

(B) providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) maintain written assessment documentation to be available for consumers for a minimum of three (3) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) clinical interview notes; and

(iii) referrals and recommendations made as a result of the assessment.

(6) Provide liaison with court officials and related other agencies; and

(7) Remit 10% of each fee collected for assessment and evaluation to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services

Revolving Fund within thirty (30) days. The fee for those undergoing an assessment and evaluation is one hundred seventy-five dollars (\$175.00). Any additional charges or fees attached to the assessment process will be set by the legislature.

(8) Explain possible liability and ability to pay for ODMHSAS-affiliated, private and other education and treatment facilities.

(9) Inform individuals receiving assessments that all contacts, evaluation results and reports are protected through federal regulations of confidentiality, 42 CFR Part 2.

(10) For those offenders receiving an alcohol and drug related license revocation on or before June 30, 2003 the assessor shall:

(A) provide the offender with a certificate of completion;

(B) affix the official assessor seal; and

(C) report completion to the Department of Public Safety.

(11) For those offenders receiving an alcohol and drug related license revocation on or after July 1, 2003, verify he or she has completed all tasks identified by the assessment and required for license reinstatement; and,

(A) provide the offender with a certificate of completion;

(B) affix the official assessor seal and stamp, with the stamp in red ink; and

(C) report completion to the Department of Public Safety.

(12) The fee for this verification of completion will be as set by the legislature.

(13) Provide ODMHSAS written notification of those offenders successfully completing required education and treatment, including the offender's name, address, date of birth and drivers license number.

(14) Each assessor and assessment agency shall annually submit to ODMHSAS a notarized affidavit documenting the number of assessments conducted, number of consumers assessed, and fees paid for assessments conducted for the previous twelve (12) months.

(15) Certified assessors and programs must provide, for each phone number published specific to assessment and evaluation, continuous availability, either in person, by phone, answering machine, electronic voice mail, or engage a professional answering service. Numbers published for the purpose of assessment and evaluation advertisement must not be answered by individuals other than those certified to provide assessment and evaluation services.

(16) All assessors will complete a minimum of six (6) ADSAC assessments during each twelve (12) month period.

(17) Each assessor and program shall have available an inventory of required and approved instruments sufficient to meet ODMHSAS requirements.

(4418) Provide each individual assessed with a form containing information regarding all assessor certifications and licensures to include; name, phone number and address of the certifying or licensing body. If certified rather than licensed, name of the licensed individual serving as supervisor with all licensures including; name, phone number and addresses of the licensing bodies pursuant to Oklahoma state statutes. Contact information for the DUI Programs personnel at ODMHSAS shall be included.

(19) Each certified assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least 15 days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to 30 days after a change has occurred.

## **450:22-1-15.1. Fitness of Applicants**

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as an assessor for evaluations related to driver's license revocation, and to set forth criteria by which the Commissioner or designee may determine the fitness of applicants.

(b) The substantiation of the items below related to the applicant may result in the initiation of suspension or revocation of certification, or denial of, or delay of certification of the applicant. These items include, but are not limited to:

- (1) Lack of necessary skill and abilities to provide adequate services;
- (2) Misrepresentation on the application or other materials submitted to the ODMHSAS;
- (3) A violation of the rules of professional conduct set forth in this Chapter.
- (4) Evaluations of supervisors or instructors;
- (5) Evaluation of competency-based project supervisor;
- (6) Allegations of consumers;
- (7) Transcripts or other findings from official court, hearing or investigative procedures;
- (8) Any unpardoned felony convictions within five (5) years;
- (9) Any felony conviction for a sexual offense;
- (10) Any felony conviction for moral turpitude; or
- (11) Any felony conviction for an offense of violence.

(c) ODMHSAS may require explanation of negative references prior to issuance of certification.

*[OAR Docket #06-880; filed 5-9-06]*

## **TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 30. STATE-OPERATED INPATIENT SERVICES**

*[OAR Docket #06-878]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

- Subchapter 15. Forensic Review Board
- 450:30-15-2. Definitions [AMENDED]
- 450:30-15-3. Composition, powers and duties [AMENDED]

### **AUTHORITY:**

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-202(17).

### **DATES:**

#### **Comment period:**

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#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2006.

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

N/A

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

N/A

#### **ANALYSIS:**

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 30 are part of the Department's review of Title 450. These proposed amendments implement changes in statutory mandates that were recently legislated.

#### **CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## **SUBCHAPTER 15. FORENSIC REVIEW BOARD**

### **450:30-15-2. Definitions**

The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"**Forensic Review Board**" or "**Review Board**" is the three-member board appointed by the ODMHSAS Commissioner to review the cases of persons ordered to the custody of the Department through a "not guilty by reason of insanity" verdict.

"**ODMHSAS**" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"**Therapeutic visits**" mean any ODMHSAS unsupervised time to be spent off the campus of the Oklahoma Forensic Center or any other ODMHSAS operated facility to which the individual may be committed and includes the following types of off-campus time:

- (A) ~~Partial-day Day passes or~~ mean off-grounds passes for a defined period of time not to exceed 12 hours between the hours of 8 am and 8 pm;
- (B) ~~Day Overnight passes mean~~ off-grounds visits to a specific location for a specific date(s) or occasion that may include an overnight stay not to exceed 24 hours, e.g. from 8:00 a.m. on December 24, 2005 until 5:00 p.m. on December 25, 2005 to visit mother for Christmas;
- (C) Routine therapeutic visits mean monthly off-grounds visits to a specific location for a designated period of time not to exceed two weeks, e.g. two weeks out of every month to be spent at Homeplace Residential Care Facility; and
- (D) Emergency therapeutic visits mean a situation that arises in the consumers family that may require them to leave the grounds of OFC upon recommendation by the Board and with court approval.

**450:30-15-3. Composition, powers and duties**

(a) **Board Membership.** The Forensic Review Board shall be composed of three (3) members selected by the ODMHSAS Commissioner.

- (1) Members shall be a licensed mental health professional whose training and experience enable ~~them~~ him or her to form expert opinions regarding mental illness and dangerousness.
- (2) ~~At least One~~ member shall be a licensed psychiatrist and one member shall be a licensed psychologist.
- (3) One member shall be a licensed psychologist.
- (24) Members shall be appointed to staggered terms not to exceed three (3) years. Members shall serve at the pleasure of the Commissioner.
- (35) The Review Board shall select a chair who shall:
  - (A) Preside over each meeting; and
  - (B) Keep the members apprised of relevant information.

(b) **Commissioner or designee.** The Commissioner or the Commissioner's designee shall review each matter that comes before the Forensic Review Board and shall either approve or disapprove any recommendation made by the Board.

(c) **Meetings.** The Review Board shall meet at the Oklahoma Forensic Center at least quarterly.

- (1) A quorum shall consist of two (2) members;

(2) In the event of a tie vote when only two members are conducting business, such results shall be forwarded to the Commissioner or designee for a determination;

(3) The agenda and materials for review shall be prepared and reviewed by the Board members in advance of the meeting. Review materials pertinent to each case may include, but are not limited to:

- (A) Risk assessment;
- (B) Recommendation and other relevant information from the consumer's treatment team;
- (C) Progress Notes for the previous three months relevant to any critical incident report or any inappropriate behavior;
- (D) Lab testing for medication compliance;
- (E) Lab results for drug/alcohol screens upon return from previous visits, if any;
- (F) Any critical incident forms involving the consumer during the previous twelve months;
- (G) Input from family members or others involved in the plans for the Therapeutic Visit; and
- (H) Other information the Review Board deems necessary.

(4) The person whose case is under review shall be given an opportunity to provide input via written documentation and in person. If the person chooses, he or she may have a representative accompany him or her to the Review Board meeting.

(5) These meetings shall not be considered opened to the public. Other than the Forensic Review Board members, the following individuals shall be permitted to attend the meetings and ask questions of the consumer whose case is being reviewed, the treatment team or any other person appearing before the Forensic Review Board:

- (A) DMHSAS Commissioner or designee;
- (B) DMHSAS Advocate General or designee;
- (C) Oklahoma Forensic Center's Executive Director or designee;
- (D) DMHSAS General Counsel or designee; and
- (E) DMHSAS Deputy Commissioner for Mental Health Services or designee.
- (F) Any other persons wishing to attend the meeting must first obtain approval by the Forensic Review Board's Chairperson or the DMHSAS Commissioner.

(ed) **Reviews.** Following the review of the information submitted, the Review Board shall render a determination at the conclusion of each meeting. The determination for each case is limited to the following:

- (1) Whether or not therapeutic visits will be recommended to the court by the Review Board;
- (2) If such visits are to be recommended, what level of supervision is to be required;
- (3) Therapeutic visits shall be recommended in a pattern designed to test and demonstrate progressive recovery of the consumer beginning with partial day passes, progressing to day passes, then for specified dates, followed by routine therapeutic visits. The location of the visit recommended and the individual responsible for supervision; and

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- (4) Any other parameters to be recommended to the court reviewing the Therapeutic Visit.
- ~~(d) All Therapeutic Visit recommendations must specify the location where the time is to be spent and the individual responsible for supervising the person during the time off campus.~~
- (e) Before being eligible for consideration for day pass therapeutic visits the individual must have been successful in managing unsupervised ground freedom on campus for at least five (5) months. Successful management of ground freedom is defined as being compliant with treatment, including being accountable for his or her whereabouts.
- (f) In order to be considered for therapeutic visits beyond the day pass level, consumers must have acceptable scores as noted on the following risk assessment instruments:
- (1) score 29 or less on the PCL-R; or
  - (2) score in categories 1 through 6 on the VRAG; ~~and~~ or
  - (3) score 25 or lower on the HCR20 for an outpatient setting.
- ~~(g) Before being considered for therapeutic overnight visits for specific dates the individual must have successfully completed at least nine (9) successful day passes spread over at least six (6) months.~~
- (h) Before being considered for routine therapeutic visits the individual must have successfully completed at least five (5) ~~time limited therapeutic overnight visits spread over at least a six (6) month period.~~
- (i) All individuals returning from any therapeutic visit may be subject to drug testing and searched for contraband.
- (j) Any individual who is noncompliant with the parameters or conditions placed on a recommendation for a specific level of therapeutic visit will automatically have his or her therapeutic visits suspended and his or her status will revert to on-campus level until the next scheduled Review Board meeting, at which time the Board will determine whether the individual should be allowed further therapeutic visits, and if so, what level of visits and will progress through the steps beginning with partial day pass therapeutic visits.
- (k) The Board shall develop a process for reviewing requests for therapeutic visits for unforeseen purposes such as death or serious illness of an immediate family member.
- (l) The Review Board shall apprise the individual whose case was reviewed, the Oklahoma Forensic Center Executive Director, the ODMHSAS General Counsel and the Consumer Advocate General of each determination made.
- (m) The ODMHSAS Office of Consumer Advocacy and the Director of Psychology of the Oklahoma Forensic Center shall provide support services to the Review Board and its Chair.

[OAR Docket #06-878; filed 5-9-06]

## TITLE 560. POLYGRAPH EXAMINERS BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-812]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

560:1-1-2. [AMENDED]

560:1-1-4. [AMENDED]

560:1-1-7. [AMENDED]

### AUTHORITY:

Polygraph Examiners Act; 59 O.S. Sections 1451 et seq., 70 O.S., Sections 3311 et seq.

### DATES:

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#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

Amended sections would add clarity to the definition of a polygraph examiner by inserting a statutory reference, update address information and correct a reference from a "competent" to "certified" court reporter.

#### CONTACT PERSON:

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

### 560:1-1-2. Definitions

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

"Board" means the Polygraph Examiners Board.

"Chairman" means that Board member elected as Chairman who presides over Board meetings, functions as coordinator between the Board and the Council (as hereinafter defined), and monitors correspondence received daily by the Board Executive Secretary.

"Council" means the Council on Law Enforcement Education and Training.

"Executive Secretary" means that individual appointed by the Council to act as Executive Secretary to the Board. He is responsible for the preparation of the meeting agendas and the daily administrative activities of the Board.

"He/His" as used herein, is representative of he/she or his/her.

"Internship" means the study of polygraph examination and the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the Board at the commencement of such internship.

"Person" means any natural person, firm, association, partnership, or corporation.

"Polygraph Examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical or electronic device as defined in 59 O.S., Section 1454.

"Secretary/Treasurer" means that Board member elected by the Board to handle all correspondence, as directed by the Chairman.

"Vice-Chairman" means that Board member elected as Vice-Chairman who presides over Board meetings and assumes the duties of the Chairman in the absence of such Chairman.

"Voluntary" as used herein, does not apply to public employees of units of government with existing policy and/or rules or regulations regarding mandatory polygraph utilization in internal investigations.

**560:1-1-4. Description of organization**

(a) The Board consists of five (5) members who shall be citizens of the United States and residents of the state for at least two (2) years prior to appointment, all of whom shall have been engaged for a period of two (2) consecutive years as polygraph examiners prior to appointment to the Board, and at the time of appointment active polygraph examiners. No two (2) Board members may be employed by the same person or agency. No more than two (2) members may be appointed from one (1) Congressional District. At least two members must be qualified examiners of a governmental law enforcement agency, and at least two (2) members must be qualified polygraph examiners in private practice. The members shall be appointed by the Governor of the State of Oklahoma, with the advice and consent of the Senate, for terms of six (6) years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate, for the unexpired term. Members of the Board are paid actual expense reimbursement only, but no wages or fees for their services.

(b) The Council on Law Enforcement Education and Training shall have the powers, duties and responsibilities as are specified by the Polygraph Examiners Act. In addition, the Council shall designate the representative of the Council to attend any meeting held by the Polygraph Examiners Board. It shall be the duty of the Council to provide telephone and mailing services and such secretarial duties and administrative functions as are designated by the Board.

(c) The Council is authorized to appoint and fix the duties and compensation pursuant to law of the employees necessary to carry out the duties imposed upon the Council by the Polygraph Examiners Act.

(d) The Board shall elect a Chairman, Vice Chairman, and Secretary every two years from among its members, and shall meet at specified dates spaced at three-month intervals.

(e) At all meetings of the Board, three members shall constitute a quorum. An affirmative vote by a simple majority of the members in attendance, shall be necessary to pass all motions presented before the Board.

(f) The Executive Secretary of the Board, at the direction of the Chairman, shall prepare the agenda for meetings of the Board. Any member may introduce items of business at any meeting of the Board.

(g) Meetings shall be conducted according to the latest edition of Roberts Rules of Order.

(h) Minutes of all meetings shall be kept in accordance with State law by the Council and shall be open for inspection to the public during regular business hours pursuant to the Oklahoma Open Records Act. codified 51 O.S., Supp. 1989 § 24a.1 et seq.

(i) The Board hereby adopts as a Rule all provisions of the Administrative Procedures Act. Title 75 O.S. 1981, and the Oklahoma Open Meeting Act. 25 O.S. 1981, as amended.

(j) The public may obtain information or make submissions or requests at the Board office.

(k) All Rules and Regulations, decisions, opinions, final orders and all other written statements of policy or interpretations formulated, adopted or used by the Board, are available for public inspection at the Board office. ~~The Board office is located at the Council on Law Enforcement Education and Training, 3530 North Martin Luther King Boulevard, Oklahoma City, Oklahoma. The Board mailing address is P.O. Box 11476, Oklahoma City, Oklahoma 73136-0476. The telephone number is (405) 425-2778.~~

(l) Nothing in these Rules and Regulations shall be interpreted or applied so as to affect the validity and enforceability of any additional requirements, rules or regulations of any other governmental entity, public agency or instrumentality which may otherwise be applicable. These Rules and Regulations shall be deemed cumulative and supplemental to all other applicable rules.

(m) These Rules and Regulations may be amended or repealed from time-to-time and new Rules and Regulations adopted by the Board pursuant to the Polygraph Examiners Act, and the Administrative Procedures Act.

(n) No Board member shall be individually or personally liable for any action of the Board.

**560:1-1-7. Hearings**

**(a) General.**

(1) In any case where the Board shall hold a hearing on any licensee or application therefore, the procedures for such hearing shall be governed generally by the Administrative Procedures Act (75 O.S. 1981, §§ 301 through 327).

(2) Any hearing under this subsection shall be independent of, and not in lieu of, criminal prosecutions or other

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proceedings under the Act or any other law of this State or the United States.

(b) **Notice of hearing.** Notices of all hearings shall be given by the Board not less than ten (10) days in advance thereof to all persons directly affected by such hearing. The notice of the hearing shall contain the following information:

- (1) The time and place of hearing;
- (2) A statement of the matters to be considered thereat;
- (3) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- (4) A short, plain statement of the matters to be asserted. If such statement of the issues is not sufficient, upon application, a more definite and detailed statement will be furnished.
- (5) A reference to the particular sections of the statutes and/or Rules or Regulations involved.

(c) **Open meetings.** All hearings shall be open to the public.

(d) **Right to counsel.** Any person affected by the hearing, shall have the right to appear in person, and be represented by counsel, provided that such counsel representing the party is duly licensed to practice law by the Supreme Court of Oklahoma, and may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses, and may present evidence in his own behalf.

(e) **Rules of evidence.** The formal rules of pleading and evidence need not be observed. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available, and, upon request, a party shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board. The Board's experience, technical competence, and specialized knowledge shall be utilized in the evaluation of evidence.

(f) **Transcript of hearing.** Upon written request reasonably made by any person affected by the hearing, and at such person's expense, a full stenographic record of the proceedings may be made by a ~~competent~~certified court reporter. When such transcription shall be made a part of the record of the Board, any other person having a direct interest therein, shall be furnished with a copy of such stenographic record at his expense.

(g) **Content of the record.** The record in any hearing, shall include the following information:

- (1) All pleadings, motions, and intermediate rulings;
- (2) All evidence received or considered, including a statement of matters officially noted;
- (3) Questions or offers of proof, objections and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) The decision, opinion, report, or order of the Board.

[OAR Docket #06-812; filed 5-4-06]

## TITLE 560. POLYGRAPH EXAMINERS BOARD CHAPTER 10. LICENSURE AND REGULATION OF POLYGRAPH EXAMINERS

[OAR Docket #06-813]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

560:10-1-13.1. [NEW]

**AUTHORITY:**

Polygraph Examiners Act; 59 O.S. Sections 1451 et seq., 70 O.S., Sections 3311 et seq.

**DATES:**

**Comment period:**

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

During a recent complaint investigation, the lack of a formal procedure caused confusion and misunderstanding on the part of the complainant and licensee. The proposed rules would establish a formal procedure to investigate complaints against a licensee to address concerns raised during the past year.

**CONTACT PERSON:**

Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**560:10-1-13.1. Complaint Procedure**

**(a) Purpose of order.** The purpose of this order is to establish Board procedures for initiation, receipt, and investigation of complaints related to matters under the authority of the Board of Polygraph Examiners.

**(b) Receipt of complaints.** It shall be the policy of the Board to investigate all complaints or allegations of misconduct committed by person(s) under the Board's authority whether initiated by the Board or complainants.

(c) **Requirement for complaint.** The investigation of a complaint concerning a licensed polygraph examiner, whether the complaint is made by the Board or by other complainants, may be initiated only when the complaint is in writing, signed, notarized, and filed with the Board.

(1) The notarized complaint form provided by the Board must contain a statement setting forth the allegations of fact and naming the licensee or licensees against whom the complaint is filed.

(2) The complaint provides the basis for the Chair of the Board to request an informal meeting with the licensee, whose participation is voluntary, and/or appointment of an investigator for the matter.

(3) The licensed polygraph examiner will be provided a copy of the complaint prior to any disciplinary action being taken.

(d) **Independently verified allegations - written complaint may not be required.** In all matters of complaints or inquiries, the Board shall require the complaint or inquiry to be in writing, signed, and notarized. However, alleged violations of the Polygraph Examiners Act which can be independently verified by the Board may not require a written complaint.

(e) **Selection of investigator.** The Board shall select a licensed polygraph examiner to investigate complaints against polygraph examiners.

(1) The selection may be by appointment by the Chair or Vice Chair.

(2) Complaints initiated will be assigned to an investigator who will cause a preliminary investigation to be initiated into the facts and circumstances surrounding such allegations.

(3) A preliminary or final investigative report is due to the complaint Review Panel within thirty (30) calendar days of receiving the complaint.

(f) **Investigator's gathering of information.** The licensed polygraph examiner authorized to receive and investigate complaints shall gather all information necessary to adequately apprise a Review Panel.

(1) The investigation may include interviews with the complainant, the licensee complained against, and others as appropriate.

(2) The licensee will have the opportunity during the investigator's interview to show compliance with all lawful requirements.

(3) Gathering information to assist the Board in its disposition of complaints is the only designated function of the investigator during the conduct of the investigation.

(4) The investigator shall not offer an opinion to the complainant and/or to the licensee about the merit of the complaint or any other matter.

(g) **Presentation of Review Panel's summary and recommendation.** The Review Panel, comprised of the investigator, the Assistant Attorney General representing the Board, and the Board member appointed by the Chair or Vice Chair, is an advisory body whose function is to summarize the complaint and to make an informed recommendation regarding disposition of the complaint to the Board.

(1) The Review Panel's summary, consisting of the alleged violation(s), and applicable laws, rules and/or ethical principles(s) and code(s) of conduct, and the recommendation will be presented at an open meeting of the Board.

(2) The complainant and licensee complained against will be given prior notification by mail of the date, time, and place of such meeting.

(3) During the Review Panel's presentation, no questions will be posed by or to the licensee or the complaining witness pertaining to the substance of the case.

(4) Such questions may be submitted in writing to the Assistant Attorney General representing the Board following the Board meeting.

(h) **Dismissal of complaint by majority vote.** Upon considering the basis of the complaint, the circumstances of the alleged violation, the summary and recommendation of the Review Panel, or a combination of these, the Board may decide not to pursue further the allegations, and may dismiss the complaint by any approving vote of a majority of the members present in open meeting. Upon dismissal, all related documents shall be filed and maintained in an unfounded complaint file.

(i) **Informal disposition of certain complaints.** In some situations including, but not limited to, cases where the inquiry or complaint does not allege conduct punishable by suspension or revocation of a license, the matter may be handled informally. However, no matter can be considered closed until so voted by a majority of the Board in open meeting.

(j) **Recusal of board member.** A Board member, who acts as a Review Panel member, shall be recused from all Board decisions relating to the complaint.

(k) **Investigator's expenses.** At the conclusion of the inquiry, the investigator may complete a Council expense reimbursement form for payment of investigative expenses.

(l) **Complaints received at the Board.** Complaints received in person should be completed on the complaint form.

(m) **Complaints received by mail or telephone.** Complaints received by mail or telephone shall be completed on the complaint form by the Board secretary.

(n) **Complaints received in the field.** If the complaint is received by a Board representative, the representative will complete the complaint form.

(o) **Assignment of complaints.** A copy of all complaints received shall be forwarded to the Chair or Vice Chair after being recorded on a complaint log, establishing a file and number. Recorded information shall include:

- (1) Name of the licensed polygraph examiner.
- (2) Name of the complainant.
- (3) Nature of the complaint.
- (4) Date complaint was received.
- (5) Name of the investigator and date assigned.
- (6) Case number.

(p) **Investigative reporting procedures.**

(1) The investigator will receive a copy of all available information concerning the incident. The investigator will maintain all materials of the investigation until submitted to the Review Panel.

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(2) Each investigation shall be conducted in accordance with professionally recognized standards, and in accordance with the laws of the State of Oklahoma and the Constitution of the United States.

(3) Each investigation should include:

- (A) Interview with complainant.
- (B) Interview with witnesses (if applicable).
- (C) Interview with licensed examiner.
- (D) Investigative findings.
- (E) Judgment and sentence documents or other documents, photographs, and other evidence if needed to prove the case in a hearing.
- (F) A report submitted to the Review Panel.
- (G) Review and copy of the licensed polygraph examiner's examinee polygraph file.
- (H) Review audio and visual recordings of examinee's polygraph examination.
- (I) All information may be forwarded to the District Attorney's office for the consideration of the filing of criminal charges.

(q) Completed Investigations. The investigator shall include the case number on all materials related to the investigation, and upon completion, submit all materials to the Review Panel. No reference to the complaint or any copies will be maintained by the investigator.

[OAR Docket #06-813; filed 5-4-06]

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

[OAR Docket #06-884]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Academic Scholars Program  
610:25-1-4. Eligibility Requirements and Term of Scholarship Award  
[AMENDED]

### AUTHORITY:

70 O.S. §2401 et seq.; 70 O.S. §3206(i); Oklahoma State Regents for Higher Education

### DATES:

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N/A

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#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

The rule amendments slightly expand the pool of eligible students for the Institutional Nominee category by adding students who are ranked #2 in their graduating class, regardless of their percentage ranking. In addition, they clarify that students graduating from high schools that do not calculate class rank and home-educated students will be considered for eligibility as an Institutional Nominee only on the basis of their ACT or SAT test scores. The amendments also delete obsolete language related to students being nominated as an Institutional Nominee a second time. Rule changes since 1999 require all Academic Scholars to accept the scholarship for the fall semester immediately following high school graduation.

#### CONTACT PERSON:

Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9335, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 1. ACADEMIC SCHOLARS PROGRAM

### 610:25-1-4. Eligibility Requirements and Term of Scholarship Award.

(a) There are five avenues by which to qualify for the Academic Scholars Program. Each is defined below:

(1) An Individual Applicant Qualified Student, which shall mean a student who is a resident of the State of Oklahoma whose ACT test score or whose Scholastic Aptitude Test score falls within the 99.5 to 100.0 percentile levels as administered in the State of Oklahoma and whose grade-point average and/or class rank is exceptional, as determined by the State Regents,

(2) A Presidential Scholar, which shall mean a student selected by the Commission on Presidential Scholars pursuant to the Presidential Scholars Program administered by the United States Department of Education,

(3) A National Merit Scholar, which shall mean a student designated as a National Merit Scholar by the National Merit Scholarship Corporation,

(4) A National Merit Finalist, which shall mean a student designated as a National Merit Finalist by the National Merit Scholarship Corporation.

(5) An Institutional Nominee, which shall mean a student nominated by an institution in The Oklahoma State System of Higher Education whose ACT test score or whose Scholastic Aptitude Test score falls within the 95.0 to 99.49 percentile levels, or who shows exceptional academic achievement as evidenced by factors including but not limited to grade point average, class rank, national awards, scholastic achievements, honors, and who shows exceptional promise based on documentation that may

include but not be limited to teacher recommendations, extracurricular activities, and evidence of overcoming economic and social obstacles as determined by the State Regents. The State Regents shall ensure that standards of high academic ability are documented. Scholarship awards to institutional nominees become effective when appropriate documentation is verified by the State Regents.

~~(A) Effective with the fall 2002 semester, Institutional Nominees are required to meet at least two of the three minimum criteria outlined below to be considered eligible for application as an Institutional Nominee. The Chancellor may approve exceptions to the minimum criteria for applicants who lack class ranking and/or GPA criteria:~~

- ~~(i) Comprehensive universities:
 
  - ~~(I) ACT: 30 or SAT equivalent~~
  - ~~(II) GPA: 3.9~~
  - ~~(III) Class rank: Top 5%~~~~
- ~~(ii) Regional universities:
 
  - ~~(I) ACT: 28 or SAT equivalent~~
  - ~~(II) GPA: 3.8~~
  - ~~(III) Class rank: Top 10%~~~~
- ~~(iii) Two-year colleges:
 
  - ~~(I) ACT: 27 or SAT equivalent~~
  - ~~(II) GPA: 3.7~~
  - ~~(III) Class Rank: Top 10%~~~~

~~(B) Effective with the Fall 2003 2006 semester, Institutional Nominees are required to meet at least one of the two minimum criteria outlined below to be considered eligible for application as an Institutional Nominee:~~

- ~~(i) Research ~~Comprehensive~~ universities:
 
  - ~~(I) ACT: 32 or SAT equivalent~~
  - ~~(II) GPA 3.9 and either Top 2% Class Rank or rank of first or second in their graduating class~~~~
- ~~(ii) Regional universities:
 
  - ~~(I) ACT: 30 or SAT equivalent~~
  - ~~(II) GPA 3.8 and either Top 4% Class Rank or rank of first or second in their graduating class~~~~
- ~~(iii) Two-year colleges:
 
  - ~~(I) ACT: 29 or SAT equivalent~~
  - ~~(II) GPA 3.7 and either Top 5% Class Rank or rank of first or second in their graduating class~~~~

~~(B) Students graduating from high schools that do not provide class rank and home-educated students shall be considered for eligibility as an Institutional nominee based on their ACT or SAT test scores.~~

(C) Students are eligible for consideration as an Institutional Nominee no later than the fall semester immediately following the graduation of their high school class. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.

(D) Institutional Nominees may be Oklahoma residents or nonresidents.

(E) Students receiving the scholarship as an Institutional Nominee of a two-year college are eligible for transfer to a four-year public or private Oklahoma institution after completion of an associate's degree or at least 48 credit hours within their first two academic years at any combination of two-year colleges in the State System. In addition, the Institutional Nominee of a two-year college must attend the nominating institution for the first year.

(F) Students receiving the scholarship as an Institutional Nominee of a four-year university are eligible for transfer to another Oklahoma institution after one year of attendance at the nominating institution.

~~(G) Students who fail to enroll the first semester upon nomination forfeit their scholarship eligibility unless they are nominated subsequently a second time.~~

(H) Institutions may not replace students who forfeit their scholarship or are removed from the program due to failure to meet continuing eligibility requirements with another nominee.

(b) Students receiving the scholarship are eligible for eight semesters of scholarship at Oklahoma colleges and universities. Additional semesters of award, up to ten semesters, are available upon approval by the President or appropriate academic officer of the institution and the Chancellor. Additional semesters are intended only for extraordinary circumstances or for undergraduate academic programs that cannot be completed within eight semesters.

*[OAR Docket #06-884; filed 5-9-06]*

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

*[OAR Docket #06-885]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 7. Oklahoma Tuition Aid Grant Program  
610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]

**AUTHORITY:**

70 O.S. §626.1; 70 O.S. §3206(i); State Regents for Higher Education

**DATES:**

**Comment period:**

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**Public hearing:**

N/A

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# Permanent Final Adoptions

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## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

The amendments to the rules include: (1) Limiting undergraduate student eligibility to be consistent with federal Pell grant eligibility, which generally ends when the student has earned their first bachelor's degree; (2) aligning the satisfactory academic progress requirements for Oklahoma Tuition Aid Grant (OTAG) recipients with federal Title IV student financial aid requirements; (3) eliminating pro-rated awards for students who are enrolled in career technology programs that are less than nine months or 900 clock hours in duration; and (4) providing a separate application form for undocumented immigrant students who are not eligible for Title IV federal student aid and are therefore unable to complete the Free Application for Federal Student Aid (FAFSA) application process.

The amendments simplify public understanding of OTAG eligibility requirements and provide administrative relief to campus financial aid administrators by aligning OTAG requirements with the federal Title IV requirements the institutions follow in packaging other student aid.

It is necessary to provide a separate application form for undocumented students since they are unable to successfully complete the FAFSA process used by other students to apply for OTAG.

## CONTACT PERSON:

Regina Switzer, Associate General Counsel, State Regents for Higher Education, (405) 225-9335, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 7. OKLAHOMA TUITION AID GRANT PROGRAM

### **610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds**

(a) *A college tuition aid grant shall be awarded annually to each eligible, qualified full-time or part-time undergraduate or graduate student enrolled in a curriculum leading to a degree or certificate in an institution of collegiate grade or postsecondary institution providing a program of training to prepare students for employment in a recognized occupation in Oklahoma approved or accredited by the Oklahoma State Regents for Higher Education or appropriate postsecondary agency in accordance with the following [70 O.S., § 626.7]:*

#### (1) **Eligibility.**

(A) Each full-time or part-time resident student's financial eligibility will be based on their Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. A resident student is one who meets the current Policy on Residence Status of Enrolled Students in the Oklahoma State System of Higher Education. Full-time and

part-time status will be defined in accordance with the current definition for full-time or half-time enrollment status for federal Title IV student financial aid eligibility.

(B) *The Oklahoma State Regents for Higher Education shall determine by rules and regulations the maximum number of semesters a student may be eligible for grants. [70 O.S., § 626.7] An otherwise eligible undergraduate student can receive a maximum of ten full-time undergraduate disbursements and a maximum of eight full-time graduate disbursements. Two part-time disbursements is equivalent to one full-time disbursement can continue to receive awards as long as they are eligible for funding from the federal Pell grant program. Graduate students can receive a maximum of eight full-time disbursements.*

(C) Tuition aid grants are not approved for summer enrollments.

(D) *No student shall be eligible for grants unless he maintains such minimum standards of academic performance as are required by the institution in which the student is enrolled. [70 O.S., § 626.7] The minimum standards of academic performance shall be those required by the institution for federal Title IV financial aid recipients.*

(E) Students who are incarcerated are not eligible to receive tuition aid grants. Incarceration will be defined in accordance with the current definition for federal Pell grant eligibility.

(F) Students must be enrolled in a postsecondary institution eligible to participate in the federal Title IV student financial aid programs.

(G) Students must meet all general eligibility requirements for recipients of federal Title IV student financial aid. The school of attendance will report each student's completed application status through a reporting system provided by the Oklahoma State Regents for Higher Education.

(H) *In the event a student for any reason ceases to continue to be enrolled during the course of an academic year, the student shall cease to be eligible for tuition aid. [70 O.S., § 626.7]*

#### (2) **Amount of grant.**

(A) *The amount of tuition aid grant to any student under this act [70 O.S., § 626.1 et seq.] for any semester shall represent a percentage not greater than seventy-five percent (75%) of the previous year's tuition and enrollment fees normally charged to residents of the State of Oklahoma by the institution of attendance. [70 O.S., § 626.7] The tuition and enrollment fees used in calculating the award will be based on standards as follows: full-time undergraduate - 30 credit hours per academic year; part-time undergraduate and graduate - 12 credit hours per academic year; full-time graduate - 18 credit hours per academic year; full-time career technology - at least 900 clock hours; and part-time career technology - at least 450 clock hours. ~~With regard to eligible educational programs~~*

that are less than nine months or 900 clock hours, the award can be pro-rated based on the student's attendance below nine months or 900 clock hours.

(B) *The percentage of aid awarded shall be based on a need analysis system that is consistent with federal student financial aid regulations. [70 O.S., § 626.7]* The percentage of aid awarded shall be based on the student's Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. The Oklahoma State Regents for Higher Education will issue an annual award payment schedule identifying the maximum eligible EFC and identifying the percentage of aid to be awarded according to EFC ranges. The maximum EFC will be based on a calculation using the Oklahoma low median family income and median household size published annually by the U. S. Department of Housing and Urban Development.

(C) *The Oklahoma State Regents for Higher Education shall determine by rules the annual maximum award based on an annual assessment of funds availability. The State Regents shall not increase the annual maximum award amount unless funding is sufficient to serve at least the same number of students as the previous academic year. [70 O.S., § 626.7]*

(D) The minimum amount of grant to be awarded is \$200 per academic year or \$100 per semester.

(E) The award must be included in the student's financial aid package managed by the institution. If the inclusion of the tuition aid grant award results in the student receiving more financial assistance than is needed to meet their cost of education as determined by the institution, the institution will resolve the overaward in accordance with federal Title IV student financial aid regulations. The institution may reduce or revoke the award if necessary to resolve the overaward.

(3) **Application procedures and deadlines.** *The Oklahoma State Regents for Higher Education may adopt rules and regulations, prescribe and provide appropriate forms for application and employ such persons, contract for such services and make such additional expenditures as may be necessary or appropriate for effectuating the provisions of this act. [70 O.S., § 626.7]*

(A) Students will apply for tuition aid grant award consideration by completing the federal student financial aid application. A separate application may be provided for students eligible for state financial aid under 70 O.S., § 2630 et seq. The Oklahoma State Regents for Higher Education will receive application data from the federal Title IV student financial aid application system for those students who indicate their legal state of residence is Oklahoma. Applications with at least one eligible Oklahoma institution selected by the student will be processed for tuition aid grant award consideration.

(B) The application receipt deadline will be reflected in the application document provided annually

by the federal Title IV student financial aid application system.

(4) **Disbursement of funds.**

(A) Funds will be disbursed to students after the institution confirms enrollment status and eligibility in each the fall and spring semesters. One half of the award will be disbursed in the fall semester, and one half of the award will be disbursed in the spring semester.

(B) Funds for eligible students will be delivered to the institution for disbursement to students in accordance with the institution's student financial aid disbursement policies.

(b) *The Oklahoma State Regents for Higher Education are hereby authorized to determine priorities for participation in this tuition aid program by full-time, part-time, undergraduate and graduate students based on available state funding. [70 O.S., § 626.8]*

[OAR Docket #06-885; filed 5-9-06]

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

[OAR Docket #06-883]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 23. Oklahoma Higher Learning Access Program (OHLAP) 610:25-23-4. Program requirements [AMENDED]  
610:25-23-7. Payment of awards; policies and limitations [AMENDED]

**AUTHORITY:**

70 O.S. §2601 et seq.; 70 O.S. §3206(i); Oklahoma State Regents for Higher Education

**DATES:**

**Comment period:**

January 3, 2006 through February 2, 2006

**Public hearing:**

N/A

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**Submitted to Senate:**

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**Gubernatorial approval:**

April 4, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2006

**Final adoption:**

April 21, 2006

**Effective:**

June 11, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The adopted rule makes the OHLAP core curriculum consistent with the statutory language related to high school graduation requirements that was

# Permanent Final Adoptions

approved in SB 982 of the 2005 legislative session. The rules also provide greater clarification for students participating in OHLAP as well as the student's parents.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM (OHLAP)

### 610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions:

- (1) *Attend school regularly and to do homework regularly;*
- (2) *Refrain from substance abuse;*
- (3) *Refrain from commission of crimes or delinquent acts;*
- (4) *Have school work and school records reviewed by mentors designated pursuant to the program;*
- (5) *Provide information requested by the Oklahoma State Regents for Higher Education [OSRHE] or the State Board of Education; and*
- (6) *Participate in program activities. [70 O.S. § 2605]*

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

- (1) *Assist the student in achieving compliance with the agreements;*
- (2) *Confer, when requested to do so, with the school contact person, other school personnel, and program mentors;*
- (3) *Provide information requested by the Oklahoma State Regents for Higher Education or the State Board of Education; and*
- (4) *Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships. [70 O.S. § 2605]*

(c) OHLAP students graduating high school prior to 2010 must complete the following 17-unit core curriculum with a minimum 2.5 GPA on a 4.0 grading scale, by the time they graduate from high school:

- (1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);
- (2) Two units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture);

(5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(6) Two additional units, or years, of subjects listed above, or any Advanced Placement (AP) course(s) except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);

(7) One unit, or year, of fine arts (music, art, or drama) or speech.

(d) OHLAP students graduating high school in 2010 and thereafter must complete the following 17-unit core curriculum with a minimum 2.5 GPA on a 4.0 grading scale, by the time they graduate from high school:

(1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);

(2) Three units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture);

(5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(6) One additional unit, or year, of subjects listed above, or any Advanced Placement course except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);

(7) One unit, or year, of fine arts (music, art, or drama) or speech.

(e) The OHLAP curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular requirements for college admission shall also apply to the OHLAP curricular requirements.

(ef) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.

(fg) Strict parameters regulate the substitution of applied courses (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System).

(gh) Exceptions to the required OHLAP core curriculum will be considered according to the following:

(1) Students attending schools which do not offer all the OHLAP core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:

(A) OHLAP core curriculum requirements which are also required for regular college admission (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies.

(B) Any other OHLAP core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

(2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.

(3) Any other requests for exceptions to the OHLAP core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for OHLAP benefits; provided, such approval may require the satisfaction of any OHLAP core curriculum requirements omitted in high school.

(hi) Students must attain a minimum 2.5 cumulative GPA on a 4.0 grading scale for all work attempted in grades nine through twelve.

(hj) Students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test or the equivalent SAT test score. Only ACT and SAT test scores from tests administered on national test dates prior to the student's high school graduation will be considered.

**610:25-23-7. Payment of awards; policies and limitations**

(a) OHLAP students enrolled at an institution in The Oklahoma State System of Higher Education shall have an award equivalent to their undergraduate resident tuition paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Trust Fund [70 O.S. § 3953.1];

(b) OHLAP students enrolled in a duly accredited private Oklahoma institution of higher education [70 O.S. § 4103] shall have awards paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access

Trust Fund in an amount equivalent to the undergraduate resident tuition if the student were enrolled in a comparable institution of The Oklahoma State System of Higher Education. Comparability of institutions shall be determined by the OSRHE;

(c) OHLAP students enrolled in a postsecondary program offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education shall have an award equivalent to tuition paid, not exceeding the amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education, to the school or institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund;

(d) Funds shall be transferred by the OSRHE from the Oklahoma Higher Learning Access Trust Fund to the institution in which the student is enrolled. No funds shall be paid directly to the student;

(e) Payment will not be allowed for courses taken in excess of those required for a baccalaureate degree;

(f) OHLAP students will be eligible for the benefits outlined in this policy for five (5) years from the first date of postsecondary enrollment. The Oklahoma State Regents for Higher Education may award the Oklahoma Higher Learning Access Program benefits for courses of postsecondary units taken more than five (5) years after the student's first semester of postsecondary enrollment only in hardship circumstances; provided, however, no Oklahoma Higher Learning Access Program participant may receive benefits beyond a cumulative time period of five (5) years [70 O.S. § 2604]. Hardship circumstances may include, but are not limited to, sickness, injury, required military service, or service required by the student's religious or cultural traditions;

(g) There will be no limit to the number of awards other than the amount of funds available or the number of eligible students. If sufficient funds are not available to provide awards for all eligible applicants, the OSRHE shall make awards on the basis of need;

(h) Students who have previously received awards shall have priority over students applying for initial awards;

(i) OHLAP award recipients shall apply for financial aid at the institution in which they enroll;

(j) *The Oklahoma State Regents for Higher Education shall take into consideration other grants and scholarships received by an eligible applicant when making awards [70 O.S. § 2604].* OHLAP award recipients may not receive financial aid in excess of his/her cost of attendance as determined by the institution in which the student is enrolled. The cost of attendance determined by the institution shall be consistent with regulations for federal Title IV student financial aid programs. If necessary, an OHLAP award shall be reduced by an amount which makes the student's total financial aid equivalent to the student's identified cost of attendance.

[OAR Docket #06-883; filed 5-9-06]

# Permanent Final Adoptions

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

[OAR Docket #06-832]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Relationships with Department Established by Law  
612:1-7-2. Relationships with appointed state officials [AMENDED]

### AUTHORITY:

The Oklahoma Commission for Rehabilitation Services; Oklahoma Statute Title 74, Section 166.1 et seq.

### DATES:

#### Comment period:

November 21, 2005 through February 8, 2006

#### Public Hearing:

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Failure of the Legislature to disapprove the rules resulted in approval on May 3, 2006

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May 3, 2006

#### Effective:

July 1, 2006

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

The proposed changes to Chapter 1 correct the name of the Department of Central Services.

#### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

### SUBCHAPTER 7. RELATIONSHIPS WITH DEPARTMENT ESTABLISHED BY LAW

#### 612:1-7-2. Relationships with appointed state officials

(a) ~~Office of Central Purchasing~~Department of Central Services. The Director of the ~~Office of Public Affairs~~Department of Central Services is responsible for the award of State contracts for supplies, materials, and equipment. The ~~Office of Public Affairs~~Department of Central

Services is also the contracting body for leases covering State real property and is responsible for disposing of any real or personal property of the State which an agency determines is surplus to its needs.

(b) **Oklahoma Employment Security Commission.** The Oklahoma Employment Security Commission is charged with the responsibility of promoting employment security by increasing opportunities for job placement, through its operation of public employment offices and by paying compensation to eligible workers who become unemployed. In addition, the Employment Security Commission assists the Department in the verification of employment for applicants and recipients of Department services.

(c) **Merit System of Personnel Administration.** The Merit Act of 1959 established the Merit System of Personnel Administration and created and defined the structure and duties of the first administrative body of that system. Later, the Oklahoma Personnel Act abolished the State Personnel Board and created and transferred the powers, duties, and responsibilities to the Office of Personnel Management and the Ethics Commission and Merit Protection Commission.

(1) **Office of Personnel Management.** The Office of Personnel Management is responsible for: the development of an efficient and effective system of personnel administration that meets the management needs of the various state agencies; maintaining and revising a classified system of employment which protects state employees from arbitrary dismissal or unfair treatment; maintaining an equitable system for the classified service; helping recruit and select qualified people; conducting a management training program; and assuring equal employment opportunity.

(2) **Ethics Commission and Merit Protection Commission.** The Ethics Commission and Merit Protection Commission is responsible for assuring that the rights of employees and agencies under the Merit System of Personnel Administration are not abridged.

(d) **The Director of State Finance.** The Director of State Finance maintains in his office records showing the debits and credits of each separate fund or appropriation for each State agency. He or she also pre-audits the claims of the Department's general administrative funds and any special construction funds. An annual budget estimate is prepared by the Department and filed with the Director of State Finance, who serves as the senior budget officer of the State.

(e) **State Fire Marshal.** The State Fire Marshal is involved in reviewing fire protection and safety features of facilities operated and funded by the Department.

(f) **Secretary of the State Election Board.** Among other duties, the Secretary of the State Election Board is to promote and encourage voter registration and voter participation in elections. The State Department of Rehabilitation Services will cooperate with the Secretary of the State Election Board in compliance with the National Voter Registration Act of 1993.

[OAR Docket #06-832; filed 5-4-06]

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

[OAR Docket #06-833]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Policy Development and Program Standards Part 3. Policy Development 612:3-5-12. Policy Development [AMENDED]

AUTHORITY:

The Oklahoma Commission for Rehabilitation Services; Oklahoma Statute Title 74, Section 166.1 et seq.

DATES:

Comment period:

November 21, 2005 through February 8, 2006

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July 1, 2006

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The memoranda review process has been removed from the Policy Development staff.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 5. POLICY DEVELOPMENT AND PROGRAM STANDARDS

PART 3. POLICY DEVELOPMENT

612:3-5-12. Policy Development

(a) Policy Development is charged with assuring that the Department complies with the Administrative Procedures Act. This responsibility includes:

(1) Ensuring that all Department statements of general applicability and future effect that implement, interpret, or prescribe law or policy, or describe the procedures or practice requirements of the Department are promulgated in accordance with the APA.

(2) That the public receives proper notice of the Department's intent to adopt, amend, or revoke rules so that opportunity is provided for public and consumer input during the rulemaking process.

(3) Management of the promulgation process for the Department in an efficient and effective manner that complies with the APA.

(b) The Administrator of the Policy Development and Program Standards Unit serves as the Department's liaison to the Office of Administrative Rules in the Office of the Secretary of State. This administrator also serves as the attestation officer, as delegated by the Oklahoma Commission for Rehabilitation Services, for purposes of 75 O.S., Section 254. An Administrative Officer within Policy Development will be designated as the back-up attestation officer for the Department.

(c) Once a Division or the Executive Office has developed proposed policy and supporting documentation, Policy Development staff will format and prepare the resulting documents for submission to the Commission for action. From that point, Policy Development staff will be responsible for the promulgation process from initial notices through distribution of the adopted policy.

(d) Policy Development staff is responsible for review of Departmental memoranda and publications to assure consistency with existing policy, and conformance with the APA.

(e) Policy Development staff will manage and maintain Departmental and Rehabilitation Services Administration memoranda and regulations. Copies of State statutes and relevant Federal statutes will also be managed and maintained as directed.

[OAR Docket #06-833; filed 5-4-06]

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

[OAR Docket #06-834]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions 612:10-1-2. Definitions [AMENDED] 612:10-1-5. Confidentiality [AMENDED] Subchapter 3. Client Participation in Cost of Services 612:10-3-4. Services exempt from client participation in service costs [AMENDED] 612:10-3-5. Basic living requirements [AMENDED] Subchapter 7. Vocational Rehabilitation and Visual Services Part 1. Scope of Vocational Rehabilitation and Visual Services 612:10-7-1. Overview of Vocational Rehabilitation and Visual Services [AMENDED] 612:10-7-4. Basic eligibility requirements for vocational rehabilitation services [AMENDED]

# Permanent Final Adoptions

612:10-7-5. Factors affecting eligibility [AMENDED]  
612:10-7-8. Order of selection [AMENDED]  
Part 9. Actions Requiring Review and Approval  
612:10-7-87. Actions requiring supervisor's approval [AMENDED]  
612:10-7-88. Actions requiring field coordinator's approval [AMENDED]  
Part 11. Physical and Mental Restoration Services  
612:10-7-104. Drugs and supplies [AMENDED]  
612:10-7-117. Psychiatric and psychological treatment [AMENDED]  
Part 13. Supportive Services  
612:10-7-131. Transportation [AMENDED]  
Part 15. Training  
612:10-7-157. Out-of-state training [AMENDED]  
612:10-7-162. Supplies and training tools for business, vocational and trade schools [AMENDED]  
Part 17. Supported Employment Services  
612:10-7-179. Overview of Supported Employment Services [AMENDED]  
612:10-7-180. Eligibility for the Supported Employment Program [AMENDED]  
612:10-7-185. Provision of supported employment services [AMENDED]  
Part 19. Special Services for Individuals Who Are Blind, Deaf, or Have Other Severe Disabilities  
612:10-7-199. Reader/recording services [AMENDED]  
Part 21. Purchase of Equipment, Occupational Licenses and Certificates  
612:10-7-216. Tools, occupational equipment, initial stocks and supplies [AMENDED]  
612:10-7-221. Housing modification [NEW]  
Subchapter 11. Independent Living—~~Rehabilitation~~ Services for Older Individuals who are Blind  
Part 1. Scope of Services  
612:10-11-4. Residency [AMENDED]

## AUTHORITY:

The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, sections 701 through 791; Oklahoma Statute Title 74, Section 166.1 et seq.

## DATES:

### Comment period:

November 21, 2005 through February 8, 2006

### Public Hearing:

February 6, 7 and 8, 2006

### Adoption:

March 6, 2006

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Failure of the Legislature to disapprove the rules resulted in approval on May 3, 2006

### Final adoption:

May 3, 2006

### Effective:

July 1, 2006

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### ANALYSIS:

The proposed changes to Chapter 10 changed nomenclature from Priority Groups 1, 2 and 3 to Most Severe, Severe and Non-Severe respectively. It clarifies: 1) a subpoena does not automatically result in the disclosure of client information; 2) mileage reimbursement is to pay for all costs associated with driving a vehicle; 3) DRS will not buy operable firearms for clients, and 4) reflects that there are no residency requirements. The proposed changes also added into policy that recipients of Dependent Child Survivor Benefits are exempt from client participation in costs of services and re-inserted policy regarding housing modifications.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities,

and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

**"Comparable benefits"** means services and/or funding available through any other programs and/or resources which will meet in whole or in part the cost of rehabilitation services provided to an eligible individual. For the purposes of this definition, the term "resources" does not include client assets as determined under 612:10-3-1 through 612:10-3-7.

**"Compensatory training"** means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

**"Competitive employment"** means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

**"Consumer Independence Support Services" (CISS)** are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

**"Continuity of Services"** means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

**"Core Independent Living Rehabilitation (IL) services"** is defined as information and referral services; independent living skills training; peer counseling; and individual and systems advocacy.

**"Core Vocational Rehabilitation (VR) services"** means services which substantially reduce the impact of functional limitations on employment outcomes. Physical and mental restoration services are examples of core VR services. Supportive services such as maintenance and transportation do not fall within the definition of core Vocational Rehabilitation services.

**"Counselor"** means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/VS Specialist, VR/VS Coordinator, and Rehabilitation Teacher who manage Visual Services cases with Homemaker goals.

**"Department"** unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

**"DRS"** means the Department of Rehabilitation Services.

**"Durable Training Supplies"** means general training supplies which are not consumable, and are required for any student taking a particular course of study at an institution of

learning, or required by a client as a reasonable accommodation for training. In general, any training supply which a client could not continue to use past successful rehabilitation, or which could not be used by other clients in future terms of training, would not meet the definition of "durable training supply".

**"DVR"** means the Division of Vocational Rehabilitation.

**"DVS"** means the Division of Visual Services.

**"Eligibility" or "Eligible"** means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most severe disabilities (~~priority group one~~); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, certification that the individual is legally and/or functionally blind or has a rapidly progressive condition and may have secondary disabilities; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community;

(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.

**"Employment and Retention" (E&R)** means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

**"Employment outcome"** means, with respect to an eligible individual, entering or retaining full-time or, if appropriate,

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part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**"Extended employment"** means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

**"Extended period of time"** means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

**"Extended services"** means ongoing support services provided to individuals with the most severe disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE.

**"Extreme medical risk"** means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

**"Functional capacities"** means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

**"Functional limitations"** means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

**"Higher education"** means universities, colleges, community/ junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

**"Highly challenged"** describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

**"Homemaker"** means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

**"IEP"** means Individualized Education Program as required by the Individuals with Disabilities Education Act.

**"Individual with a disability"** means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

**"Individual with severe disability"** means an individual with a significant disability, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

**"Individual with the most severe disability"** means an individual with the most significant disability as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

**"Integrated setting"** means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with

non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(C) A job site where the individual with severe disability works in a group of not more than eight workers with disability and interacts regularly in performance of job duties with non-disabled co-workers and/or members of the general public.

(D) Interaction with individuals who provide ongoing supported employment services at the job site does not satisfy the integration requirement.

**"Intercurrent (acute) conditions"** means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

**"IPE"** means the Individualized Plan for Employment.

**"Job Club"** is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

**"Job Coach/Employment Training Specialist"** means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

**"Long-term treatment"** means medical or psychological treatment that is expected to last more than three months.

**"Maintenance"** means a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

**"Milestones"** means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

**"Multiple services"** means the counseling and guidance provided as a routine part of case management plus two or more core VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a severe disability, even if two or more core services are included in the package. Core services include:

(A) **Restorative.** Services including surgery, hospitalization, medical treatment, anesthetic, psychiatric treatment, psychological counseling, nursing, medication;

(B) **Auxiliary.** Services including prosthetics, orthotics, hearing aids, wheelchairs, other durable

medical equipment, physical therapy, speech therapy, optics;

(C) **Assistive technology.** Services including accommodations, sensory aids, telecommunication devices, low vision aids, assessment, training, modification, and specialized adaptive equipment;

(D) **Specialized.** Services for individuals who are blind, deaf or severely disabled may include rehabilitation teaching, orientation and mobility training, reader services, interpreter services, personal attendant services, and personal adjustment training;

(E) **Training.** Services including college and university training, occupational and vocational training, on-the-job training, remedial training, job readiness training, work adjustment training, work site learning, all other training;

(F) **Selective placement.** Services including job coaching, job duty and workstation analysis, job duty and workstation adaptation, supported employment, vocational technician services, and employment and retention services; and/or

(G) **Intensive counseling.** Services including therapeutic or adjustment guidance and counseling, such as counseling that is directed toward the acceptance of disability.

**"Natural supports"** means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

**"Occupational license"** means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

**"Ongoing support services"** means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

**"Package of services"** means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of core services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

**"Personal assistance services"** means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

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**"Physical and mental restoration services"** means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

**"Physical or mental disability"** means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

**"Referral"** means information provided to agency staff regarding an individual who may need vocational rehabilitation services; information or direction provided to an individual regarding services and resources available from other agencies or service providers; or information and direction provided to an individual regarding opportunities for employment. A referral may include arranging for appointments on behalf of the individual.

**"Rehabilitation Act"** means the Rehabilitation Act [29 USC 701 et seq.].

**"Related factors"** means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

**"Section 504 Plan"** is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

**"Small business enterprises"** means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

**"Stabilization"** means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

**"Substantial impediment to employment"** means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

**"Supported employment"** (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive

work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most severe disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness (see the definition for "transitional employment").

**"Supportive services"** means vocational rehabilitation services provided so eligible individuals may derive the full benefit of core services being provided under an IPE.

**"Transitional employment"** (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness.

**"Transportation"** means a supportive service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

**"Unpaid family worker"** means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

**"VR"** means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

**"VS"** means the Division of Visual Services, or the more general term visual services, depending upon the context.

### 612:10-1-5. Confidentiality

(a) **General guidelines.** All client or applicant information acquired will remain the property of DRS. All casework materials are to be maintained in the appropriate case record. The terms "release of information", "release of personal information", and similar terms refer to providing access to the record, or providing copies, summaries, descriptions, or other reproductions of the actual case record materials and not to the materials themselves. All applicants, clients, or client representatives will be informed of the Department's policies on confidentiality of personal information. This information will only be used and released for purposes directly related to the administration of the Vocational Rehabilitation and Visual Services programs. Information containing identifiable personal information will not be shared with advisory or other bodies who do not have official responsibility for the administration of these programs. In the administration of the program, the DVR and DVS units may obtain personal information from service providers and cooperating agencies under assurances the information will not be further divulged. Use and release of personal information will conform to applicable state and federal laws and regulations. Questions regarding release of information are to be directed to the Department's general counsel. Staff are to consult the general counsel before providing trial testimony, depositions, or a sworn affidavit concerning consumer information. Moreover, if served with a subpoena for the release of client information, staff should notify the general counsel immediately. In a legal proceeding,

client information can only be released without the client's consent in response to a court order. A subpoena by itself is not sufficient to authorize disclosure of client information.

(b) **Written release required.** Release of personal information must be by written consent of the individual or authorized representative. If requested in writing by an applicant or eligible individual, DRS will make all requested information in that individual's record of services available to the individual in a timely manner except as provided in subsection (c). The Department's Authorization for Release of Information form may be used when the client requests that personal information be released by DRS to a third party is provided for this purpose, and may also be used to request confidential information from other sources. Other release forms are acceptable, as long as they provide the required information. Written authorization for release of information must include:

- (1) the nature of the information to be released;
- (2) designation of the parties to whom the information is to be released;
- (3) the specific purpose for which the released information may be used;
- (4) designation of the agency or person authorized to disclose the information; and
- (5) dates of initiation and termination of consent.

(c) **Release of information to the individual.** The individual, or the individual's representative, will be given access to the relevant case record, or provided copies of requested information upon providing a written authorization for release of information, except as in (1) through (3) of this Subsection.

~~(1) The individual is or has been a patient of a physician, psychologist, mental health institution or facility, a drug or alcohol abuse treatment facility or service, a community mental health service or agency or a community social service agency for the purpose of mental health or drug or alcohol abuse care and treatment, and the requested information was copied from his or her psychiatric or psychological records. —Psychological, psychiatric, mental health and substance abuse treatment records and information from psychological, psychiatric, mental health and substance abuse treatment practitioners may only be obtained provided the requirements of Section 1-109 of Title 43A of the Oklahoma Statutes are met.~~ Under these circumstances, refer the individual, or the individual's representative, to the treating health professional.

(2) When a DRS professional staff person believes medical or other information not covered in (1) of this Subsection may be harmful to the individual, the information may not be released directly to the individual but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative through his or her representative, a physician, or a licensed/certified psychologist.

(3) Information obtained from another organization or agency may be released only through that agency, or under the conditions established by the outside agency, organization or providers. ~~For example, information from the Veteran's Administration, and Social Security Administration, information regarding the diagnosis and treatment of AIDS, or drug treatment of veterans~~ may not be released. Refer the individual requesting such information to the source from which the information was obtained.

(d) **Request for information correction.** An individual who believes that information in the individual's case record is inaccurate or misleading may request that the information be amended. Even if the information is not amended, the request for amendment must be documented in the case record.

(e) **Release of information to other programs or authorities.** Paragraphs (1) through (4) of this Subsection provide the rules governing release of personal information to other programs or authorities.

(1) Upon receiving the informed written consent of the individual, or the individual's representative, information may be released to another agency or organization. Only that information that would be released to the involved individual, or the individual's representative will be released, and only to the extent that the other program or organization demonstrates that the information requested is necessary for its program.

(2) Personal information will be released if required by Federal law or regulations.

(3) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(4) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(f) **Release of information for audit, evaluation or research.** Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research, only:

(1) for the purposes directly connected with the administration of the DVR or DVS program;

(2) for purposes which would significantly improve the quality of life for persons with disabilities; and

(3) if the organization, agency or individual assures:

(A) The information will be used only for the purpose it is being provided;

(B) The information will be released only to persons officially connected with the audit, evaluation or research;

(C) The information will not be released to the individual;

(D) The information will be managed in a manner to safeguard confidentiality; and

(E) The final product will not reveal any personal identifying information without the informed written

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consent of the involved individual or the individual's representative.

## SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

### 612:10-3-4. Services exempt from client participation in service costs

(a) DVR and DVS clients who have income and assets above the basic living requirements will be required to apply surplus resources to the cost of rehabilitation services, including status 06, except for the following services which do not require a determination of financial status:

- (1) services provided to assess eligibility and rehabilitation needs (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);
- (2) counseling, guidance, referral, and other services provided directly by DVR and DVS staff;
- (3) on-the-job training;
- (4) personal or work-adjustment training;
- (5) reader services;
- (6) interpreter services;
- (7) personal assistance services;
- (8) job placement;
- (9) compensatory training;
- (10) job coaching services (i.e., supported employment, employment and retention, transitional employment); or
- (11) library services.

(b) Recipients of Social Security benefits under Titles II or XVI (SSDI and SSI) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.

(c) Recipients of SSDI (Social Security Disability Insurance) Adult Dependent Child Survivor Benefits--Title III Sec. 202 (d)(1)(C) and 223 (d) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.

### 612:10-3-5. Basic living requirements

(a) A basic living requirement has been established for different size family groups. A family member is an individual who either (A) is a relative or guardian of an applicant or eligible individual; or (B) Lives in the same household as an applicant or eligible individual and has a substantial interest in the well-being of that individual and whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome. Basic living requirements are based on 150% of the Federal poverty level adjusted annually for family size. The standard is intended to cover only the necessities of food, shelter, utilities, clothing, transportation, and incidentals to give the counselor some criteria by which to measure the financial status of a client. To qualify as independent from the family group, the client must meet one of the following criteria:

(1) Beneficiary of SSDI, ~~or~~ SSI, or Title III Adult Dependent Child Survivor Benefits;

(2) At least 24 years of age;

(3) A ward of the court and in custody of DHS;

(4) Married and maintaining a separate household;

(5) Meets the criteria for temporary housing as described in 612:10-3-5(c) or;

(6) The counselor verifies the client has the financial resources to demonstrate self-sufficiency and the client declares no family contributions are available.

(b) Verification of family membership should be based upon whatever available information most accurately documents family membership according to the definition given in this Subsection. Examples of acceptable verification include the latest Federal income tax return, payroll information, insurance policies, client report, and/or counselor observation.

(c) An eligible adult individual whose disability has resulted in the need to live with family or friends temporarily, and as appropriate the individual's spouse and dependent children, will be considered as a separate household regardless of living arrangements.

## SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

### PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VISUAL SERVICES

#### 612:10-7-1. Overview of Vocational Rehabilitation and Visual Services

(a) This Subchapter discusses services within the scope of the Vocational Rehabilitation and Visual Services programs. Generally, these services are referred to as vocational rehabilitation services or VR services. Vocational rehabilitation services are provided by the Division of Vocational Rehabilitation and the Division of Visual Services. Vocational rehabilitation services are provided to help eligible individuals achieve employment outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of each eligible individual. To the maximum extent appropriate, VR services are meant to result in competitive employment in an integrated setting. Vocational rehabilitation services include services for individuals and services to groups of individuals.

(b) Vocational rehabilitation services for individuals include:

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) referral and other services to secure needed services from other agencies through cooperative agreements if such services are not available from DVR or DVS;

- (4) job-related services, including job search and placement assistance, job retention services, ongoing services, and extended services;
  - (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this title unless maximum efforts have been made by DVR or DVS staff and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;
  - (6) to the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits) other than DVR or DVS, diagnosis and treatment of physical and mental impairments, including:
    - (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;
    - (B) necessary hospitalization in connection with surgery or treatment;
    - (C) prosthetic and orthotic devices;
    - (D) eyeglasses and visual services as prescribed by qualified personnel who meet State licensure laws and who are selected by the individual;
    - (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and
    - (F) diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State licensure laws;
  - (7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an Individualized Plan for Employment;
  - (8) transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome;
  - (9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;
  - (10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State licensure laws;
  - (11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;
  - (12) occupational licenses, tools, equipment, and initial stocks and supplies;
  - (13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;
  - (14) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;
  - (15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the Individualized Plan for Employment;
  - (16) supported employment services for individuals with the most severe disabilities (~~priority group 1~~) that need ongoing support services from a job coach to obtain and maintain employment;
  - (17) employment and retention services for individuals with severe disabilities who require short term job coach support to obtain and maintain a successful employment outcome;
  - (18) transitional employment services for individuals with the most severe disabilities (~~priority group 1~~) due to mental illness who have little or no successful work history and need work adjustment/trial work experience;
  - (19) job placement services for individuals with disabilities who are job ready;
  - (20) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and
  - (21) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.
- (c) Vocational rehabilitation services for groups of individuals include:
- (1) in the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by DVR or DVS, the provision of such services and supervision, along or together with the acquisition by DVR or DVS of vending facilities or other equipment and initial stocks and supplies;
  - (2) services that contribute to the rehabilitation of a group of individuals not related to an IPE, including:
    - (A) the establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility. Such programs shall be used to provide services that promote integration and competitive employment; and
    - (B) the provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual with a disability;
  - (3) the use of telecommunications systems (including telephone, television, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section

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and developing appropriate programming to meet the particular needs of individuals with disabilities;

(4) special services to provide nonvisual access to information for individuals who are blind, including:

(A) the use of telecommunications, Braille, sound recordings, or other appropriate media;

(B) captioned television, films, or video cassettes for individuals who are deaf or hard of hearing;

(C) tactile materials for individuals who are deaf-blind; and

(D) other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 [42 USC 12111 et seq.] and that are seeking to employ individuals with disabilities; and

(6) consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

### 612:10-7-4. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) can benefit in terms of an employment outcome from vocational rehabilitation services; and

(3) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(b) An individual who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act [42 U. S. C. 401 et seq. and 1381 et seq.], or Title III Adult Dependent Child Survivor Benefits (based on the individual's disability that began prior to age 22) shall be:

(1) considered to have a severe disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(c) Determinations by other agencies, particularly education agencies, regarding whether an individual has an impairment or is an individual with a severe disability are to be used to the extent appropriate, available and consistent with the Rehabilitation Act.

(d) Every person must be evaluated individually regarding history, prognosis and functional limitations to determine if the individual can benefit from rehabilitation services in terms of an employment outcome.

(e) Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Eligibility documentation for vocational rehabilitation services requires both medical and psychological records. Clients who are accepted on the basis of alcoholism and/or drug dependency, whether a primary or secondary disability, must be enrolled in a treatment or maintenance program and be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. DRS will not provide services to individuals who abuse drugs and/or alcohol. The client must provide the agency with supportive documents from qualified Drug and Alcohol treatment professionals that the client is presently substance-free, maintaining sobriety, actively participating in a treatment or maintenance program, and ready to engage in vocational rehabilitation services. Those individuals who are alcohol/drug free for two or more years will not be eligible on a primary disability of alcoholism/drug dependency.

(2) **Allergies/Asthma.** Only the most serious allergies/asthmatic condition requiring continuous medical intervention will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (4i) through (4iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a

qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

**(B) Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

**(i) Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

**(I)** The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

**(II)** The hearing loss in each ear is 55 dB or greater.

**(ii) Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when:

**(I)** The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

**(II)** The SRT in each ear is 55 dB or greater.

**(iii) Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

**(B)C) Evaluation of need for visual examination.** Clients with a disability of deafness or hearing loss will be offered a visual exam annually unless adequate existing records are available.

(4) **Diabetes:** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year ~~offered a visual exam at least once per year. It is recommended that~~ All insulin dependent diabetics are required to attend diabetic education training as part of their IPE. This can be provided by a consumer's personal physician, in coordination with the VR specialist. If diabetic education is provided, a separate intermediate objective addressing this service must be included on the IPE.

(5) **Facial and Disfigurement Conditions.** Treatment of any of these conditions may also be provided under intercurrent illness policy. Treatment may be provided when:

(A) it is necessary to correct or substantially modify a condition which is stable or slowly progressive;

(B) such correction or modification may reasonably be expected to eliminate or reduce the impediment to employment within a reasonable length of time.

(6) **Learning Disabilities.** Individuals must meet one of the following three criteria to be identified as learning disabled:

(A) Have a marked discrepancy between verbal and performance intellectual level;

(B) Be diagnosed or identified as having a specific learning disability from the local educational system; or

(C) When the individual's achievement on individually administered, standardized test in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM IV).

(7) **Mental Disorders:** Treatment must be incorporated as a service in the IPE for individuals with a diagnosis of mental disorder. Comparable benefits will be used when available.

(8) **Mental Retardation.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. For individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the mentally retarded range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the mentally retarded range of ability.

(9) **Height.** To be eligible, ~~a person under 52 inches must be unable to participate in activities of daily living~~ person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be 100% over normal weight using the designated weight chart and unable to participate in activities of daily living. Any radical surgery i.e., bypass or stapling of the stomach, treatment plans are beyond the scope of VR services. Any vocational plan for a person who is obese must include some type of treatment plan. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency.

(11) **Visual.** The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. Any one or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.

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(A) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye after best correction (in the case of difference of acuity between reading and distance use the greater loss).

(B) **Loss of depth perception or stereopsis.**

(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.

(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one-picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hyper-tropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.

(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.

(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.

(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual

efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.

(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability. Supervisory approval is necessary for establishing an impediment to employment when the disabling condition is a red-green deficiency.

(12) **Hearing evaluation.** Individuals who have been identified as "legally blind" will be carefully evaluated regarding the need for a hearing evaluation. When a hearing deficit is indicated by a medical examination report, statement of the client and/or family, or observation of one of the professional staff members working with the individual, it is noted in the case record. The counselor will make arrangements for a hearing examination unless existing records are adequate and appropriate for this assessment.

(13) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

### 612:10-7-5. Factors affecting eligibility

(a) **Physical or mental condition.** The presence of a disability or impairment that meets the first criterion of eligibility must be documented by more than just a diagnosis that a physical or mental condition exists. To qualify, the condition must be serious enough to result in a substantial and lasting impediment to employment.

(1) Physical or mental conditions which may meet the first element of basic eligibility are:

(A) permanent, stable conditions, for which the resulting impediments to employment, and the individual's functional capacities can be determined;

(B) slowly progressive conditions, in which the individual's functional capacity is not expected to diminish so rapidly as to prevent completion of vocational rehabilitation services, and/or employment for a reasonable period of time;

(C) remediable conditions which are recurring or chronic, require restoration services, and result in no substantial impediment to employment after restoration services have been provided.

(2) Physical or mental conditions which do not meet the first element of basic eligibility include:

(A) temporary conditions in which no functional limitations of an enduring nature are expected after treatment or recovery;

(B) unstable conditions which require emergency medical intervention and/or prolonged medical management, and for which functional capacities and limitations cannot be predicted because of the recency of onset and/or the recurring nature of the condition.

(b) **Need for VR services.** The third element of basic eligibility states the individual must require vocational rehabilitation services to prepare for, enter, engage in, or retain an employment outcome. Paragraphs (1) and (2) of this Subsection define the conditions of the third element of basic eligibility.

(1) The applicant requires VR services when the individual will not be able to achieve an employment outcome because of the documented impediment to employment, unless one or more of the services listed in 612:10-7-1 are provided.

(2) When any of the conditions listed in (A) through (E) of this Paragraph exist, VR services are not required. Counseling, guidance, and placement services may still be provided when the conditions in Subparagraphs (A), (D), or (E) exist.

(A) The applicant is already receiving services needed for employment.

(B) The applicant can obtain or retain suitable employment without VR services.

(C) The services needed will not lead to an employment outcome.

(D) The needed services are mandated of another agency.

(E) The requested services are not VR services.

(c) **Age.** There is not an upper or lower age limit in and of itself which may result in the applicant's ineligibility to receive vocational rehabilitation services. In determining eligibility, however, the counselor must keep in mind the ultimate objective of DVR and DVS is to enable an individual to achieve an employment outcome, as defined in 612:10-1-2. A counselor may provide vocational rehabilitation services to an individual prior to working age if the client meets basic eligibility requirements, a vocational objective can be determined, and the client will reach working age by the time the IPE is completed. If the client has not yet completed his basic education (high school), the counselor will not provide services that are the responsibility of the public school system. Persons past normal retirement age who meet the basic eligibility requirements may be accepted for vocational rehabilitation services if the services to be provided will enable the applicant to achieve an employment outcome.

(d) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:

(1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay in services.

(2) Veterans receiving additional benefits under the G.I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.

(e) **Services when client is employed.** Individuals who are regularly employed in a job commensurate with their strengths, resources, priorities, concerns, abilities, and capabilities are not

considered eligible for vocational rehabilitation services. Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services when:

(1) the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities; and

(2) vocational rehabilitation services are required to assist the individual to obtain an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(f) **Services provided after alleviation or removal of the disability.** When physical restoration services can result in the removal or alleviation of the disability, services will be limited to the recommended physical restoration services, counseling, guidance, and placement only.

(g) **Residence.** ~~Any individual residing in the state at the time of application may receive vocational rehabilitation services if otherwise eligible. There are no residency requirements that would exclude any individual who is present in the state from receiving services for which they are otherwise eligible.~~

(h) **Citizenship.** Participation in the vocational rehabilitation program shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized to work in the United States.

(i) **Sports participation.** Individuals with disabilities have a right to participate in sports. If the athletic activity is not detrimental to the client's health, physical well-being, general safety or the safety of others, an opportunity to participate in sports, or receive an athletic scholarship will not be the basis for denial of vocational rehabilitation services. When eligibility is questionable because of sports participation, the case will be reviewed by the medical consultant.

**612:10-7-8. Order of selection**

(a) **Need for order of selection.** The Department, in consultation with the State Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, that it cannot serve all individuals who are determined eligible for DVR and DVS services. The Department consults with the State Rehabilitation Council regarding the:

(1) need to establish an order of selection, including any re-evaluation of the need;

(2) priority categories of the particular order of selection;

(3) criteria for determining individuals with the most severe disabilities; and

(4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most severe disabilities. Every individual determined to be eligible for DVR and DVS services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority

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group is based solely upon the severity of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

- (1) **Priority Group 1 Most Severe (MS).** Eligible individuals with the most severe disabilities. A most severe disability is a severe mental or physical disability resulting in serious limitations in three or more functional capacities and requiring multiple services over an extended period of time.
  - (2) **Priority Group 2 Severe (S).** Eligible individuals with severe disabilities resulting in serious limitations in at least one, but not more than, two functional capacities and requiring multiple services over an extended period of time.
  - (3) **Priority Group 3 Non-Severe (NS).** Eligible individuals with disabilities not meeting the definition of individual with a severe disability.
- (c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having application dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and DVS staff. The written notice will specify the implementation date of the action and direct DVR and DVS staff on how to handle cases by priority group and application date. DVR and DVS staff will inform each eligible individual on their caseloads:

- (1) of the priority groups in the order of selection;
  - (2) of the individual's assignment to a priority group; and
  - (3) of the individual's right to appeal that assignment.
- (d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and DVS staff in writing when all or part of a closed priority group is opened. When this directive includes

new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

- (1) contact individuals within the highest open priority group first, ~~Priority Group 1 Most Severe~~ being the highest of all priority groups;
  - (2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then
  - (3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.
- (e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.
- (f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. No IPE will be written to provide such services to these individuals.

### PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

#### 612:10-7-87. Actions requiring supervisor's approval

The supervisor indicates approval by signing the appropriate documentation or form in the case, or by memorandum when necessary. Verbal approval may be given when circumstances warrant, but must be followed immediately by written approval. The supervisor may delegate approval authority for designated duties to a subordinate professional only Specialist IV. The Specialist IV may assume responsibilities for approval when absolutely necessary because of prolonged absence of the supervisor or similar reasons, and when arrangements cannot be made for another supervisor to perform duties for the absent supervisor. ~~The subordinate professional must have at least two years of experience as a Senior VR Counselor in the appropriate Division, be current on production goals, and not be under corrective discipline or intensive supervision.~~ The appropriate field coordinator's approval must be obtained for any such substitution or delegation.

- (1) All actions of a newly employed counselor/teacher. The newly employed counselor/teacher will remain under intensive supervision until the counselor/teacher has reached a sufficient level of competence to work under general supervision as documented by the program manager. The release from intensive supervision will be given to the counselor/teacher in writing with a copy to the field

coordinator. A counselor or teacher can be returned to intensive supervision when documentation or observation indicates he or she is no longer at a level of competence to work under general supervision. This decision will be given to the counselor/teacher in writing with a copy to the field coordinator.

(2) All IPE's or amendments when the total of the planned DVR and DVS expenditures for the entire case exceed \$15,000.

~~(3) All IPE's which include out of state training.~~

~~(4) All IPE's which include the purchase of psychotherapy or personal adjustment counseling.~~

~~(5) Purchase of hospitalization for diagnostic purposes.~~

~~(6) All IPE's which include purchase of occupational tools and equipment or initial stocks for small business enterprises.~~

~~(7) Release of confidential information in instances not covered in 612:10-1-5.~~

~~(8) All case closures except Status 08 and Status 30 closures.~~

~~(9) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).~~

~~(10) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.~~

~~(11) Maintenance for job search services beyond 1 (one) month. (Specialist IV may approve)~~

~~(12) Clothing expenses in excess of \$400.00 (Specialist IV may approve)~~

~~(13) Small Business plan in excess of \$10,000.00.~~

**612:10-7-88. Actions requiring field coordinator's approval**

Field coordinator approval is requested by written memorandum from the counselor, accompanied by a written recommendation from the supervisor. The field coordinator gives his or her approval in a written memorandum to the counselor, with a copy going to the supervisor. Verbal approval may be given when circumstances warrant, but must be followed immediately by written approval. The field coordinator must approve:

- (1) all IPE's which include DVR and DVS funding of training beyond the bachelor's degree level;
- (2) all IPE's which include the purchase of housing modifications costing more than \$2,500;
- (3) delegation or substitution for supervisory approval in case of supervisor's prolonged absence or similar circumstances.
- (4) dental services during active job search.
- (5) dental services requiring hospitalization.
- (6) self-employment funding over \$15,000.00.
- (7) vehicle or home modifications.

**PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES**

**612:10-7-104. Drugs and supplies**

(a) Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. ~~Over the counter drugs are not to be purchased with DRS funds.~~ Prescription drugs and/or prescribed medical supplies which are part of a treatment plan are not to be purchased unless they are necessary to achieve an intermediate objective established in the IPE. The counselor can plan the purchase of prescribed drugs and/or medical supplies up to a total of three months. Supervisory approval must be obtained for any planned purchases of prescribed drugs and/or medical supplies beyond this timeframe

(b) Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.

(c) Durable medical equipment does not fall within the category of prescribed medical supplies and the provisions of this section do not limit its purchase.

**612:10-7-117. Psychiatric and psychological treatment**

(a) Psychotherapy may be provided for emotional conditions which may be expected to respond within a reasonable period of time. Psychotherapy can be provided only by the sources in (1) - (5) of this Subsection.

(1) Psychiatrists certified by the American Board of Psychiatry and Neurology or completed the required training and are "Board Qualified", or who have spent a major portion of their time in a particular specialty for at least two years and are recognized as specialists in the local community (same criteria as applied to other medical specialists).

(2) Licensed Doctors of Medicine or Doctors of Osteopathy who have received specific training for and are experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(3) Psychologists with a doctorate in clinical or counseling psychology who hold a valid license to practice psychology.

(4) Psychologists with a doctorate in clinical or counseling psychology who are employed by governmental agencies exempt from the licensing law.

(5) Other licensed clinicians or those employed by governmental agencies who have received administrative approval to provide this treatment service.

(b) Treatment may be purchased for a period not to exceed three months. ~~All purchased psychotherapy must be approved by the supervisor.~~ Upon receipt of a written report from the therapist, the supervisor may approve additional three-month periods. Long-term psychiatric or psychological treatment is outside the scope of vocational rehabilitation services. Clients needing long-term or ongoing psychiatric or psychological treatment will be referred to the appropriate community mental health center.

(c) Personal Adjustment Counseling may be provided for those persons with emotional conditions who may benefit from counseling to bring about a more adequate social adjustment,

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alleviate superficial anxiety, and to create more effective interpersonal relationships. Personal Adjustment Counseling may be provided by: those individuals listed in (a) of this Section.

(d) Personal Adjustment Counseling may be purchased for a three-month period following approval of the IPE by the supervisor. Additional three-month periods may be provided upon review of a written report from the therapist and approval of the supervisor.

## PART 13. SUPPORTIVE SERVICES

### 612:10-7-131. Transportation

Transportation, including adequate training in the use of public transportation vehicles and systems, may be provided for a client as a supportive service to enable the client to receive diagnosis, evaluation or other rehabilitation services. Authorizations for transportation will not be issued to pay the cost, or part of the cost, for any other service.

(1) **Public transportation.** The authorization is made directly to the vendor or client for actual cost.

(2) **Private transportation.** ~~Reimbursement for use of a private vehicle is negotiated up to~~ Mileage for use of a private vehicle is reimbursed at 100 percent of the rate allowed by the State Travel Reimbursement Act and is authorized directly to the client. In these instances, mileage will be restricted to the most direct route and to the least possible number of trips. Mileage reimbursement as a supportive service to enable the client to receive diagnosis, evaluation or other rehabilitation service is intended to cover the cost of fuel, routine maintenance, and repairs. Case narrative documentation is required explaining how the amount was determined.

(3) **Out-of-state/air transportation.** Transportation by airplane or out of state travel may be provided to allow a client to receive services not available in the state. Transportation may also be provided for a client to seek employment out of state provided the counselor has written documentation that the severity of the disability, or the nature of the vocational objective, makes in-state placement unusually difficult. The case must also contain documentation of efforts made to place the client with an appropriate in-state employer. ~~All out of state travel must be approved by the supervisor.~~ If air fare is to be provided, arrangements for such fares will be made through the State Travel Coordinator, Department of Rehabilitation Services State Office.

(4) **Transportation for an attendant.** Transportation may also include the cost of travel for an attendant of an individual with a severe disability. Subsistence will be paid at the rates established by the State and described in OAC 340:2-1. The counselor will have an agreement with the client regarding allowable expenses before the trip is made.

(5) **Training for use of public transportation.** Expertise available within DVR and DVS, or within the

community will be used to provide this service when possible. If this service must be purchased, the authorization is made directly to the vendor or client for actual cost.

## PART 15. TRAINING

### 612:10-7-157. Out-of-state training

(a) Out-of-state training of DRS clients is approved when one or more of the following applies:

(1) The course of training is not available within the state;

(2) The out of state training program is no more expensive than in-state training; or

(3) There are specific considerations based on severity of the disability which preclude the use of in-state facilities.

(b) The case record is to document the basis for this determination.

(c) ~~All IPE's for out of state training must have supervisory approval.~~ Individual counselors will be responsible for authorizing payment to out-of-state training facilities, unless a supervising counselor has been assigned for the training facility. Tuition for a student who attends an out-of-state college or university will be paid at the same rate paid at Oklahoma colleges or universities of equal rank. A textbook allowance and purchase of durable training supplies can be provided for clients in out-of-state training, utilizing procedures outlined in 612:10-7-153 and 612:10-7-154.

(d) Documentation must state why the particular vendor is being used in terms of specific clients, and address the issues of:

- (1) selection of vocational objective;
- (2) projected starting and completion dates;
- (3) breakdown of costs; and
- (4) extent of comparable services and benefits.

(e) Prior to client's enrollment at a facility located in another state, an approved Justification for Out-of-State Training form must be submitted to the DRS State Office.

(f) The DRS Contracts Unit must complete renewal of contracts no less than two months prior to present contract expiration date to ensure continuation of services. When a contract lapses because renewal was not completed within time frames, the Department cannot pay the institution's claim.

### 612:10-7-162. Supplies and training tools for business, vocational and trade schools

(a) Required books, supplies, and training tools may be purchased for clients attending a facility with a valid contract. Gun "kits", but not operable firearms, used as training tools may be purchased for students in gun-smithing school only. The client, or client's family or authorized representative as appropriate, is responsible for maintaining supplies and training tools in good working order. DVR and DVS will pay for repairs to supplies and training tools purchased with DVR and DVS funds during the life of the case unless there is clear evidence the supplies or training tools have been damaged due to client abuse or neglect.

- (b) The Department retains title to any tools costing \$500 or more purchased for training purposes until title is released by an authorized agent of the Department. The supervising counselor will complete the Receipt for Equipment and Title Agreement, and obtain necessary signatures, before releasing such tools to the client. Any tools purchased for training purposes remain with the client while he/she is in training and after the completion of the training if they can be used in the client's chosen vocation. If the client drops out of training, the supervising counselor and/or home counselor will make every effort to repossess the tools to transfer to another client.
- (c) Case recording must reflect the disposition of tools and materials provided the client before the case is closed.

**PART 17. SUPPORTED EMPLOYMENT SERVICES**

**612:10-7-179. Overview of Supported Employment Services**

- (a) Supported employment services are provided to individuals with the most severe disability, ~~in Priority Group 1~~, who need supports on and off the job to obtain and maintain employment. Supported employment is for individuals who need substantial assistance in making a job choice; getting a job matching that choice; learning job tasks, gaining work adjustment skills, and stabilizing in employment; as well as long term support to retain employment.
- (b) Supported employment services are provided by the Department for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation professional jointly agree to extend the time in order to achieve the rehabilitation objective identified in the IPE. Following transition, post employment services can be provided, when unavailable from an extended services provider and when necessary, to maintain or regain the job placement or advance in employment.
- (c) There are two levels of service: regular and highly challenged. The DRS counselor, working with the client and the provider, will designate the service model to be used and whether the individual meets the regular or highly challenged criteria. The highly challenged criteria is defined in the provider contract.

**612:10-7-180. Eligibility for the Supported Employment Program**

- An individual shall be eligible for supported employment services if:
- (1) The individual is determined to be eligible for vocational rehabilitation services;
  - (2) The individual is determined to be an individual with the most severe disabilities, ~~in Priority Group 1~~; and
  - (3) A comprehensive assessment of rehabilitation needs of the individual, including an evaluation of rehabilitation, career, and job needs, identifies supported employment as the appropriate rehabilitation objective for the individual.

**612:10-7-185. Provision of supported employment services**

- (a) Supported employment (SE) services are not subject to financial status determination. Services are purchased from a qualified vendor under contract with the Department. However, services may be available from a variety of providers and should be furnished to each client by the most appropriate means. This would include training from certified job coaches or employment training specialists, as well as other qualified individuals, including co-workers, through natural supports.
- (b) Supported employment services include:
  - (1) Situational assessments to help develop, finalize or reassess a supported employment plan of services;
  - (2) job development and job placement;
  - (3) provision of time-limited job coach services needed to support an individual with the most severe disabilities, ~~in Priority Group 1~~, in employment such as:
    - (A) intensive on-the-job skills training and other training and support services needed to achieve and maintain job stability;
    - (B) follow-up services with employers, supported employee, parents and guardians, and others for the purpose of supporting and stabilizing the job placement; and
    - (C) post employment services, following transition to extended services, not available from the extended services provider and needed to maintain job placement such as job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.
- (c) Time-limited supported employment services cannot exceed 18 months unless an amendment indicates more time is necessary for the individual to achieve job stability before transition to extended services. Case documentation justifying the extension must indicate two criteria have been met. The first is substantial progress has been made toward meeting the hours-per-week goal established in the IPE; and secondly, extended services are available and can be provided without a break in services. The 18 months of time-limited services are based on the time the client actually spends in employment. When DVR and DVS services are re-initiated through opening a new case, a new period of up to 18 months of time limited services begins. The time counted towards the 18 month limitation does not include:
  - (1) time during a break in employment;
  - (2) the period between transition to extended services and closure of the DVR or DVS case; or
  - (3) time in post employment services.
- (d) Re-placement services are intended for recently rehabilitated individuals who have completed the final SE milestone (Successful Rehabilitation), with the same provider within the last 2 years. The Counselor reviews the documentation from the provider regarding the job loss, and determines if extended services are not adequate to cover re-placement at no cost to DRS. Re-placement services include:
  - (1) Vocational Preparation/Job Club (optional);
  - (2) 4 Weeks Job Support;
  - (3) Job Stabilization; and

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(4) Successful Rehabilitation.

(e) The Highly Challenged rate can only be authorized if the previous case was designated as Highly Challenged.

(f) There are special provisions for individuals with serious mental illness, who may be placed in transitional employment (TE). Transitional employment services are not subject to financial status determination. Services are purchased from a qualified vendor under contract with the Department. Transitional employment, like work adjustment, is designed to assist individuals who have not had significant, successful or recent work experience to build their work adjustment skills and ego strength/self-esteem, develop a positive work history, learn adjustment skills in a real work environment or clarify their strengths and interests. TE addresses the need for a transitional work period to lay the foundation for a career decision that is expected to involve employment beyond the entry level.

### PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SEVERE DISABILITIES

#### 612:10-7-199. Reader/recording services

(a) **Scope.** Reader services have been established for individuals who are blind and certain other clients with disabilities. Reader services are exempt from client participation in cost of service. ~~This service requires supervisory approval for a client with disabilities other than blindness.~~ In planning the provision of reader services for a client who is blind, the counselor will consider the client's ability to do his/her own reading, if he/she has residual vision, and the availability of volunteer reading from family members, campus groups, and others. When reader services are provided, the counselor will follow these procedures:

(b) **Cost.**

(1) Each client (major disability code 100-119) approved to receive reader services may be provided three hours reading time per month for each semester hour enrollment.

(2) For summer school enrollment in college courses, and for graduate or post-graduate course work, the formula of six hours of reading time per month for each hour of course work may be used.

(3) Reader services will be based on the Federal Minimum Wage.

(c) **Payment.**

(1) Reader services payments may not be paid in advance. Payment is authorized directly to the client.

(2) Reader services are authorized in exactly the same manner as monthly maintenance or transportation and are included on the same authorization with either or both of these other services.

(3) Amounts on the authorization are rounded to the nearest dollar.

(d) **Recorded textbooks.** DVR and DVS counselors will refer all clients needing reader services to the Oklahoma Library for the Blind and Physically Handicapped (OLBPH), VS #72. An Individual Application for Library Service will

be completed by the client. Recorded or large print textbooks are available for students with disabilities. Payment of the enrollment fee is not based on financial status determination. OLBPH requires concurrent registration with Recordings for the Blind. A registration fee is required and can be paid through DVR and DVS funds.

(1) If a textbook is to be recorded by the OLBPH, the print textbook will be sent three months in advance if possible. The Library can, upon notice, have the first part of a recorded book back within one week.

(2) Students with learning disabilities and visual impairments may be eligible for taped textbooks from the organizations in (A) and (B) of this paragraph.

(A) Educational Tape Recording for the Blind. An enrollment fee, which can be paid from DVR and DVS funds, is required for students with learning disabilities.

(B) The Recordings For the Blind (RFB). An enrollment fee, which can be paid from DVR and DVS funds, is required. RFB will also record textbooks for students if necessary. To use this service, two copies of the print textbook must be submitted at least three months in advance. The counselor can provide both copies of the printed text.

(e) **Special reading requirements.** There may be exceptional circumstances where students need additional hours of reading time, as in law, foreign language, certain graduate level programs, or special training courses other than those in a college or university. The fee is negotiable with the reader but will not exceed the prevailing student labor rate.

### PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATES

#### 612:10-7-216. Tools, occupational equipment, initial stocks and supplies

(a) Tools, occupational equipment and supplies will be provided to eligible clients to the extent necessary to achieve their vocational goal providing the client has adequate resources available for the proper maintenance and upkeep of such tools and equipment. The client, or client's family or authorized representative as appropriate, is responsible for maintaining tools, occupational equipment, initial stocks, and supplies in good working order. DVR and VSD will not pay for repairs to tools, occupational equipment, initial stocks and supplies purchased with DVR and DVS funds once title has been released to the client. DVR and DVS will not pay for repairs before title is released when there is clear evidence that the damage resulted from abuse or neglect.

(b) The client will retain possession and control of articles while engaging in the job or occupation for which articles were provided, or when title is released to client. Occupational tools, occupational equipment, and initial stocks and supplies are defined as follows:

(1) Occupational tools are considered to be those minimum tools required for a designated trade, necessary to

the employment of the individual, and not furnished by the employer. DRS will NOT purchase operable firearms even if required for employment. Counselor will assist consumer in finding resources to help in this purchase if necessary.

(2) Occupational equipment is equipment required to meet the minimum needs of an individual in starting and conducting a business of his or her own.

(3) Initial stocks and supplies are those materials and merchandise necessary for the client to become operational in a business.

(c) ~~An IPE which includes the purchase of occupational tools, equipment and initial stocks and supplies requires supervisory approval.~~ Purchase of occupational tools, equipment and initial stocks and supplies will be made in accordance with 612:10-1-7. If the client is required to participate in cost of services, the payment will be made to the nonmedical vendor. When the equipment is received and/or installed, the appropriate rehabilitation professional completes the Receipt for Equipment and Title Agreement, if the purchase total is \$500 or more, then signs the vendor's invoice and routes it to DRS state office.

(d) Used tools or equipment may be purchased when it is evident considerable savings may be affected. Used equipment or tools are to be appraised piece-by-piece by at least three shop owners or managers in the same type of work, and who are not acquainted with the vendor.

(e) If the counselor, after a thorough check of the tools or equipment, finds they are not being used for the purpose for which they were purchased, the counselor is to repossess the tools or equipment by executing the Release or Receipt of Equipment form.

**612:10-7-221. Housing Modification**

(a) Modification of a residence will be limited to installation of ramps, widening of doors, installation of grab bars and similar types of modifications when such modifications are necessary to enable the consumer to obtain gainful employment. Any major structural modification which includes, room addition, or any major wall removal will not be provided by VR services. For any modification over \$2,500.00 please refer to (c).

(b) In all situations where housing modification is to be done, the owner of the house must sign a written release form. In those situations where the consumer is a renter, the renter/consumer is responsible for obtaining the written release from the owner. The maximum amount authorized without further approval is \$2,500.00. The counselor must make a referral to the Assistive Technology Specialist who will make the evaluation of the house and recommend the modifications needed to make the house accessible and usable for the consumer. After modifications have been completed the counselor will contact the AT specialist for inspection of the home, to ensure the modifications conform to prescribed standards and meet the consumers accessibility needs. The specialist will provide a report to the counselor and the counselor must get a statement of satisfaction from the consumer.

(c) Housing modifications that will cost more than \$2,500.00 require field coordinator approval, and a requisition must be submitted to the Department's Central/Departmental Services unit which will arrange for acquisition of the house modifications. This limit must include the TOTAL cost of both labor and materials for the ENTIRE home modification. If the consumer is required to participate in the cost of the modifications, the payment by the consumer will be made to the vendor.

**SUBCHAPTER 11. INDEPENDENT LIVING REHABILITATION SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND**

**PART 1. SCOPE OF SERVICES**

**612:10-11-4. Residency**

OL services are available to any eligible individual residing in the State There are no residency requirements that would exclude any individual who is present in the state from receiving services for which they are otherwise eligible.

*[OAR Docket #06-834; filed 5-4-06]*

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #06-825]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 725:1-1-1. Purpose [AMENDED]
- Subchapter 3. Organizational Structure
- 725:1-3-1. Director as Chief Executive Officer [AMENDED]
- 725:1-3-2. Divisions of the Department [AMENDED]
- Subchapter 5. Operations of the Oklahoma Tourism and Recreation Commission and Department
- 725:1-5-1. Purpose [AMENDED]
- 725:1-5-2. Policy-determining agency for Department [AMENDED]
- 725:1-5-3. General course and mission of operations [AMENDED]
- 725:1-5-4. Requests for information [AMENDED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.

**DATES:**

**Comment period:**

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# Permanent Final Adoptions

## Gubernatorial approval:

April 6, 2006

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Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2006.

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## SUPERSEDED EMERGENCY ACTION:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

Sections of Chapter 1, Administrative Operations, have been amended to conform to current statutes governing the Oklahoma Tourism and Recreation Department and to correct scrivener's errors.

## CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 725:1-1-1. Purpose

The rules of this Chapter are adopted pursuant to ~~74:1801-74:2200~~ et seq. These rules are intended to provide the general public with information ~~describing~~ regarding the practices and procedures of the Oklahoma Tourism and Recreation Department (the "Department") and Commission (the "Commission").

## SUBCHAPTER 3. ORGANIZATIONAL STRUCTURE

### 725:1-3-1. Director as chief executive officer

- (a) The Director of the Department will be appointed in accordance with the provisions of 74 O.S., ~~Section 1807~~ Section 2206 and is considered the ~~appointing authority~~ Appointing Authority for the ~~department~~ Department. The Director of the Department is commonly referred to as the Executive Director.
- (b) The Department shall be organized in the manner prescribed by statute and OAC 725:1-3-2.

### 725:1-3-2. Divisions of the Department

~~(a)~~ There are two methods by which Divisions of the Oklahoma Tourism and Recreation may be created, abolished, or combined as deemed necessary to carry out its duties [~~74:1809-74:2211~~]:

- (1) Legislative Action
- (2) Commission Resolution

## SUBCHAPTER 5. OPERATIONS OF THE OKLAHOMA TOURISM AND RECREATION COMMISSION AND DEPARTMENT

### 725:1-5-1. Purpose

~~It shall be the purpose of the Commission and Department to promote the development and use of the state's lodges, parks and recreational areas; promote tourism by publicity and dissemination of information; assist in promotion of events sponsored by municipalities, associations and organizations commemorating special events of local or historical interest; and function in advisory capacity to the Governor, State Legislature, state agencies, municipalities, and to private organizations on matters pertaining to tourism and recreation [74:1803].~~ It shall be the purpose of the Commission and the Department to conserve and protect the parkland under the control of the Commission; oversee the operation and maintenance of the state's lodges and golf courses; promote tourism by publicity and dissemination of information; assist in promotion of events sponsored by municipalities, associations, and organizations commemorating special events of local or historical interest; educate the public on the people, places, events, culture, and history of Oklahoma; and function in advisory capacity to the Governor, State Legislature, state agencies, municipalities, and to private organizations on matters pertaining to tourism and recreation [74: 2202].

### 725:1-5-2. Policy-determining agency for Department

- (a) The Commission, as the policy-determining agency for the Department shall determine the broad plans and programs necessary for the accomplishments of duties and responsibilities vested by law in the Commission [~~74:1806~~ 74:2202(B)].
- (b) The Commission shall prescribe rates, fees, tolls or charges for the services, facilities and commodities rendered by all property of the Commission [~~74:1847.1(A)(12)~~]. The Commission may prescribe and collect reasonable rates and fees for the services, facilities and commodities rendered by all property of the Commission [74:2220(A)].

### 725:1-5-3. General course and mission of operations

- (a) The Commission and Department create and promote opportunities for quality recreational and educational experiences in an environmentally sound manner and develop, stimulate and market the state's travel and tourism industry. The Department commits to training, motivating and empowering its employees to achieve excellence through the Quality Improvement Process and exercises the highest business and ethical standards in all its activities.
- (b) The Oklahoma Tourism and Recreation Department operates ~~resort-hotels~~ lodges, golf courses, ~~Traveler~~ Tourism Information Centers, state parks, a conservation area, and the central offices in Oklahoma City.

**725:1-5-4. Requests for information**

(a) **General.**—The Commission and Department recognize that the public is vested with the right to know and be fully informed about its government and will comply with the provisions of the Open Records Act, 51 O.S., Section 24 A.1. et seq., when responding to requests for information.

(b) **Requests.**—Any individual or group seeking information about the Oklahoma Tourism and Recreation Department and Commission, its operations, facilities, programs, etc., may request information by one of the following methods:

(1) Written requests for information may be mailed to Oklahoma Tourism and Recreation Department, ~~2401 North Lincoln Boulevard, Suite 500, Oklahoma City, Oklahoma, 73105-4492~~ 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102. Written requests do not have to be in a specific format, however all must be legible.

(2) Requests for information may be made by telephoning 405.230.8300, Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays.

(3) Requests for information may be made in person at ~~2401 North Lincoln Boulevard, Suite 500, Oklahoma City, Oklahoma, 73105~~ 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102, Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays.

*[OAR Docket #06-825; filed 5-4-06]*

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

*[OAR Docket #06-826]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Acceptance of Checks
  - 725:15-3-3. Acceptance of checks [AMENDED]
  - 725:15-3-4. Cashing of checks [AMENDED]
- Subchapter 9. Uniform Personnel Standards and Practices
  - 725:15-9-2. Standards and practice [AMENDED]
- Subchapter 17. Pets on Premises
  - 725:15-17-1. Purpose [AMENDED]
  - 725:15-17-2. Restrictions [AMENDED]
- Subchapter 19. Oklahoma Tourism and Recreation Product Development, Promotion, and Events Funding Criteria
  - 725:15-19-1. Purpose and authority [AMENDED]
- Subchapter 27. Promotion of Facilities
  - 725:15-27-1. Purpose [AMENDED]
- Subchapter 29. Oklahoma Today Magazine
  - Part 1. General Provisions
    - 725:15-29-2. Fee authority [AMENDED]
  - Part 3. Magazine Sales
    - 725:15-29-10. Establishing rates [AMENDED]
    - 725:15-29-11. Application of rates and discounts [AMENDED]
  - Part 5. Resale Merchandise
    - 725:15-29-20. Establishing prices [AMENDED]
    - 725:15-29-21. Application of prices, discounts and specials [AMENDED]
  - Part 7. Credit
    - 725:15-29-32. Terms and payment of credit accounts [AMENDED]
- Subchapter 31. Refunds

- Part 3. State Parks
  - 725:15-31-11. Refunds for advance payment [AMENDED]
- Part 5. Golf Courses
  - 725:15-31-21. Refunds for green fees and cart rental [AMENDED]
- Part 7. State Lodges
  - 725:15-31-32. Refunds for purchases of merchandise from gift shops [AMENDED]
- Subchapter 33. Oklahoma Tourism Development Act Tax Credit Program
  - 725:15-33-1. Necessity, function, and conformity [AMENDED]
  - 725:15-33-2. Definitions [AMENDED]
  - 725:15-33-3. Standards for preliminary approval [AMENDED]
  - 725:15-33-4. Oklahoma Tourism Development Act Tax Credit Program application [AMENDED]
  - 725:15-33-5. Final approval [AMENDED]
  - 725:15-33-6. Application form [AMENDED]
- Subchapter 35. Revenue Bond and Note Issuance
  - 725:15-35-1. Authority [AMENDED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.

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June 11, 2006

**SUPERSEDED EMERGENCY ACTION:**

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**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Sections 725:15-3-3 and 725:15-3-4 have been amended to conform with the current operating procedures of the Oklahoma Tourism and Recreation Department.

Section 725:15-9-2 has been amended to revise the Oklahoma Tourism and Recreation Department's anti-discrimination statement.

Sections 725:15-17-1 and 725:15-17-2 have been amended to create a consistent policy regarding pets in facilities operated by the Oklahoma Tourism and Recreation Department.

Sections of Subchapter 19 have been amended to conform to statutory changes.

Sections of Subchapter 27 have been amended to conform to statutory changes.

Sections of Subchapter 29 have been amended to conform to statutory changes and to update the contact information for the Oklahoma Tourism and Recreation Department.

Sections of Subchapter 31 have been amended to create a consistent refund policy across all divisions of the Oklahoma Tourism and Recreation Department.

Sections of Subchapter 33 have been amended to conform to statutory changes.

Sections of Subchapter 35 have been amended to conform to statutory changes.

**CONTACT PERSON:**

Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

# Permanent Final Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:

## SUBCHAPTER 3. ACCEPTANCE OF CHECKS

### 725:15-3-3. Acceptance of checks

(a) Personal checks may be accepted as payment for goods and services in the amount of purchase. A personal check must be drawn by the person making the purchase, payable to the facility, dated the day of the sale.

(b) ~~Payroll and company~~ Company checks may be accepted for an amount not to exceed \$50.00 more than the purchase. Acceptance of these checks must be approved by the facility manager or ~~superintendent~~ designee.

### 725:15-3-4. Cashing of checks

Facilities do not maintain sufficient funds to cash checks, therefore no checks will be cashed for anyone other than an overnight guest of a park or lodge. The overnight guest may cash one personal check not to exceed \$50.00 with the approval of the facility manager, ~~or superintendent~~, or designee. Each check cashed will be noted on the guest folio or registration ticket.

## SUBCHAPTER 9. UNIFORM PERSONNEL STANDARDS AND PRACTICES

### 725:15-9-2. Standards and practice

(a) It is the policy of the Oklahoma Tourism and Recreation Commission to adhere to the principles of the Oklahoma Merit System of Personnel Administration in employment practices.

(b) The Executive Director shall be responsible and have the authority for the administration and maintenance of Personnel Department Policies and Operating Procedures which shall apply to all department positions. Responsibility and authority to appoint, promote, transfer, demote, suspend, discipline and separate personnel is vested in the Executive Director who may delegate responsibilities as necessary for the implementation of this policy

(c) The Oklahoma Department of Tourism and Recreation shall not favor or discriminate against any person/employee in recruitment, examination, appointment, training, promotion, retention, discipline, separation or any other aspect of personnel administration because of ~~race, color, creed, sex, national origin, age, political or religious affiliations, or physical handicap~~ race, color, sex, age, national origin, creed, political affiliation, sexual orientation, religion, opinion or disability, so long as the physical handicap does not prevent or render the employee less able to do the work for which they are employed. It is further the policy of the Commission to comply fully with

the nondiscrimination provisions of all Federal and State laws, regulations and executive orders relating thereto.

(d) ~~The department~~ Department shall establish and maintain a Personnel Operations Manual which will implement Commission and Merit System policy and other approved procedures relating to personnel administration.

## SUBCHAPTER 17. PETS ON PREMISES 725:15-17-1.PURPOSE

### 725:15-17-1. Purpose

The purpose of this Subchapter is to establish policy and procedure to provide guidelines regarding pets in ~~Parks and Lodge areas~~ facilities operated by the Oklahoma Tourism and Recreation Department.

### 725:15-17-2. Restrictions

(a) The following activities are prohibited in any facility within the State Park System:

(1) No person shall bring a dog or pet into, permit a pet to enter or remain, or possess a pet in the State Park System unless said animal is leashed (not to exceed 10 feet or 3.0 meters), caged, confined in a vehicle, or otherwise restrained, so as to be under direct physical control of a person, (verbal control not implied).

~~(2) Any vicious dog found loose in any State Park or Recreation Area, or which may be chasing or running game in the State Park System, may be destroyed in conformance with 74 O.S., Section 4846.1 2217.~~

~~(23) No person shall bring a pet into, permit a pet to enter or remain, or possess any pet on any swimming pool or controlled beach area, public building or any area or structure closed to the possession of pets by the park manager. Nor will any pet be allowed to swim at, or around any marina or fishing dock under the jurisdiction of the State Park System.~~

~~(34) No person shall bring a dog into, permit to enter or remain or possess in the State Park System unless the person can present proof that the said dog has a current, valid rabies inoculation.~~

~~(45) No person shall keep a noisy, vicious, or otherwise dangerous animal, or one which is disturbing to other persons in the State Park System and allow said animal to remain therein if directed by any Park Official to remove said animal.~~

~~(56) (1) and (2) of this Section shall not apply to a "Seeing Eye" dog used to guide a blind person, while using State Park facilities, providing that said dog shall remain under the immediate control of said blind person. Leaving a pet unattended which may result in harm to the pet.~~

~~(67) No pets will be permitted in the main portion of any lodge. Managers should encourage guests who do not wish to pen up their pets to accept a cottage in place of Lodge sleeping rooms. At least four cottages should be identified and used for guests who have pets.~~

(b) In park areas where hunting has been permitted, dogs may be used to support such activities in accordance with state law and any condition which may be established by the park manager [74: 2217].

(c) Pets or feral animals that are running-at-large or observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other natural resources.

(d) Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or destroyed if after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(e) Pets may be kept by residents of park areas consistent with the provisions of this section and in accordance with conditions which may be established by the park manager.

(f) This section does not apply to guide dogs accompanying visually or hearing impaired persons or dogs used by enforcement officers in the performance of their official duties.

**SUBCHAPTER 19. OKLAHOMA TOURISM AND RECREATION PRODUCT DEVELOPMENT, PROMOTION, AND EVENTS FUNDING CRITERIA**

**725:15-19-1. Purpose and authority**

This program which makes grants and matching funds available to communities, associations and organizations is intended to encourage the sponsoring of events, promotions and product development which will enhance tourism and recreation opportunities in Oklahoma. The criteria described provides an objective approach to distribution of funds. The overall program will only be in effect during those years in which the legislature provides funding to the Oklahoma Tourism and Recreation Department for this purpose. The rules of this subchapter are promulgated under the authority of 74 O.S. § ~~1803 2202~~, ~~Executive Order 88-16~~, Oklahoma Tourism and Recreation Commission.

**SUBCHAPTER 27. PROMOTION OF FACILITIES**

**725:15-27-1. Purpose**

The purpose of this Subchapter is to establish guidelines for the application of statutory authority for promotion of ~~department~~ Department facilities in a manner considered acceptable in the hospitality industry [74:~~1834~~ 2221].

**SUBCHAPTER 29. OKLAHOMA TODAY MAGAZINE**

**PART 1. GENERAL PROVISIONS**

**725:15-29-2. Fee authority**

Fees described in this Subchapter will be approved by the Oklahoma Tourism and Recreation Commission ("the Commission"). The Commission shall prescribe rates, fees, tolls or charges for the services, facilities and commodities rendered by all property of the Commission. [74:~~1847.1(A)(12)~~ 2220(A)].

**PART 3. MAGAZINE SALES**

**725:15-29-10. Establishing rates**

(a) The Executive Director and the publisher of Oklahoma Today magazine shall periodically review the rates for the magazine.

(b) Such rates will be based upon the following:

(1) The amount determined that will result in improved financial condition of Oklahoma Today magazine; and,

(2) The price prevailing for similar regional magazines.

(c) Oklahoma Today magazine will maintain printed rate information to be made available upon request. Requests may be made as follows:

(1) Telephone requests may be made by calling ~~405/521-2496~~ 405.230.8452.

(2) Written requests may be mailed to Oklahoma Today magazine, P.O. Box 53384, Oklahoma City, Oklahoma, 73152-9971.

**725:15-29-11. Application of rates and discounts**

Every person shall be charged the same rate for single issue or subscription purchases of Oklahoma Today magazine except:

(1) when discounted for promotional purposes as outlined in OAC 725:15-29-4 and in accordance with 74 O.S., Section ~~1813(A)(12)~~ 2230(A)(11) or,

(2) when specifically directed by legislative action.

**PART 5. RESALE MERCHANDISE**

**725:15-29-20. Establishing prices**

(a) The Executive Director and the publisher of Oklahoma Today magazine shall periodically review the prices for all resale items regularly advertised in the magazine.

(b) Such rates will be based upon the following:

(1) The amount determined that will result in improved financial condition of Oklahoma Today magazine; and,

(2) The price prevailing for similar products in the State of Oklahoma.

(c) Oklahoma Today magazine will maintain printed rate information to be made available upon request. Requests may be made as follows:

(1) Telephone requests may be made by calling ~~405/521-2496~~ 405.230.8452.

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(2) Written requests may be mailed to Oklahoma Today magazine, P.O. Box 53384, Oklahoma City, Oklahoma, 73152-9971.

## **725:15-29-21. Application of prices, discounts and specials**

Every person shall be charged the same price for single issue or subscription purchases of Oklahoma Today magazine except:

- (1) when discounted for promotional purposes as outlined in OAC 725:15-29-4 and in accordance with 74 O.S., Section ~~1813(A)(12)~~ 2230(A)(11); or,
- (2) when specifically directed by legislative action; or,
- (3) when it is determined by the publisher of Oklahoma Today magazine that discounts should be offered to allow for the liquidation of seasonal items in a timely manner.

## **PART 7. CREDIT**

### **725:15-29-32. Terms and payment of credit accounts**

(a) Terms and payments for entities, individuals and/or businesses purchasing advertising space in Oklahoma Today magazine will be made using one of the following methods:

(1) Payments will be made as described in the billing schedule published in Oklahoma Today magazine's media guide. A copy of the media guide may be requested as follows:

(A) Telephone requests may be made by calling ~~405/521-2496~~ 405.230.8452.

(B) Written requests may be mailed to Oklahoma Today magazine, P.O. Box 53384, Oklahoma City, Oklahoma, 73152-9971.

(2) Payment for purchase of advertising on credit must be paid in full within 90 days of publishing date unless the publisher of Oklahoma Today magazine or the Chief Financial Officer authorizes special terms.

(b) Failure to pay credit accounts in full in accordance with approved terms will result in revocation of the credit account. No further credit will be approved unless specifically authorized by the Executive Director.

## **SUBCHAPTER 31. REFUNDS**

### **PART 3. STATE PARKS**

#### **725:15-31-11. Refunds for advance payment**

(a) Cash refunds may be made when a guest has occupied state park accommodations and chooses to vacate the facility due to unsuitable conditions prior to their planned departure and has paid for accommodations in advance. Inoperable utilities, pest infestation or personal emergencies are examples of conditions warranting a refund.

(b) A cash refund may be made locally at the facility's discretion for refunds not greater than One Hundred Dollars (\$100.00).

(c) Refunds greater than One Hundred Dollars (\$100.00) up to Five Hundred Dollars (\$500.00) will be made in the form of a check issued by the facility.

(d) Refunds greater than Five Hundred Dollars (\$500.00) will be made in the form of a check issued by the Department's administrative offices in Oklahoma City, unless prior approval has been granted by the Chief Financial Officer of designee.

~~(de)~~ No refunds will be made if comparable state park accommodations are made available to the guest in lieu of the unsuitable accommodations.

~~(ef)~~ Such determination of conditions and whether comparable state park accommodations are available shall be made by the facility manager.

### **PART 5. GOLF COURSES**

#### **725:15-31-21. Refunds for green fees and cart rental**

(a) Refunds for golf course green fees and cart rental may be made when an individual cannot play the number of holes for which fees were paid using one of the following methods:

(1) A cash refund may be made locally at the facility's discretion for refunds not greater than One Hundred Dollars (\$100.00).

(2) Refunds greater than One Hundred Dollars (\$100.00) up to Five Hundred Dollars (\$500.00) will be made in the form of a check issued by the facility.

(3) Refunds greater than Five Hundred Dollars (\$500.00) will be made in the form of a check issued by the department's administrative offices in Oklahoma City, unless prior approval has been granted by the Chief Financial Officer or designee.

(b) Golf course managers reserve the right to prorate the amount of a refund based upon the number of holes played.

### **PART 7. STATE LODGES**

#### **725:15-31-32. Refunds for purchase of merchandise from gift shops**

Refunds for lodge gift shop purchases may be made upon return of merchandise accompanied by the original sales receipt using one of the following methods:

(1) A refund not greater than One Hundred Dollars (\$100.00) may be made locally at the facility's discretion in the form of cash.

(2) A refund greater than One Hundred Dollars (\$100.00) up to Five Hundred Dollars (\$500.00) will be made in the form of a check issued by the facility.

(3) A refund greater than Five Hundred Dollars (\$500.00) will be made in the form of a check issued by the Department's administrative offices in Oklahoma City, unless prior approval has been granted by the Chief Financial Officer or designee.

**SUBCHAPTER 33. OKLAHOMA TOURISM DEVELOPMENT ACT TAX CREDIT PROGRAM**

**725:15-33-1. Necessity, function, and conformity**

68 O.S. Supp. ~~2000~~ 2005, § 2357.37 requires that the Director, with approval of the Oklahoma Tourism and Recreation Commission, shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction projects or film or music production and development facility project by the promulgation of rules in accordance with the Administrative Procedures Act.

**725:15-33-2. Definitions**

(a) "Agreement" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means an agreement entered into pursuant to Section 2357.39 of Title 68 of the Oklahoma Statutes, by and between the Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project or film or music production and development facility project.

(b) "Approved company" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means any eligible company that is seeking to undertake a tourism attraction or film or music production and development facility project and is approved by the Director pursuant to Sections 2357.38 and 2357.39 of Title 68 of the Oklahoma Statutes.

(c) "Approved costs" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means:

(1) obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project.

(2) the costs of acquiring real property or rights in real property in connection with a tourism attraction project or film or music production and development facility project, and any costs incidental thereto.

(3) the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project which is not paid by the vendor, supplier, contractor, or otherwise provided.

(4) all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project.

(5) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project.

(6) all costs required for the installation of utilities in connection with a tourism attraction project or film or music production and development facility project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and

(7) all other costs comparable with those described in this paragraph.

(d) "Director" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means the Director of the Oklahoma Tourism and Recreation Department or the Director's designated representative.

(e) "Eligible company" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project or undertake film or music production and development facility project, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to Section 2357.37 of Title 68 of the Oklahoma Statutes.

(f) "Final approval" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means the action taken by the Director authorizing the eligible company to receive inducements under Section 2357.40 of Title 68 of the Oklahoma Statutes.

(g) "Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourist attraction or for purposes of a film or music production and development facility project for any monthly sales tax reporting period after the approved company provides the certification required by subsection B of Section 2357.40 of this title, which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification

(gh) "Inducements" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means the income tax credit or sales tax credit as prescribed in Section 2357.40 of Title 68 of the Oklahoma Statutes.

(hi) "Preliminary approval" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means the action taken by the Director conditioned upon final approval by the Director upon satisfaction by the eligible company of the requirements of the Oklahoma Tourism Development Act.

(ij) "Tourism Attraction" ~~is defined in 68 O.S. Supp. 2000, § 2357.36~~ means a cultural or historical site; a recreational or entertainment facility; an area of natural phenomenon or scenic beauty; a theme park; an amusement or entertainment park; an indoor or outdoor play or music show; a botanical garden, or a cultural or educational center. A tourism attraction shall not include:

(1) lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project.

(2) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the

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tourism attraction project or if the sale of goods is incidental to the tourism attraction project.

(3) facilities that are not open to the general public,

(4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project.

(5) facilities owned by the State of Oklahoma or a political subdivision of this state, or

(6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

(jk) "Tourism attraction project" or "project" is defined in 68 O.S. Supp. 2000, § 2357.36 means the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction or film or music production and development facility, and the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction or film or music production and development facility, including, but not limited to:

(1) surveys, and

(2) installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located.

### **725:15-33-3. Standards for preliminary approval**

When submitting a written request is submitted to the Director for consideration of preliminary approval of the eligible company and its tourism attraction project, the Director shall base approval of the request upon the information in the application, recommendations from staff and advisory review committees, and any written or oral communications with the eligible company.

### **725:15-33-4. Oklahoma Tourism Development Act Tax Credit Program application**

(a) An eligible company wishing to participate in the Oklahoma Tourism Development Act Tax Credit Program shall file three (3) copies of an application with the Director. If the application does not contain all information and materials identified below it shall be returned to the applicant and will not be considered.

(b) The following information and materials shall be submitted as a part of the application:

(1) Eligible company name, address, phone and telefax numbers, contact person and federal employer tax identification number;

(2) Location of tourism attraction project or film or music production and development facility project;

(3) Form of organization of eligible company;

(4) Previous participation of eligible company in Oklahoma tax incentive programs;

(5) Ownership of eligible company;

(6) Bankruptcy history of eligible company;

(7) Governmental denial, suspension or revocation of licenses of eligible company;

(8) Attorney for eligible company, including address, phone and telefax numbers;

(9) Contact person of bank for eligible company, including address, phone and telefax numbers and contact person;

(10) Accountant for eligible company, including address, phone and telefax numbers;

(11) Tourism attraction project or film or music production and development facility project description;

(12) Eligible company ownership or leasing of tourism attraction project or film or music production and development facility project;

(13) Estimated tourism attraction project or film or music production and development facility project costs;

(14) Proposed sources of financing tourism attraction project or film or music production and development facility project;

(15) Contractor for tourism attraction project or film or music production and development facility project, including address, phone and telefax numbers and contact person;

(16) The total number of jobs projected upon completion of and within two (2) years after completion of the tourism attraction project or film or music production and development facility project;

(17) Five (5) year history of attendance at tourism attraction project or film or music production and development facility project for an expansion;

(18) Five (5) year attendance projections for tourism attraction project or film or music production and development facility project;

(19) Months of the year during which the tourism attraction project or film or music production and development facility project is open;

(20) Marketing plans and media type to be used for the tourism attraction project or film or music production and development facility project, including five (5) year proposed advertising budget;

(21) Value of Oklahoma tangible property before and after completion of the tourism attraction project or film or music production and development facility project;

(22) Ten (10) year estimate of tourism attraction project or film or music production and development facility project payroll;

(23) Estimated federal and state income tax liability of eligible company for first ten (10) fiscal years of the eligible company after commencement of operations of the tourism attraction project or film or music production and development facility project;

(24) Estimated state sales tax liability of eligible company for first ten (10) fiscal years of the eligible company after commencement of operations of the tourism attraction project or film or music production and development facility project;

(25) If the tourism attraction project or film or music production and development facility project is an expansion, federal and state income tax liability of eligible company for the past three (3) fiscal years;

(26) Ten (10) year estimated revenue of eligible company subject to Oklahoma income tax from the tourism attraction project or film or music production and development facility project; and

(27) Ten (10) year estimated additional revenue the tourism attraction project or film or music production and development facility project will generate to the community.

(28) Type of tax credit desired.

(29) A signed and dated Certification of Application.

**725:15-33-5. Final Approval**

The Director shall provide his/her final approval required by Title 68 O.S. Supp. ~~2000~~ 2005, § 2357.38 based upon:

(1) The eligible company's satisfaction of statutory requirements of Title 68 O.S. Supp. ~~2000-2005~~, § 2357.34 to 2357.40;

(2) The findings of the consultants report required by paragraph C of Title 68 O.S. Supp. ~~2000~~ 2005, § 2357.37; and

(3) The application submitted to the Director under Section 3(2) of this administrative regulation, and written and oral communications with the eligible company.

**725:15-33-6. Application form**

(a) The "Application for the Oklahoma Tourism Development Act Income Tax Credit Program (11/2000)" is incorporated by reference.

(b) A copy of the form of application may be inspected, copied or obtained at the Oklahoma Tourism and Recreation Department, ~~15 N. Robinson, Suite 100, 1st Floor Coleord Building, Oklahoma City, Oklahoma~~ 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma, between 8 a.m. and 4:30 p.m., Monday through Friday.

**SUBCHAPTER 35. REVENUE BOND AND NOTE ISSUANCE**

**725:15-35-1. Authority**

The Oklahoma Tourism and Recreation Commission may make and issue notes and bonds, and pledge revenues of the Department and funds as may be provided by law for such payments pursuant to the provisions contained in Sections ~~4881~~

~~2271~~ through ~~4886~~ 2276 Title 74 of the Oklahoma Statutes for furtherance of its lawful purposes.

[OAR Docket #06-826; filed 5-4-06]

**TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
CHAPTER 20. MARKETING SERVICES  
OPERATION**

[OAR Docket #06-827]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

725:20-1-2. Fee authority [AMENDED]

Subchapter 9. Brochure Charges

725:20-9-5. Establishing fees [AMENDED]

725:20-9-6. Application of fees, discounts and waivers [AMENDED]

Subchapter 11. Promotional Items Fees

725:20-11-3.1. Establishing fees [AMENDED]

Subchapter 13. Traveler Information Centers

725:20-13-1. Purpose [AMENDED]

725:20-13-2. State Capitol tours [AMENDED]

725:20-13-3. Special events [AMENDED]

725:20-13-4. Setting hours of operation [AMENDED]

725:20-13-5. Smoking [AMENDED]

725:20-13-6. Pets on premises [AMENDED]

725:20-13-7. Abandoned vehicles [AMENDED]

725:20-13-8. Soliciting [AMENDED]

725:20-13-9. Alcoholic beverages and controlled substances [AMENDED]

725:20-13-10. Commercial use of ~~Traveler~~ Traveler Tourism Information Centers [AMENDED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 17, 2006 - February 22, 2006

**Public hearing:**

February 22, 2006

**Adoption:**

February 27, 2006

**Submitted to Governor:**

February 28, 2006

**Submitted to House:**

February 28, 2006

**Submitted to Senate:**

February 28, 2006

**Gubernatorial approval:**

April 6, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2006.

**Final adoption:**

April 26, 2006

**Effective:**

June 11, 2006

**SUPERSEDED EMERGENCY ACTION:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Section 725:20-1-2 has been amended to conform to the statutes governing the operation of the Oklahoma Tourism and Recreation Department.

Sections of Subchapter 9 have been amended to conform to the Oklahoma Tourism and Recreation Department's current organizational structure and to update contact information.

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Section 725:20-11-3.1 has been amended to update contact information.

Sections of Subchapter 13 have been amended to conform to statutes governing the Oklahoma Tourism and Recreation Department and to update contact information.

## CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 725:20-1-2. Fee authority

Fees described in this Chapter will be approved by the Oklahoma Tourism and Recreation Department ("the Department") and Commission ("the Commission"). The Commission shall prescribe rates, fees, tolls or charges for the services, facilities and commodities rendered by all property of the Commission. ~~[74:1847.1(A)(12)]~~ [74:2220(A)]

## SUBCHAPTER 9. BROCHURE CHARGES

### 725:20-9-5. Establishing fees

(a) The Executive Director and the Director of ~~travel~~ Travel and Tourism shall periodically submit proposed fees to the Commission for approval.

(b) Such fees will be based upon the cost of producing brochures.

(c) The Division of Travel and Tourism will maintain fee information to be made available upon request. Requests may be made as follows:

(1) Telephone requests may be made by calling ~~405/521-2406~~ 405.230.8400.

(2) Written requests may be mailed to Division of ~~Travel and Tourism, 2401 North Lincoln Boulevard, Suite 505, Oklahoma City, Oklahoma 73105-4492~~ 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102.

### 725:20-9-6. Application of fees, discounts and waivers

(a) Every person shall be charged the same fee for brochures except:

(1) Individual persons seeking tourist information. Persons may receive quantities of brochures up to 25 of any one item, once annually, without charge for the brochures.

(2) Any tourism-related company, organization or individual may receive Department brochures free of charge within the quantity approved by the Director of the Travel and Tourism Division or ~~the Assistant Director of the Travel and Tourism Division~~ designee.

(b) Oklahoma State government agencies may be exempt from brochure charges with approval of the Director of the Travel and Tourism Division or ~~Assistant Director of the Travel and Tourism Division~~ designee and if the use of brochures is determined to promote Oklahoma tourism.

(c) Any company, organization or individual may be exempt from the brochure or freight/postage charges if they are involved in a direct promotional effort with the Department.

(d) All organizations, companies or individuals shall be charged for freight/postage of all bulk orders unless exempted in (c) of this Section.

## SUBCHAPTER 11. PROMOTIONAL ITEMS FEES

### 725:20-11-3.1. Establishing fees

(a) The Executive Director and Director of Travel and Tourism shall periodically submit proposed fees to the Commission for approval.

(b) Such fees will be based upon the following considerations:

(1) Cost of items produced.

(2) Distribution costs.

(c) The Division of Travel and Tourism will maintain printed fee schedules to be made available upon request. Requests may be made as follows:

(1) Telephone requests may be made by calling ~~405/521-2406~~ 405.230.8400.

(2) Written requests may be mailed to Division of ~~Travel and Tourism, 2401 North Lincoln Boulevard, Suite 505, Oklahoma City, Oklahoma 73105-4492~~ 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102.

## SUBCHAPTER 13. TRAVELER TOURISM INFORMATION CENTERS

### 725:20-13-1. Purpose

The purpose of this Subchapter is to establish policies for Traveler Tourism Information Centers operated by the Division of Travel and Tourism.

### 725:20-13-2. State Capitol tours

Tours of the State Capitol may be arranged through the ~~Capitol Information Center~~ Travel and Tourism Division as follows:

(1) Telephone requests may be made by calling ~~405/521-3356~~ 405.230.8400.

(2) Written requests may be mailed to ~~State Capitol Information Center, 1st Floor Rotunda, State Capitol Building, Oklahoma City, Oklahoma 73105~~ Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102.

**725:20-13-3. Special events**

- (a) The Department may authorize use of Traveler Tourism Information Centers for special events.
- (b) Authorization will be granted only if there is a meaningful association between tourism, the Traveler Tourism Information Center and the event.
- (c) Requests for authorization to use a Traveler Tourism Information Center for a special event must be submitted in writing to the Division of Travel and Tourism, 2401 North Lincoln Boulevard, Suite 505, Oklahoma City, Oklahoma 73105-4492 120 North Robinson, Suite 600, Oklahoma City, Oklahoma 73102.

**725:20-13-4. Setting hours of operation**

- (a) The Executive Director or the Director of Travel and Tourism will periodically approve and appropriately publish hours of operation for Traveler Tourism Information Centers.
- (b) Hours of operation will be based upon the following considerations:
  - (1) Seasonal travel patterns
  - (2) Available staff
- (c) The hours of operation will be posted at each Traveler Tourism Information Center.
- (d) A printed schedule of hours of operation will be made available upon request. Requests may be made as follows:
  - (1) Telephone requests may be made by calling 405/521-2406 405.230.8400.
  - (2) Written requests may be mailed to Division of Travel and Tourism, 2401 North Lincoln Boulevard, Suite 505, Oklahoma City, Oklahoma 73105-4492 120 North Robinson, Suite 600, Oklahoma City, Oklahoma 73102.

**725:20-13-5. Smoking**

- (a) Guidelines regarding smoking at Traveler Tourism Information Centers will be established in accordance with the Smoking in Public Places Act. [63:1-1521 et seq.]
- (b) Areas will be designated "smoking" and "no smoking" and appropriately posted as such.

**725:20-13-6. Pets on premises**

- (a) Pets will not be permitted in Traveler Tourism Information Center buildings, except for guide animals accompanying disabled persons.
- (b) Visitors may exercise pets in areas designated for that purpose, however, pets should not be allowed to roam freely on the grounds.

**725:20-13-7. Abandoned vehicles**

- (a) Motor vehicles left unattended in a Traveler Tourism Information Center parking lot for more than 72 hours will be considered to be abandoned.
- (b) Abandoned motor vehicles will be impounded in accordance with state law.

**725:20-13-8. Soliciting**

- The following is prohibited in or on the grounds of Traveler Tourism Information Centers:
- (1) Soliciting or demanding gifts, money, goods or services.
  - (2) Selling, hawking, peddling any goods, wares, merchandise, liquids, edibles or any item of value unless authorized by the Oklahoma Tourism and Recreation Commission.

**725:20-13-9. Alcoholic beverages and controlled substances**

- (a) Possession or consumption of alcoholic beverages is prohibited in Traveler Tourism Information Centers, except for special events as approved by the Director of Travel and Tourism.
- (b) Possession of a controlled substance, unless such substance was obtained by the possessor directly or pursuant to a valid prescription from a practitioner acting in the course of professional practice allowed by state law ~~[63:2-419]~~, is prohibited in Traveler Tourism Information Centers.

**725:20-13-10. Commercial use of Traveler Tourism Information Centers**

- (a) ~~Commercial use of space.~~ The Commission may authorize the Division of Travel and Tourism to enter into agreements for commercial use of space in a traveler tourism information center for advertising. Examples of appropriate commercial use of space are interactive video displays, printed promotional materials, interactive hotel/motel reservations equipment, etc.
- (b) ~~Setting fees for commercial use of space.~~ Upon approval of the Commission to enter into agreements for commercial use of space, rates shall be set in one of the following manners:
  - (1) Printed promotional materials. The Executive Director and the Director of Travel and Tourism shall periodically approve and appropriately publish a schedule of fees for printed promotional materials.
  - (2) Other commercial use fees. Agreements for other types of commercial use will be awarded by competitive bid. The Division of Travel and Tourism reserves the right to award bids to multiple vendors.
- (c) ~~Discounts and waivers.~~ All organizations, companies, individual and other entities will be charged the same fees except:
  - (1) Fees may be waived or discounted for organizations, companies, individuals and other entities involved in promotional efforts of the Travel and Tourism Division of the Department.
  - (2) The Commission, Executive Director, or the Director of Travel and Tourism may waive any fees or charges when promotional effort is deemed in the best interest of the department.
  - (3) The Director of the Travel and Tourism Division of the Oklahoma Tourism and Recreation Department may authorize discounts when it is deemed in the best interest of the Division ~~of~~ or Department.

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(4) State and federal governmental agencies and non-profit organizations may be exempted from fees charged for commercial advertising displays.

[OAR Docket #06-827; filed 5-4-06]

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 20. MARKETING SERVICES OPERATION

[OAR Docket #06-828]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Reimbursement of Matching Funds to Multicounty Organizations

725:20-7-1. Definition of multicounty organization; directors [AMENDED]

725:20-7-2. Definition of matching funds; limitations [AMENDED]

725:20-7-3. Tourism marketing plan; budget work program [AMENDED]

725:20-7-4. Allocation of matching funds among multicounty organizations [AMENDED]

725:20-7-5. Allowable expenditures [AMENDED]

725:20-7-6. Administrative expenditures [AMENDED]

725:20-7-7. Tourism promotion expenditures [AMENDED]

725:20-7-9. Independent and certified audit [AMENDED]

### AUTHORITY:

Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.

### DATES:

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Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2006.

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#### SUPERSEDED EMERGENCY ACTION:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

Section 725:20-7-1 has been amended to update the definition of a multicounty organization.

Section 725:20-7-2 has been amended to update language within the rule.

Section 725:20-7-3 has been amended to require a multicounty organization to place a minimum of \$10,000.00 of media advertising with outlets that are outside of the multicounty's area. The amendments also reorganize the parts of the rule to make the rule easier to understand.

Section 725:20-7-4 has been amended to require a multicounty to raise a minimum of \$50,000 before the organization is eligible to participate in the program. Additionally, the rule has been amended to limit the amount any one organization may receive during an allocation of appropriated dollars.

Section 725:20-7-5 has been amended to revise the definition of an allowable expenditure.

Section 725:20-7-6 has been amended to reduce the amount of administrative costs that are reimbursable under the multicounty matching funds program.

Section 725:20-7-7 has been amended to revise the publications and activities of a multicounty organization that qualify as tourism promotion expenditures and to require a specific format for a multicounty's budget work program.

Section 725:20-7-9 has been amended to require a multicounty to correct all shortcomings identified in an audit before the organization is eligible for funding.

#### CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 7. REIMBURSEMENT OF MATCHING FUNDS TO MULTICOUNTY ORGANIZATIONS

### 725:20-7-1. Definition of multicounty organization; directors

(a) A multicounty organization is:

(1) A non-profit association, registered with Oklahoma's Secretary of State, whose primary purpose is to promote the tourism attributes of a multiple-county region in Oklahoma and, is identified as a tourism "country" or "lake" association; ~~or, any other such organization participating in the matching funds program as of July 1, 2001.~~

(2) An association that is governed by a board of directors who equitably represent the counties comprising the multiple-county region. Directors shall reside or work in the county they represent.

(3) An association whose directors are elected by the organization's membership.

(4) An association that maintains an administrator of operations who is not an elected director.

(5) An association that utilizes income from private sector sources as the basis for funding administrative and promotion expenses. ~~(A) Private sector funds are revenues solicited and received by a multicounty organization for purposes of administering and implementing the organization's program of tourism marketing and promotion. Methods for generating such income are: membership dues, advertising sales in the organization's periodic promotional publication(s), participation in media advertising planned and implemented by the association and, net income from a public entertainment event that is planned, managed and promoted by the association.~~

(6) An association that has provided to the Department an independent and certified financial ~~related~~ audit for the immediate preceding fiscal year.

(7) With the exception of those organizations not identified as "country" or "lake" associations participating in the program on July 1, 2001, not more than one organization representing a recognized "country" region or "lake" area shall be eligible to receive matching funds.

(b) Directors shall not receive remuneration, reimbursement, or anything of value from the association for themselves or for business operations in which a director or immediate family member is a principal or an employee, except for: travel expenses not to exceed the State Travel Act; familiarization tour costs for lodging and meals when paid to the lodging and restaurant owner who is a director; and, rent of office facilities.

**725:20-7-2. Definition of matching funds; limitations**

(a) Matching funds are funds appropriated by the Legislature, and administered by the Tourism and Recreation Department, for the reimbursement of expenditures by qualified multicounty organizations for allowable administrative expenditures and ~~expenditures~~ expenditures for allowable tourism promotion expenditures conducted by the multicounty organization.

(b) Limitations to the amount of matching funds that any multicounty organization may receive are contingent upon:

- (1) the total amount appropriated each year by the Legislature;
- (2) the amount of allowable expenditures by a multicounty organization;
- (3) the number of eligible multicounty organizations; and,
- (4) an organization's compliance with rules governing the program.

**725:20-7-3. Tourism marketing plan; budget work program**

(a) Each multicounty organization shall prepare a tourism marketing plan, which shall include a budget work program, for the ensuing fiscal year. The tourism marketing plan shall specify:

- (1) ~~The marketing plan shall specify which~~ Which multicounty region of the state the multicounty organization represents and the tourism attributes of the region.
- (2) Target markets and the method(s) of communication that will be employed to reach the targeted markets shall be identified.
- (3) ~~The budget work program shall specify the~~ The projected cost of each method of promotion.
- (4) Evaluative measures of the multicounty organization's marketing and promotion ~~methods shall be an element of the marketing plan,~~ The measures shall be designed to enable the multicounty organization to gauge whether a promotion/marketing effort reached the identified target market(s) and how many inquiries to the multicounty organization resulted from the promotion/marketing effort. ~~and the~~ The results shall be submitted to the Department as a supplemental report with the annual independent audit.

~~(5) The measures shall be designed to enable the multicounty organization to gauge whether a promotion/marketing effort reached the identified target market(s) and how many inquiries to the multicounty organization resulted from the promotion/marketing effort.~~

~~(65)~~ The marketing plan shall be specific as to how How the multicounty organization plans to attract travelers/visitors/tourists to the region comprised of the multiple counties.

~~(7b)~~ The tourism marketing plan shall not be an individual business, community, or county plan.

~~(8c)~~ A multicounty organization's marketing shall complement the ~~state~~ State of Oklahoma's tourism marketing plan in the following regards:

~~(A1)~~ Target markets shall be identified and all marketing/promotion shall be placed in such a manner as to effectively reach the targeted markets;

~~(B2)~~ Media advertising/communication shall be employed to project an image of the multicounty region and to pull inquiries for more specific or comprehensive information about the area, events, or attractions;

~~(C3)~~ Produce specific and comprehensive information about the multicounty region's tourism attributes;

~~(D4)~~ Distribute information to those who inquire, as well as to unsolicited potential travelers/visitors/tourists, and at travel and trade shows; and,

~~(E5)~~ Evaluate the multicounty organization's marketing/promotion methods to determine effectiveness.

~~(bd)~~ Each multicounty organization shall submit its marketing plan, which includes a budget work program for the ensuing fiscal year to the Tourism and Recreation Department not later than May 20, each year.

~~(ee)~~ Expenditures for obligations incurred before the Tourism and Recreation Commission approves a multicounty organization's plans and budget, and expenditures not in accordance with a multicounty organization's marketing plan shall not be reimbursable expenditures. Amendments to marketing plans may be submitted during the current fiscal year and are subject to approval by the Oklahoma Tourism and Recreation ~~Department~~ Commission.

~~(df)~~ A multicounty organization's marketing plan shall be structured to:

(1) ~~Coordinate~~ Integrate the association's tourism marketing and promotion with the Department's tourism marketing;

(2) Participate and cooperate with the Department in identifying ~~all~~ historical, scenic and recreational attractions and events in the multicounty organization area;

(3) ~~Participate and cooperate with the Department in exhibiting~~ at travel/trade shows by exhibiting at a minimum of one (1) travel/trade show;

(4) Participate and cooperate with the Department in developing and distributing brochures, news and publicity materials which promote area attractions and tourism-related activities by budgeting for the production of a periodic promotional publication an amount equal to a minimum of thirty percent (30%) of the amount of matching funds allocated to the multicounty organization;

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(5) Participate and cooperate with the Department in identifying marketing areas for the purpose of placing media advertising that promotes area attractions and tourism-related activities;

(6) Participate and cooperate with the Department in the development of print media, radio and television spots to be utilized for paid and public service announcements and contract for and place a minimum of ~~one ten~~ thousand dollars ~~(\$1,000.00)~~ (\$10,000.00) or higher in media advertising with media whose majority circulation is outside the counties comprising the multicounty organization's area;

(7) Participate and cooperate with the Department in the development of travel industry familiarization tours and international travel markets for the state;

(8) Participate and cooperate with the Department in developing package tours for the purpose of establishing Oklahoma as a destination state; and,

(9) Participate and cooperate with the Department in tourism promotion and advertising programs approved by the Commission.

(eg) A multicounty organization's marketing shall be planned, implemented and administered by the multicounty organization's administrator or staff designated by the association's governing body.

(fh) A multicounty organization shall not subcontract or reassign the responsibilities described without the approval of the Department of Tourism and Recreation.

### **725:20-7-4. Allocation of matching funds among multicounty organizations**

(a) Matching funds appropriated by the Legislature for multicounty organizations shall be allocated among the multicounty organizations who have submitted an acceptable marketing plan and certified audit for the previous fiscal year to the Oklahoma Tourism and Recreation Department. The marketing plan will be considered an application to receive matching funds.

(b) To be eligible to receive matching funds, a multicounty organization must have raised an average of at least fifty thousand dollars (\$50,000.00) in private funds over the three (3) most recent fiscal years.

~~(bc)~~ The amount allocated to a multicounty organization shall be one hundred percent (100%) of the average amount expended, by the multicounty organization over the three (3) most recent fiscal years, for administration and promotion expenses that would have qualified for reimbursement with matching funds, regardless of whether the expenditures were reimbursed. However, no multicounty organization will receive more than twenty-five percent (25%) per allocation of the amount appropriated by the Legislature.

~~(ed)~~ The average amount will be derived from the annual independent audits submitted by a multicounty organization for the most recent three (3) years.

~~(de)~~ If a multicounty organization has not been audited for three (3) consecutive years, its amount of private sector funds raised will be based on the average of the two (2) most recent

years or, if audited for only the immediate past fiscal year, the amount of qualified private sector funds raised during that year.

~~(ef)~~ In the event the appropriated funds are more, or less than the amount necessary to satisfy one hundred percent (100%) of the overall average, then each association will be allocated an amount equivalent to its percentage of the overall average.

~~(fg)~~ If a multicounty organization has not utilized the full amount of its allocation (evidenced by either proof of payment, invoice showing obligated expense, work order, or contract) at least thirty (30) days prior to the end of the fiscal year, the unobligated amount shall be reallocated among the multicounty organizations who stipulate they will be able to utilize matching funds in excess of the amount initially allocated. No multicounty organization shall receive more than twenty-five percent (25%) of the reallocated amount.

### **725:20-7-5. Allowable expenditures**

(a) Expenditures by multicounty organizations are expenditures that are consistent with the definition of Administrative and Promotion expenditures, submitted to the Department of Tourism and Recreation for reimbursement of matching funds.

(b) Allowable administrative expenditures shall be limited to those expenditures specified in the definition of administrative expenditures. An administrative expenditure shall be an expenditure made by the multicounty organization for administering the association's fund raising for tourism promotion.

(c) Allowable tourism promotion expenditures shall be limited to those expenditures specified in the definition of tourism promotion expenditures. A tourism promotion expenditure shall be an expenditure made by the multicounty organization for marketing and promotion conducted by the association. Advertising or promotion of activities that are prohibited by Oklahoma State Law shall not be allowable expenditures.

(d) Allowable expenditures shall be in conformity with the multicounty organization's marketing plan approved by the ~~Tourism Commission~~ Oklahoma Tourism and Recreation Commission.

(e) Paying for marketing, promotion or administrative expenses incurred by, ~~or on behalf of,~~ an individual or entity other than the multicounty organization shall not be an allowable (matchable) expenditure ~~unless previously and specifically authorized by the multicounty organization.~~

### **725:20-7-6. Administrative expenditures**

(a) Administrative expenditures are expenditures by a multicounty organization for the administration of fund raising to accomplish the association's tourism promotion objectives.

(b) Reimbursement of matching funds for administrative expenditures by a multicounty organization shall not exceed ~~forty~~ twenty percent (~~40%~~ 20%) of the total expenditures reimbursed with matching funds.

(c) Administrative expenditures reimbursable with matching funds shall be limited to:

(1) Salaries, payroll taxes, and personal services contracts for the person(s) employed by the multicounty organization to administer/manage the association's fund raising and tourism marketing efforts. Such employee(s)

shall not simultaneously hold a policy making position with the multicounty organization.

(2) Travel expenses not to exceed the amounts provided in the State Travel Reimbursement Act, during the course of administering operations of the multicounty organization.

(3) Rent and utilities, for the operation of an office for the multicounty organization that is located in a facility open to the general public. Matching funds shall not be reimbursed for rent of space in a private residence.

(4) Office supplies, for the normal functions of such an office to administer the operations of the multicounty organization. Durable (non-consumable) office supplies, such as furnishings and machines, and repairs to facilities or equipment, shall not be reimbursed with matching funds.

(5) Telephone and facsimile machine usage costs for administering the operations of the multicounty organization.

(6) Costs of the requisite annual independent audit of the financial operations of the multicounty organization.

(d) The limitation on administrative expenditures applies only to those expenditures submitted for matching with state appropriated funds.

**725:20-7-7. Tourism promotion expenditures**

(a) Tourism promotion expenditures are expenditures by the multicounty organization for tourism marketing planned and conducted by the association.

(1) Tourism promotion expenditures by a multicounty organization reimbursable with matching funds are actual costs for the preparation, printing, publication and distribution of media advertising in:

- (A) brochures;
- (B) travel posters;
- (C) mailing pieces;
- (D) newspapers;
- (E) magazines;
- (F) film and video;
- (G) television;
- (H) radio;
- (I) billboards; and,
- (J) websites.

(2) Brochures, promotion materials and advertisements shall be planned, approved and implemented by the multicounty organization.

(b) Any tourism promotion communication, with the exception of billboards, shall substantially disseminate information or project an image of the relevant multicounty area.

(c) Brochures, direct mail, newspaper advertisements, magazine advertisements, television advertisements, radio advertisements, and websites shall specify how the reader/viewer/listener may inquire of the multicounty organization for comprehensive or particular information about tourism attractions, services, events or attributes of the multicounty organization area.

(1) The multicounty organization shall maintain a record of responses and inquiries that result from the mass communication and media advertising.

(2) The record, at a minimum, shall identify the origin of inquiries and the number of inquiries generated by each communication/advertising method.

(d) Costs of renting exhibit space and displays at travel and trade shows and conventions, and the multicounty organization's expenses for operating such exhibits, not to exceed amounts provided in the State Travel Reimbursement Act. ~~Liability insurance required for boat, sport and travel show participation and promotional events sponsored by the multicounty organization shall be allowable expenditures.~~

(e) Costs of travel writer, travel agent, tour broker and tour operators familiarization tours into the state of Oklahoma, not to contravene the State Travel Reimbursement Act shall be allowable expenditures.

(f) Registration fees for the annual tourism and recreation industry conference shall be allowable expenditures.

(g) Advertising/promotion specialties shall be indicative and representative of the multicounty region's tourism attributes. Items shall be ~~inexpensive~~, not for resale and distributed to target markets.

(h) All tourism promotion expenditures shall be for the purpose of attracting travelers/visitors/tourists into the state of Oklahoma or into the multicounty organization area.

(i) Media advertising (excluding billboards) shall be placed with a medium whose primary circulation is outside the multicounty organization's area.

(j) A newspaper, magazine, television station, or radio station that cannot document by subscription, circulation, viewer or listener ratings that their primary audience is outside the multicounty organization's area shall not qualify as a communication/advertising medium for which matching funds may be reimbursed. However, a multicounty organization may use as much as ~~fifty~~ twenty percent (~~50%~~ 20%) of its total allowable promotion expenditures promoting events and attractions within its region by using local newspapers, radio stations, television stations, brochures or billboards.

(k) There shall be no prohibition upon the location of billboard advertising provided the billboard is along an interstate or state highway.

(l) Matching funds shall not be reimbursed to a multicounty organization for any partisan or political communication or advertising.

(m) Any communication/advertising shall include and utilize the appropriate logo or slogan designated by the Tourism and Recreation Department as the official tourism logo or slogan. The logo shall be prominently displayed on the cover of print publications and, at a minimum, on ten percent (10%) of the publication's pages.

(n) Brochures and periodic promotional publications shall state "produced in cooperation with the Oklahoma Tourism and Recreation Department" and, shall identify the Department as a source of tourism information for the state and include the Department's ~~telephone number, mailing address or website address~~ and/or telephone number.

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(o) Tourism promotion expenditures shall be specified in the multicounty organization's marketing plan and budget work program. The marketing plan shall ~~specify~~ comply with the format provided by the Department.

- (1) ~~"what" will be promoted;~~
- (2) ~~"how" it will be promoted i.e., method or media;~~
- (3) ~~"where" and "to whom" it will be promoted i.e., target market(s) to be reached;~~
- (4) ~~"when" the promotion will be conducted; and,~~
- (5) ~~the projected "cost" of the promotion or particular marketing effort.~~

(p) Tourism promotion expenditures that are reimbursed with matching funds shall be limited to the production of material, communication, advertising, travel/trade show exhibitions and/or hosting of familiarization tours; all conducted by the multicounty organization.

(q) Reimbursement of matching funds to a multicounty organization is expressly prohibited for any endeavor undertaken by, or any expense incurred by, an individual or entity other than the multicounty organization.

## 725:20-7-9. Independent and certified audit

~~(a)~~ Each multicounty organization that receives matching funds shall provide to the Tourism and Recreation Department an audit for the fiscal year. The audit shall be performed by a public accountant or certified public accountant registered with the Oklahoma Accountancy Board.

(1) The audit shall be a financial-related audit as defined by "Government Auditing Standards", issued by the Comptroller General of the United States, and due no later than January 20 each year.

(2) The scope of the audited financial report shall, at a minimum, consist of a statement of revenue and expenditures, and shall specify the sources and uses of funds and the fund raising method(s) shall be described.

(3) The audited financial report shall identify separately the disbursement of all allowable and discretionary expenditures. Examples of discretionary promotion expenditures shall be provided as a supplement to the audit to determine whether such expenditures satisfied the requirements to be reimbursed with matching funds.

(4) Revenue reported shall include all advertising revenue received and define all other individual sources of revenue. The names and addresses and amounts received from each advertiser shall be included as an unaudited supplemental schedule to the audit report.

(5) The auditor's Report on Compliance With Rules and Regulations shall address whether a contractor who solicited advertising revenue for the production of a promotional periodical publication provided detailed written disclosure of its actual costs incurred in performance of the contract on at least a quarterly basis.

(6) Audit reports showing reimbursement of unallowable expenditures, reimbursement for expenditures by an individual or entity other than the multicounty organization, or noncompliance with statutes, procedures, or Tourism and Recreation Department rules and regulations will bar further reimbursement of matching funds until

restitution is made to the Tourism and Recreation Department.

(7) An incomplete or insufficient audit report shall be cause for withholding matching funds until such time as an acceptable audit is provided.

(8) The person or entity engaged to perform the audit shall not be the same person or entity that performs book-keeping, controllership or management functions, or other accounting services for the multicounty organization; and, file a copy of the audit with the State Auditor and Inspector.

(9) While not a part of the audit and not subject to the standards of the audit: the performance measures report (as prescribed by the Department), evaluative measures report that records the origin and number of inquiries, and examples of advertising not submitted for reimbursement with matching funds shall be submitted to the Department separate from the audit; but, simultaneously with the audit.

(10) When an audit cites deficiencies or shortcomings, the organizations shall include a response describing how the deficiencies or shortcomings will be corrected. Organizations will not be eligible for funding until the shortcomings identified in the audit are corrected.

[OAR Docket #06-828; filed 5-4-06]

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 25. STATE LODGES OPERATIONS [REVOKED]

[OAR Docket #06-829]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [REVOKED]

725:25-1-1. Purpose [REVOKED]

725:25-1-2. Definitions [REVOKED]

Subchapter 3. Use of Lodge Public Space for Private Groups [REVOKED]

725:25-3-1. Purpose [REVOKED]

725:25-3-2. Guidelines [REVOKED]

Subchapter 7. Reservations [REVOKED]

725:25-7-1. Purpose [REVOKED]

725:25-7-2. Accepting reservation requests [REVOKED]

Subchapter 9. Fees and Rates for Lodge Guest Rooms, Meeting Rooms, Banquet Rooms, and Commercial Use of Facilities [REVOKED]

725:25-9-1. Purpose [REVOKED]

725:25-9-2. Setting rates [REVOKED]

725:25-9-3. Applications of rates [REVOKED]

725:25-9-4. Special rates and promotional discounts [REVOKED]

725:25-9-5. Lease concessions [REVOKED]

725:25-9-6. One-time sales [REVOKED]

Subchapter 11. Prices, Fees and Other Charges for Commodities and Services Provide by Lodges [REVOKED]

725:25-11-1. Purpose [REVOKED]

725:25-11-3. Setting price and fees [REVOKED]

725:25-11-4. Application of prices, charges and fees [REVOKED]

725:25-11-5. Specials [REVOKED]

725:25-11-6. Promotional discounts [REVOKED]

Subchapter 15. Resort Credit Policy [REVOKED]

725:25-15-1. Purpose [REVOKED]

725:25-15-2. Individual credit [REVOKED]

725:25-15-3. Group credit [REVOKED]

Subchapter 23. Pets on Premises [REVOKED]
725:25-23-1. Purpose [REVOKED]
725:25-23-2. Restrictions on pets [REVOKED]
Subchapter 25. Swimming Pools [REVOKED]
725:25-25-1. Purpose [REVOKED]
725:25-25-2. Guidelines for swimming pools [REVOKED]
Subchapter 27. Confidentiality of Guest Records [REVOKED]
725:25-27-1. Purpose [REVOKED]
725:25-27-2. Guest records confidential [REVOKED]
Subchapter 29. Smoking [REVOKED]
725:25-29-1. Purpose [REVOKED]
725:25-29-2. Guidelines on smoking [REVOKED]

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SUPERSEDED EMERGENCY ACTION:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Chapter 25, State Lodges Operations, is being revoked to reflect organizational and statutory changes created by SB823 (2005).

CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

725:25-1-1. Purpose [REVOKED]

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This chapter applies specifically to the responsibilities of the Lodge Division.

725:25-1-2. Definitions [REVOKED]

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

"Benchmarks" means standards of satisfactory performance.

"Commodities" means foods, beverages, gift shop merchandise, and other items bought and resold.

"Deposit" means a charge equal to the first night's rate to be applied to the last night of the reservation. A deposit may be in the form of cash, check or properly authorized and processed credit card.

"Improved financial condition" means the financial results of an activity, a change in rates or fees, or any other event that increases revenues or reduces expenditures, the net result of which improves the financial condition of the State in the current or succeeding fiscal years.

"Lodge division revenues" means the gross revenues from all sales of products and services of all Lodge operations combined.

"Services" means, but are not limited to, waiting on restaurant and banquet customers, baggage handling, setting up and cleaning up after banquet functions, and catering of meals.

SUBCHAPTER 3. USE OF LODGE PUBLIC SPACE FOR PRIVATE GROUPS [REVOKED]

725:25-3-1. Purpose [REVOKED]

The purpose of this Subchapter is to identify the periodic requests for use of public space for private functions and the operational means by which to handle these requests.

725:25-3-2. Guidelines [REVOKED]

(a) Identification of public space available for group use will include, but not be limited to, the following:

- (1) Lobby
(2) Dining room
(3) Swimming pool area
(4) Parking lot
(5) Patio area
(6) Tennis court

(b) At his/her discretion, the lodge manager will make the decision to provide a group this privilege. The lodge manager will also make a reasonable effort to provide guests not a part of the group with equal accommodations.

SUBCHAPTER 7. RESERVATIONS [REVOKED]

725:25-7-1. Purpose [REVOKED]

The purpose of this Subchapter is to establish policy for accepting requests and making reservations for Lodge rooms, cabins and meeting rooms.

# Permanent Final Adoptions

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## 725:25-7-2. Accepting reservation requests [REVOKED]

In accordance with 74 O.S., Section 1810, the Lodge Division will accept requests and make reservations at state lodges as follows:

- (1) When request for a reservation is made by a individual, a deposit is required before a reservation can be confirmed.
- (2) When a block of several rooms is requested for a group, a group reservations agreement signed by an authorized person representing the group may be substituted in place of a deposit in order to confirm the reservations.
- (3) When a deposit is not received or a contract is not returned in accordance with procedures established, the reservation may be cancelled without further notice and the accommodations may be made available to other customers.
- (4) When market demand exists and there is reason to believe improved financial condition will result, reservations may be restricted to those of two days or more.
- (5) Reservations for meeting room space may be accepted without reserving overnight accommodations. However, these reservations will not be confirmed or guaranteed more than 60 days in advance of the requested date without specific approval from the Director of Lodges or Executive Director. Acceptance of such reservations may be declined if there is reason to believe that the department's financial condition may be adversely affected.

## SUBCHAPTER 9. FEES AND RATES FOR LODGE GUEST ROOMS, MEETING ROOMS, BANQUET ROOMS, AND COMMERCIAL USE OF FACILITIES [REVOKED]

### 725:25-9-1. Purpose [REVOKED]

The purpose of this Subchapter is to establish a policy for rental rates of guest rooms, cottages, meeting rooms, banquet rooms, and other space rendered by the Lodge Division to the general public.

### 725:25-9-2. Setting rates [REVOKED]

- (a) The Executive Director or the Director of Lodges shall periodically approve and appropriately publish rates and fees for rental of guest rooms, meeting rooms, banquet rooms, and other public space rendered by the Lodge Division to the general public.
- (b) Such rates and fees will be based on the following considerations:
  - (1) The amount determined that will result in improved financial condition for the Lodge Division, and
  - (2) The rates and fees for similar services then prevailing in the State of Oklahoma.
- (c) The Lodge Division will maintain printed rate sheets to be made available upon request. Requests may be made as follows:

(1) Telephone requests may be made by calling 405/521-3988.

(2) Written requests may be mailed to Lodge Division, 2401 North Lincoln Boulevard, Suite 500, Oklahoma City, Oklahoma 73105-4492.

### 725:25-9-3. Applications of rates [REVOKED]

Everyone using these facilities shall be charged the same rates except when discounted for promotional purposes as outlined in OAC 725:25-9-4 and in accordance with 74 O.S., Section 1834, or when specifically directed by legislative action.

### 725:25-9-4. Special rates and promotional discounts [REVOKED]

- (a) Individuals sixty two (62) years or older (and their spouse if using it together) will be offered a special rate for a guest room or cottage providing they identify themselves as senior citizens and the request is made prior to use. This special rate may be restricted during periods of heavy demand.
- (b) Individuals who have been certified as totally disabled under state or federal law, will be offered a special rate providing request is made prior to use of the guest room or cottage. This special rate may be restricted during periods of heavy demand.
- (c) Guest rooms, cottages, banquet space and/or meeting space may be made complimentary or a discount may be offered when it is determined by the Director of Lodges or Lodge Manager that such action is in tandem with the marketing program and likely to result in improved financial condition for the Lodge System.
- (d) Special rates for groups will be established in conjunction with the establishment of individual rates. Group rates or any promotional discount afforded them will apply only when a Group Reservation Agreement is fully executed and will be limited to the provisions and terms stated therein.

### 725:25-9-5. Lease concessions [REVOKED]

- (a) When it is in the best interest of the overall lodge operation, the Executive Director shall cause bids to be let, and a lease to be executed to operate specific activities at a lodge on a lease concession basis.
- (b) Leases will be presented to the Commission for final approval.

### 725:25-9-6. One-time sales [REVOKED]

- (a) In addition to normal rental rates, a fee of ten percent (10%) of gross sales will be charged when Lodge facilities are used for the sale of any product or commodity to the general public.
- (b) This fee may be negotiated if the activity is in connection with group business as described in OAC 725:25-3-1 and 725:25-3-2 or in a manner that is considered acceptable in the hospitality industry.

**SUBCHAPTER 11. PRICES, FEES AND OTHER CHARGES FOR COMMODITIES AND SERVICES PROVIDED BY LODGES [REVOKED]**

**725:25-11-1. Purpose [REVOKED]**

The purpose of this Subchapter is to establish policy for prices and fees charged for commodities and services rendered by the Lodge Division to the general public.

**725:25-11-3. Setting price and fees [REVOKED]**

(a) The Executive Director and the Director of Lodges shall periodically approve and appropriately publish a schedule of rates for all regularly offered items such as those on restaurant and banquet menus. In addition, fees will be established for any common service rendered by the state lodges such as, but not limited to, baggage handling and set up and clean up charges.

(b) Such rates and fees will be based on the following considerations:

- (1) The amount determined that will result in improved financial condition for the Lodge Division, and
- (2) The prices, fees, or other charges for similar commodities and services then prevailing in the State of Oklahoma.

**725:25-11-4. Application of prices, charges and fees [REVOKED]**

Everyone purchasing or using commodities and services shall be charged the same rates except when discounted as outlined in OAC 725:25-11-5 and 725:25-11-6 and in accordance with 74 O.S., Section 1834, or when specifically directed by legislative action.

**725:25-11-5. Specials [REVOKED]**

The Lodge Manager or Food and Beverage Manager may set temporary prices for items not on the restaurant or banquet menus. This provision is intended to allow the use of perishables in a timely manner and to accommodate unanticipated needs of individuals and/or groups.

**725:25-11-6. Promotional discounts [REVOKED]**

Commodities and services may be made complimentary or a discount offered when it is determined by the Director of Lodges that such promotion is in tandem with the marketing program and is likely to result in improved financial condition for the Lodge System.

**SUBCHAPTER 15. RESORT CREDIT POLICY [REVOKED]**

**725:25-15-1. Purpose [REVOKED]**

The purpose of this Subchapter is to establish a system for obtaining credit information on new group accounts, regulating

credit privileges on past group accounts and handling individual credit requests.

**725:25-15-2. Individual credit [REVOKED]**

(a) No credit will be extended to an individual guest except by use of a valid credit card accepted by the Lodge.

(b) Exceptions may be made only with the specific approval of the Executive Director or the Director of Administrative Services.

**725:25-15-3. Group credit [REVOKED]**

(a) All requests for group credit will include amount of credit requested, billing information, bank, and other credit references.

(b) Any request shall require approval of the Executive Director or Director of Administrative Services.

(c) A list of active accounts will be maintained. Any account that has not been satisfactorily used within one year shall be dropped. A new request and approval will be required to reinstate.

(d) Any time a group (or individual) that is extended credit does not make full payment within 90 days or within terms arranged, they will be deleted from approved list and no further credit will be approved without approval of the Executive Director.

**SUBCHAPTER 23. PETS ON PREMISES [REVOKED]**

**725:25-23-1. Purpose [REVOKED]**

The purpose of this Subchapter is to establish guidelines regarding pets at State Lodges.

**725:25-23-2. Restrictions on pets [REVOKED]**

(a) Pets will not be permitted in the main portion of any lodge without specific approval of the Lodge Manager.

(b) Managers should encourage guests who do not wish to use kennel facilities to accept a cottage in place of lodge sleeping rooms.

(c) The provisions of this subchapter do not apply to guide animals accompanying disabled persons.

**SUBCHAPTER 25. SWIMMING POOLS [REVOKED]**

**725:25-25-1. Purpose [REVOKED]**

The purpose of this subchapter is to provide guidelines relative to the operation of swimming pools at state lodges.

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## 725:25-25-2. Guidelines for swimming pools [REVOKED]

~~Swimming pools at state lodges will be operated in accordance with Oklahoma State Department of Health rules and regulations.~~

## SUBCHAPTER 27. CONFIDENTIALITY OF GUEST RECORDS [REVOKED]

### 725:25-27-1. Purpose [REVOKED]

~~The purpose of this subchapter is to establish policy regarding confidentiality of guest records at state lodges.~~

### 725:25-27-2. Guest records confidential [REVOKED]

- ~~(a) Records containing details of individual customer's stay at a state lodge are considered confidential.~~  
~~(b) Release of records will be made only to law enforcement agencies that can demonstrate a legal requirement for access.~~

## SUBCHAPTER 29. SMOKING [REVOKED]

### 725:25-29-1. Purpose [REVOKED]

~~The purpose of this subchapter is to establish guidelines regarding smoking at State Lodges.~~

### 725:25-29-2. Guidelines on smoking [REVOKED]

- ~~(a) Guidelines regarding smoking at State Lodges will be established in accordance with the Smoking in Public Places Act [63:1-1521 et seq.].~~  
~~(b) Areas will be designated "smoking" and "no smoking" and appropriately posted as such.~~  
~~(c) Lodges will attempt to provide "no smoking" sleeping accommodations to guests upon request.~~

*[OAR Docket #06-829; filed 5-4-06]*

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

*[OAR Docket #06-830]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 2. General Provisions [AMENDED]
- Subchapter 4. Public Use and Recreation [AMENDED]
- Subchapter 6. Fees, Discounts and Waivers [AMENDED]
- Subchapter 8. Camping and Day Use [AMENDED]
- Subchapter 10. Trails [AMENDED]
- Subchapter 12. Reservations and Use of Cabins, Group Camps, Shelters, Reserved/Assigned Camping Facilities, Amphitheaters, Community Buildings and Meeting Rooms [AMENDED]
- Subchapter 23. Mineral Leases and Operations [AMENDED]
- Subchapter 24. Golf [AMENDED]
- Subchapter 26. Vehicle and Traffic Safety [AMENDED]

Subchapter 28. Park Security and Law Enforcement [AMENDED]

Subchapter 29. Operations of State Lodges [NEW]

### AUTHORITY:

Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.

### DATES:

#### Comment period:

January 17, 2006 - February 22, 2006

#### Public hearing:

February 22, 2006

#### Adoption:

February 27, 2006

#### Submitted to Governor:

February 28, 2006

#### Submitted to House:

February 28, 2006

#### Submitted to Senate:

February 28, 2006

#### Gubernatorial approval:

April 6, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2006.

#### Final adoption:

April 26, 2006

#### Effective:

June 11, 2006

#### SUPERSEDED EMERGENCY ACTION:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

Existing Subchapter 2 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's errors.

Existing Subchapter 4 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error. Section 725:30-4-9, Pets has been revoked because it duplicates rules regarding pets in facilities found in other rules of the Oklahoma Tourism and Recreation Department.

Existing Subchapter 6 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error. The amendments also remove the discount for Good Sam's Club and Family Camper and RVers Association.

Existing Subchapter 8 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 10 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 12 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 16 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 18 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 20 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 22 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 23 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 24 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 26 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

Existing Subchapter 28 has been amended to incorporate statutory changes made by SB 823 during the 2005 Regular Session of the Oklahoma Legislature and to correct any scrivener's error.

New Subchapter 29 has been created to incorporate the rules for the operation of State Lodges into the Chapter. Prior to 2005, State Lodges was a division of the Oklahoma Tourism and Recreation Department. In 2005, Senate Bill 823 merged State Lodges into the Division of State Parks. This new Subchapter reflects the organizational change.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

**SUBCHAPTER 2. GENERAL PURPOSE**

**725:30-2-1. Rulemaking authority and purpose**

The Oklahoma Tourism and Recreation Department, Division of State Parks is authorized to establish and promulgate rules for the use of public recreation facilities. The rules set forth in ~~chapter~~ Chapter 30 are designed to define the proper use, government and management for the protection of persons, property, and natural and cultural resources within state parks, lodges and golf courses and to provide for the enjoyment of those resources and facilities in a manner that will leave them unimpaired for the enjoyment of future generations ~~{74:1847.1(A)(10)}{74:1811(2)}~~ [74:2215 - 74:2218][74:2212].

**725:30-2-2. Applicability and scope**

- (a) The regulations contained in this chapter apply to all persons entering, using, visiting or otherwise within:
  - (1) The boundaries of state owned lands and waters administered by or subject to the jurisdiction of the Oklahoma Tourism and Recreation Department, Division of State Parks.
  - (2) The boundaries of lands and waters, controlled, leased, administered or otherwise subject to the jurisdiction of the Oklahoma Tourism and Recreation Department, Division of State Parks, ~~including the State Capitol grounds commonly known as State Capitol Park~~ ~~{74:1811.4(A)(B)(C)}~~.
- (b) The rules contained in ~~subchapter~~ Subchapter 18 of this chapter are special rules prescribed for special use areas. Those rules may amend, modify, relax or make more stringent the rules defined in this chapter but do not preclude the application of all rules in this chapter unless expressly indicated.
- (c) The rules contained in this chapter shall not be construed to prohibit administrative activities conducted by the Division of State Parks, or its agents, in accordance with general operations and management plans, or in emergencies involving threats to life, property and park resources.
- (d) The rules contained in this chapter are intended to treat a mobility-impaired person using a manual or motorized

wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same rules.

~~(e) Except as provided in subchapter 28 of this chapter the remaining rules in this chapter shall not be applicable to the operations and management of the Oklahoma Tourism and Recreation Department, Lodge Division.~~

~~(f)~~ In addition to the rules set forth in this chapter, nothing shall preclude the application of any state law or federal regulation and the penalties prescribed therein.

~~(g)~~ The rules in this chapter are severally adopted. If one or more of these sections are deemed invalid, the remaining sections are intended to remain in effect. Where a rule herein is amended or revoked, acts or omissions prior thereto such amendment or revulsion may be prosecuted as though such section or rule had not been so amended or revoked.

**725:30-2-5. Hours of operation**

- (a) Visiting hours within the state park system is 24 hours per day throughout the year except as defined in 725:30-2-6.
- (b) Visiting hours for offices, campgrounds, marinas, stables, nature centers, swimming pools and other facilities, state operated or under lease, which do not operate 24 hours per day shall be established by the park manager and such hours ~~posted~~ posted in a conspicuous manner at the entrance to the building, area or facility. Park offices shall post hours of operation for all facilities within that state park unit.

**SUBCHAPTER 4. PUBLIC USE AND RECREATION**

**725:30-4-1. Preservation and protection of natural, cultural and archaeological resources**

Except as otherwise provided in this chapter, the following is prohibited in state parks:

- (1) Possessing, destroying, injuring, defacing, removing, digging, killing, or disturbing in or from its natural state:
  - (A) Living or dead wildlife or the parts or products thereof, such as antlers, nests, or skins ~~[74:4846.2 2217]~~.
  - (B) Plants or trees or any parts thereof ~~[74:4846.2 2217]~~.
  - (C) Non-fossilized and fossilized paleontological specimens, cultural or archaeological resources, or the parts thereof ~~[74:4846.2 2217]~~.
- (2) The feeding, touching, teasing, frightening or intentional disturbance of wildlife, their nesting or breeding sites or other aspects of wildlife habitat.
- (3) Using or possessing wood gathered from within the park area. Provided, however, that the park manager may designate areas where wood on the ground may be collected for use as fuel for camp fires within the park area only.
- (4) Walking on, climbing, entering, ascending, descending, or traversing on any archaeological or cultural

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resource site, monument, or statue, except in areas designated by the park manager.

(5) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, subbottom profiler, or any other metal detecting device. This paragraph does not apply to:

- (A) A device broken down and stored or packed to prevent its use while in park areas;
- (B) Electronic equipment used for the navigation of boats and fishing purposes;
- (C) Metal or mineral detectors when authorized by permit from the park manager.

(6) The gathering and removal of nuts, berries and fruits or any other natural products for personal consumption purposes, except when authorized by a permit upon determination that the gathering and removal will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The park manager may:

- (A) Limit the quantity that may be gathered; or
- (B) Limit the location where natural products may be gathered; and
- (C) Restrict the possession or consumption to the park area.

### 725:30-4-2. Hunting

(a) All state parks within the state park system are considered game refuges, except as otherwise posted [74:1846.3 2227]. The hunting, taking or possessing of wildlife or portions thereof, except as provided in (b) of this section, is prohibited [29:7-304].

(b) Hunting or trapping may be permitted in the park where such activities are specifically authorized by written agreement and approval of the Oklahoma Tourism and Recreation Department Commission and the Oklahoma Department of Wildlife Conservation Commission [74:1846.3 2228].

(c) The hanging, curing or storage of lawfully taken wildlife carcasses in any area of a state park unit except those areas designated by the park manager is prohibited.

### 725:30-4-9. Pets [REVOKED]

(a) ~~The following is prohibited in state parks:~~

~~(1) Possessing a pet in a public building or location designated as a swimming beach, or any area or structure closed to the possession of pets by the park manager.~~

~~(2) Failing to crate, cage, restrain or leash, which shall not exceed 10 feet in length, or otherwise physically confine a pet at all times.~~

~~(3) Leaving a pet unattended which may result in harm to the pet.~~

~~(4) Allowing a pet to make noise that is unreasonable considering location, time of day and night, impact upon park visitors, and other relevant factors as may be determined by the park manager or park ranger.~~

~~(5) Possessing a pet in which the owner or guardian cannot provide proof that said pet has a current valid rabies inoculation.~~

~~(6) Failing to retrieve and properly dispose of pet excrement.~~

~~(b) In park areas where hunting has been permitted, dogs may be used to support such activities in accordance with state law and any condition which may be established by the park manager [74:1846.1 2217].~~

~~(c) Pets or feral animals that are running at large or observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other natural resources.~~

~~(d) Pets running at large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or destroyed if after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.~~

~~(e) Pets may be kept by residents of park areas consistent with the provisions of this section and in accordance with conditions which may be established by the park manager.~~

~~(f) This section does not apply to guide dogs accompanying visually or hearing impaired persons or dogs used by enforcement officers in the performance of their official duties.~~

## SUBCHAPTER 6. FEES, DISCOUNTS AND WAIVERS

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

(a) Recreation fees are hereby established as approved by the Oklahoma Tourism and Recreation Department Commission. The Commission shall prescribe rates, fees, tolls, or charges for the services, facilities and commodities rendered by all property of the Commission [74:1847.1(A)(11) 2220]. Such fees, rates and charges shall be based upon staff recommendation pursuant to prevailing market conditions for similar facilities, services or merchandise. Fees, rates and charges shall be structured in a manner that is competitive with the private sector and avoids undercutting.

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

(1) Individuals 62 years of age and over and his or her spouse are entitled to discounts for camping, cabin rental, golf, cave tours, swimming and bicycle rentals. A driver's license shall be used for verification of age [74:1847.1(B)(1) 2220].

(2) Individuals who have been certified as totally disabled as defined by state or federal law and their spouses shall be entitled to a discount which shall apply to use of, or access to, recreation facilities, regardless of residency. Acceptable means of verifying total disability include: the presentation of a Medicare card issued to an individual prior to their 65<sup>th</sup> birthday; a Notice of Award letter from the Social Security Administration; hunting and fishing license that notes total disability; award letter issued by

the Department of Veterans Affairs or a document issued by a retirement or insurance board, commission or administration that attests to the individual's total disability; or a physicians letter, on letterhead stationery, that declares the individual is totally disabled. [74:1847-1(B)(2) :2220].

(3) Children's groups that provide beneficial services are entitled to discounts for camping, shelters and swimming [74:1847-1(B)(3) 2220]. Such services shall be restricted to projects which provide environmental education awareness such as tree planting, refuse clean up, or wildlife habitat improvement. Children's groups performing a minimum of 2 hours service toward such projects shall be entitled to prescribed fee discounts. For the purpose of this section a group is 5 or more persons and a child is a person under the age of 18.

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

(d) The director may offer special group or promotional rates in accordance with 74 O.S., Section 1834 2221. ~~Current discounts are offered for camping to the Good Sam Club and Family Campers and RVers Association.~~

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

(f) Entrance or day-use charges established by the Oklahoma Tourism and Recreation Department Commission, in accordance with 725:30-6-1, shall be evidenced by a receipt or pass sold upon demand from the public or at the entrance of any designated entrance or day-use charge facility. The method of collection will be by deposit in a self-pay receptacle or payment to Department personnel who will provide a cash receipt.

**SUBCHAPTER 8. CAMPING AND DAY USE**

**725:30-8-6. Group camping**

(a) Group camping is permitted within designated campgrounds in the state park system when there will be 5 or more sites occupied by a group for ~~2 two (2)~~ or more consecutive nights or ~~3 three (3)~~ consecutive nights on holiday weekends.

(b) Group camping is permitted outside of designated campgrounds in the state park system with an approved permit from the park manager when there will be 20 or more recreational vehicle units for ~~2 two (2)~~ or more consecutive nights or ~~3 three (3)~~ consecutive nights on holiday weekends.

(c) Reservations may be made for group camping in accordance with 75:30-12-5 of this chapter.

**SUBCHAPTER 10. TRAILS**

**725:30-10-1. Oklahoma Trails System Act**

(a) "The purpose of the Oklahoma Trails System Act is to provide public access to, and enjoyment and appreciation of, the Oklahoma outdoors in order to foster the conservation, development and wise use of the natural and historic resources of the state. It is the intent and purpose of the Oklahoma Trails System Act to encourage hiking, bicycling, horseback riding and other recreational activities and, because trail use by motorized vehicles is incompatible with some other trail uses, it is intended to provide separate trails and facilities for motorized vehicles whenever necessary and feasible" [74:1855 2279].

(b) The Oklahoma Tourism and Recreation Department, Division of State Parks shall adopt the purpose of the Oklahoma Trails System Act and such purpose shall dictate the operation, management and use of trails within the state park system.

(c) For the purpose of this subchapter all trails are considered multiple use with exceptions and restrictions clearly marked.

**725:30-10-2. Prohibitions**

The following is prohibited in state parks:

(1) Use of a trail for purposes or activities which have posted as restricted.

(2) Mutilation, destruction or vandalism of any guidepost, notice, tablet or any other improvement designed and established for trail use.

(3) Trail users shall remain on designated trails in order to minimize adverse impact on the environment. Field study off of a trail is permitted, however, in sensitive or wilderness areas prior approval of the park manager shall be required by permit.

(4) Failure to yield right of way in accordance with multiple use trail yield signage defined in 725:30-2-8~~(4)~~.

**SUBCHAPTER 12. RESERVATIONS AND USE OF CABINS, GROUP CAMPS, SHELTERS, RESERVED/ASSIGNED CAMPING FACILITIES, AMPHITHEATERS, COMMUNITY BUILDINGS AND MEETING ROOMS**

**725:30-12-3. Group camps**

(a) **Group camp season.** Group camps open April 1 and close October 31 of each year. Exceptions may be approved by the park manager.

(b) **Application.**

(1) Reservation applications are accepted on a year-to-day basis.

(2) Applications for a reservation may be obtained by contacting the park manager at the park unit in which the reservation is desired or by contacting the Division of State Parks administrative offices in Oklahoma City. Applications shall be completed in full and define an alternate date.

(3) Applications shall be mailed directly to the park unit for which the reservation is requested.

(c) **Reservations and reservation priorities.**

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- (1) Reservations for groups requesting the use of the group camp for 5 consecutive days or more shall be accepted and confirmed on a first-come, first-served basis, except as provided for in OAC 725:30-12-5(c)(4).
  - (2) Reservations for groups requesting the use of the group camp for less than 5 consecutive days shall be confirmed after January 1st each year.
  - (3) In instances when 2 or more groups have requested the same group camp on the same date, first consideration will be given to the earliest postmark date on the envelope in which the application was submitted. In cases of 2 identical postmark dates, first consideration shall be given to the group having the same reservation dates in the previous year. The next consideration will be the requested alternate date.
  - (4) The number of reservations are not limited during any single season, and the park manager shall give consideration to serving the greatest numbers of groups and the maximum number of persons. In addition, the park manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of the group camp. Such determinations shall be based upon the reservation type, size and activities.
  - (5) If an application is accepted a request for reservation deposit shall be mailed or presented to the group representative. The deposit shall be equal to the first night's rate and shall be mailed or presented to the park unit within 14 days (excluding Sundays) from the day the request for deposit was mailed from the park unit or the reservation may be cancelled. Failure to submit an accurate deposit amount may result in cancellation of the reservation. Upon receipt of the deposit the reservation will be confirmed. Once confirmed a reservation will not be cancelled or changed to accommodate any other group.
  - (6) Cancellation of reservations shall be made by the group representative 60 days in advance of the occupancy date which is listed on the confirmed reservation form or the deposit shall be subject to forfeiture.
  - (7) In cases where the group camp is not reserved it may be rented to the first group making application and providing a deposit on a first-come, first served basis.
- (d) **Restrictions and general information.**
- (1) No group will be permitted to reserve a group camp for 2 successive holiday or special event periods.
  - (2) A damage and cleaning deposit may be requested by the park manager.
  - (3) Group directors shall receive the area between 2:00 p.m. and 4:00 p.m. on the first day of the reservation or in its present condition at any other time.
  - (4) All fees are due and payable upon departure except as defined by the park manager.
  - (5) The group camp will be furnished with silverware, china, drinking glasses, pots ~~an~~ and pans, chairs, beds, tables, paper products, mattresses and mattress covers. All other equipment, bedding and supplies necessary for the operation, cleanliness and safety of the group camp shall be provided by the group.
  - (6) A group camp director shall be provided and shall be no less than 25 years of age and ~~4~~ one (1) counselor shall be provided for every ~~8~~ eight (8) children who shall be no less than 18 years of age.
  - (7) Any damages to property or injuries shall be reported to the park manager.
  - (8) Arrangements for medical care shall be arranged in the nearest community prior to group camp occupancy.
  - (9) Groups using pools or water related recreational facilities shall provide a waterfront director who holds a valid lifesaving certificate as defined by the American Red Cross and is no less than 18 years of age. The Oklahoma Tourism and Recreation Department, Division of State Parks may provide lifeguard services pursuant to the fee defined in 725:30-6-~~8~~ 1. Such fee shall not exceed the posted maximum limit which has been set forth by the Oklahoma Tourism and Recreation Department Commission. Swimming pools may be reserved at the discretion of the park manager.
  - (10) Recreational vehicles may be parked in the vicinity of the group camp at the discretion and designation of the park manager based upon the established fee of semi-modern campsites.
  - (11) Group camps shall be left clean and Sanitary prior to check out time which is 12:00 noon on the scheduled day of departure.
- (e) **Prohibited activities.** The following is prohibited:
- (1) Using the group camp for purposes other than those activities which are approved by the park manager.
  - (2) The sale of merchandise, goods or services to anyone other than a member of the group.
  - (3) Transfer or assignment of the group camp reservation to any other group without authorization of the park manager.
  - (4) Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of the use of the group camp.

### 725:30-12-5. Reserved/assigned and group camping

#### (a) Reservations and reservation priorities - reserved/assigned camping.

- (1) Reservations shall be accepted on a year-to-day basis.
- (2) Reservations shall be taken on a first-come, first-served basis.
- (3) A reservation can be made by contacting the park unit in which the reservation is requested.
- (4) The minimum reservation shall be for 2 nights on weekends and 3 nights on holiday weekends during the season.
- (5) If accepted, a request reservation deposit shall be mailed or presented to the person requesting a reservation. The deposit shall be equal to the first night's rate (3 nights on holiday weekends) and presented to the park unit within 14 days (excluding Sundays) from the day the request for deposit was mailed from the park unit or the reservation shall be cancelled.

(6) Cancellation of the reservation shall be made 5 days in advance of the occupancy date or the deposit shall be subject to forfeiture.

(7) Reservations shall be held without guarantees until 6:00 p.m. Reservations may be held after 6:00 p.m. with prepayment by check, money order or accepted credit cards in those parks that provide credit card services.

(8) Persons may reserve a campsite in person on a first-come, first served basis when campsites have not been reserved and are available at the established reserved/assigned campground fee.

(9) Sites shall be reserved by availability and not by site number.

(10) One tent may be established in the immediate area of a rented site and a fee may be imposed at the discretion of the park manager.

(11) The provisions in (1) through (9) of this subsection apply only to State Parks offering reserved camping.

**(b) Reservation and reservation priorities - group camping.**

(1) Reservations shall be accepted for groups when there will be ~~5~~ five (5) or more sites occupied by the group for 2 or more consecutive nights or ~~3~~ three (3) consecutive nights on holiday weekends on a year-to-day basis. At the park manager's discretion, reservations for groups (5 or more sites) may be requested for dates not in excess of three years from the date of application.

(2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.

(3) Reservations shall be made by ~~1~~ one (1) person representing the entire group. The group representative shall provide the park unit:

- (A) The arrival and departure dates;
- (B) The number of campsites which will be occupied by the group; and
- (C) The number of members applicable to a discount as defined in 725:30-6-1.

(4) The provisions (1) through (3) of this subsection apply only to state Parks offering reserved group camping.

(5) Two methods of advance deposits are available for groups.

(A) A security bond deposit in the amount of \$200.00 allows groups to make unlimited campground reservations for up to three years in advance. The deposit shall be submitted to the headquarters of the Oklahoma Tourism and Recreation Department.

(i) Upon notice of a group reservation a reservation confirmation shall be sent to the group representative.

(ii) When the \$200.00 security bond deposit level is reduced by the terms set forth in (b)(~~5~~ 6) of this section the group representative shall reestablish the \$200.00 level within ~~10~~ ten (10) days notice from the Department.

(B) Non-security bond deposits shall be made by the group representative 60 days in advance of arrival

date in accordance with the following requirements or the reservation will be cancelled:

(i) The amount of deposit shall be equal to the first night's rate multiplied by the number of reserved sites, except on weekends and holidays.

(ii) The amount of deposit shall be equal to the nightly rate for ~~2~~ two (2) nights multiplied by the number of sites on weekends during the season.

(iii) The amount of deposit shall be equal to the nightly rate for ~~3~~ three (3) nights multiplied by the number of sites on holiday weekends during the season.

(iv) Upon receipt of deposit for non-security bond deposit a reservation confirmation shall be sent to the group representative.

(6) Notice of cancellation for the entire group shall be received by mail or telephone from the group representative 10 days in advance of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.

(7) Upon arrival at the reserved/assigned campground the group representative or designee shall provide payment for the balance of the reservation period and verification for senior citizen and totally disabled person discounts for the entire group.

(8) Visitation and reservation circumstances shall dictate consecutive site allocation for groups.

**(c) Reservation and reservation priorities - rallies and large groups.**

(1) Reservations shall be accepted outside of campgrounds for groups in excess of 20 recreational vehicle units where park facilities can accommodate the size of the group on a year-to day basis.

(2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.

(3) Reservations shall be made by ~~1~~ one (1) person representing the entire group. The group representative shall provide the park unit:

- (A) The arrival and departure dates;
- (B) The number recreational vehicles; and
- (C) The number of members applicable to a discount as defined in 725:30-6-1.

(4) A deposit shall be required in accordance with the terms set forth in (b)(~~4~~ 5) of this section.

(5) Notice of cancellation for the entire group shall be received by mail or telephone from the group representative 30 days in of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.

(6) A permit requiring liability insurance may be required contingent upon activities conducted by the group in accordance with rules set forth in subchapter 16 of this chapter.

(7) Upon arrival the group representative or designee shall provide payment for the balance of the reservation period for the entire group.

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(d) **Transferring of reservations.** The transferring of campsite reservations is prohibited.

## 725:30-12-6. Amphitheaters, community buildings, meeting rooms and Lake Eucha State Park

### (a) **Reservation and reservation priorities.**

- (1) Facilities defined in this section shall be reserved on a year- to-day basis.
- (2) Reservations shall be taken on a first-come, first served basis.
- (3) A reservation can be made by contacting the park unit in which the reservation is requested.
- (4) If accepted, a request for reservation deposit shall be mailed or presented to the person requesting a reservation. The deposit shall be half of the total fee for the facility reserved and presented to the park unit within 14 days (excluding Sundays) from the date the request for deposit was mailed from the park unit or the reservation shall be cancelled.
- (5) Cancellation of the reservation shall be made ~~5~~ five (5) days in advance of the occupancy date or the deposit shall be subject to forfeiture.
- (6) Fee balance is payable upon receipt of the facility and shall not be prorated.
- (7) A damage and or cleaning deposit may be required at the discretion of the park manager.
- (8) The park manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of facility use.

### (b) **Special consideration for amphitheaters.**

- (1) Utilization of amphitheaters is under the control of the park manager at the designated park or lodge unit ~~except Quartz Mountain State Park.~~
- (2) There shall be an additional charge for use of lighting and sound equipment which will be operated by park officials.

(c) **Special considerations for visitor center meeting rooms.** Groups using visitor center meeting rooms, which do not meet the requirements of free usage in accordance with 725:30-12-2(c), shall pay the set fee.

(d) **Special consideration for Lake Eucha State Park.** Groups using the pool shall be responsible for pool safety, provide their own lifeguard(s) and comply with any other safety standards or rules which are set forth in the rental agreement.

### (e) **Prohibited activities.** The following is prohibited:

- (1) Using these facilities for purposes other than those approved by the park manager.
- (2) The sale of merchandise, goods or services to anyone other than a member of the group.
- (3) Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of use of these facilities.

## SUBCHAPTER 23. MINERAL LEASES AND OPERATIONS

### 725:30-23-1. Purpose and authority

(a) The purpose of this subchapter shall be to define the process in which mineral leases located upon Oklahoma Tourism and Recreation Commission (Commission) property are examined, competitively bid, awarded and ultimately leased. General management of mineral operations is also addressed.

(b) In accordance with state law, the Commission is authorized to offer for sale, sell, and execute oil and gas leases, and other mineral and mining leases [74:~~1850~~. 2219].

(c) The Commission may authorize the Executive Director to enter into leases, grant easements and execute such instruments as in the judgment of the Commission are necessary or convenient to the exercise of those powers and duties of the Commission pursuant to the Oklahoma Tourism and Recreation Act. [74:~~1847.1(A)(17)~~ 2207(5)].

### 725:30-23-3. Bidding process

(a) The Department shall prepare an invitation to bid (ITB) and shall advertise the mineral interest bid as set out in 74 O.S. Section ~~1850~~ 2219.

(b) All bids must be submitted in accordance with the requirement contained in the ITB.

(c) A separate bid showing the tract number and legal description must be filed on each tract. Each tract will be leased separately to the highest and best bidder. Drilling contracts or production payments will not be considered, except in a special lease sale.

(d) The minimum bid will be specified in the ITB, the notice of sale and lease.

(e) The successful bidder must pay the full cost of advertising.

(f) The successful bidder will be issued a maximum of a three (3) year commence type lease. The royalty and annual delay rental will be specified in the notice of sale.

## SUBCHAPTER 24. GOLF

### 725:30-24-1. Prohibitions

Except as otherwise provided in this section, the following is prohibited in state parks:

(1) Using a golf course or any portion thereof without having paid prescribed fees in advance except when so authorized by the golf course manager.

(2) Operating a golf cart in a reckless or otherwise careless or wanton manner without due regard for the safety of persons or property.

(3) Rental and use of golf cart by any person ~~under the age of 18~~ without a valid drivers license.

(4) A golf cart rented from a golf course and operated outside the course's boundaries is to be operated in conformance with 725:30-28-4.

(5) Operating a golf cart beyond passenger or occupancy capacity limits set forth by the manufacturer.

(6) Failing to return a rental golf cart by sunset.

- (7) Participating in a game of golf without a set of golf clubs for each person.
- (8) Possessing a pet except as defined in ~~725:30-4-9(f)~~ 725:15-17-2.
- (9) Glass containers of any kind except when authorized by the golf course manager.
- (10) Allowing children under the age of 12 upon any portion of the golf course without a parent or guardian who is 18 years of age or older.
- (11) Carrying or possessing personal golf equipment in a golf pro shop.
- (12) Wearing inappropriate clothing, or the absence of required clothing apparel inside the golf pro shop. Such requirements shall be set forth by the golf course manager and posted at the entrance of the golf pro shop.

**SUBCHAPTER 26. VEHICLES AND TRAFFIC SAFETY**

**725:30-26-12. Unsafe operation**

- (a) The elements of this section constitute offenses that are less serious ~~that than~~ reckless driving. The offense of reckless driving is defined by state law and violations are prosecuted pursuant to subchapter ~~(2)~~ 2 of this chapter.
- (b) The following are prohibited in state parks:
  - (1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.
  - (2) Operating a motor vehicle which unnecessarily cause its tires to squeal, skid or break free of the road surface.
  - (3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, wildlife and property.
  - (4) Operating a motor vehicle while allowing a person to ride:
    - (A) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed.
    - (B) On any exterior portion of the motor vehicle not designed or intended for use of a passenger. This restriction does not apply to a person seated in the bed of a truck that is equipped with sides.

**SUBCHAPTER 28. PARK SECURITY AND LAW ENFORCEMENT**

**725:30-28-1. Park ranger - powers, authority and appointments**

- (a) "Park rangers when commissioned, shall have all the powers of peace officers except the serving or execution of civil process, and shall have in all parts of the state the same powers with respect to criminal matters and enforcement of

- laws relating thereto as sheriffs, highway patrolmen, and police officers in any suit brought against them in consequence of acts done in the course of their employment, provided, however, they shall comply with the provisions of Section 3311 of Title 70 of the Oklahoma Statutes"~~[74:1811-2(A)~~ 2216].
- (b) "The director may commission any officer who is certified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes as a park ranger as the Department deems necessary to secure the parks and property of the Department and to maintain law and order therein"~~[74:1811(4)~~ :2216].
- (c) The director may commission other employees as reserve park rangers and seasonal rangers who are certified pursuant to 70 O.S., Section 3311 as park rangers "as the Department deems necessary to secure the parks and property of the Department and to maintain law and order therein" ~~[74:1811(4)~~ 2216].
- (d) For the purposes of this subchapter a seasonal ranger or reserve ranger shall have the same authority as defined in (a) and (b) of this section.

**725:30-28-2. Primary authority and jurisdiction**

- (a) Park rangers as defined in 725:30-28-1 shall be the primary law enforcement authority within the state park system who shall enforce parking, traffic, criminal and any other law applicable which provide for the maintenance of public health and safety, protection of the environment, natural and cultural resources and proper use of the park unit.
- (b) "Park rangers shall have jurisdiction over all parts and aspects of the parks, including the state lodges located therein, whether state operated or leased to private operators" ~~[74:1811.3~~ 2216].

**SUBCHAPTER 29. STATE LODGES OPERATIONS**

**725:30-29-1. Purpose**

The rules of this Subchapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This Subchapter applies specifically to the operation of state lodges.

**725:30-29-2. Definitions**

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

"Benchmarks" means standards of satisfactory performance.

"Commodities" means foods, beverages, gift shop merchandise, and other items bought and resold.

"Deposit" means a charge equal to the first night's rate to be applied to the last night of the reservation. A deposit may be in the form of cash, check or properly authorized and processed credit card.

"Improved financial condition" means the financial results of an activity, a change in rates or fees, or any other event that increases revenues or reduces expenditures, the net result

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of which improves the financial condition of the State in the current or succeeding fiscal years.

**"Lodge division revenues"** means the gross revenues from all sales of products and services of all Lodge operations combined.

**"Services"** means, but are not limited to, waiting on restaurant and banquet customers, baggage handling, setting-up and cleaning-up after banquet functions, and catering of meals.

### **725:30-29-3. Use of Public Space**

(a) Identification of public space available for group use will include, but not be limited to, the following:

- (1) Lobby
- (2) Dining room
- (3) Swimming pool area
- (4) Parking lot
- (5) Patio area
- (6) Tennis court

(b) At his/her discretion, the lodge manager will make the decision to provide a group this privilege. The lodge manager will also make a reasonable effort to provide guests not a part of the group with equal accommodations.

### **725:30-29-4. Accepting reservation requests**

The Division of State Parks will accept requests and make reservations at state lodges as follows:

- (1) When request for a reservation is made by a individual, a deposit is required before a reservation can be confirmed.
- (2) When a block of several rooms is requested for a group, a group reservation agreement signed by an authorized person representing the group may be substituted in place of a deposit in order to confirm the reservations.
- (3) When a deposit is not received or a contract is not returned in accordance with procedures established, the reservation may be cancelled without further notice and the accommodations may be made available to other customers.
- (4) When market demand exists and there is reason to believe improved financial condition will result, reservations may be restricted to those of two (2) days or more.
- (5) Reservations for meeting room space may be accepted without reserving overnight accommodations. However, these reservations will not be confirmed or guaranteed more than sixty (60) days in advance of the requested date without specific approval from the Director of State Parks or Executive Director. Acceptance of such reservations may be declined if there is reason to believe that the department's financial condition may be adversely affected.

### **725:30-29-5. Setting rates for guest rooms, meeting rooms and other public space**

(a) The Executive Director and the Director of State Parks shall periodically approve and appropriately publish rates and fees for rental of guest rooms, meeting rooms, banquet rooms,

and other public space rendered by the Division of State Parks to the general public.

(b) Such rates and fees will be based on the following considerations:

- (1) The amount determined that will result in improved financial condition for the Division of State Parks, and
  - (2) The rates and fees for similar services then prevailing in the State of Oklahoma.
- (c) The Division of State Parks will maintain printed rate sheets to be made available upon request. Requests may be made as follows:
- (1) Telephone requests may be made by calling 405.230.8300.
  - (2) Written requests may be mailed to Division of State Parks, 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma 73102.

### **725:30-29-6. Special rates and promotional discounts**

(a) Individuals sixty-two (62) years or older (and their spouse if using it together) will be offered a special rate for a guest room or cottage providing they identify themselves as senior citizens and the request is made prior to use. This special rate may be restricted during periods of heavy demand.

(b) Individuals who have been certified as totally disabled under state or federal law, will be offered a special rate providing request is made prior to use of the guest room or cottage. This special rate may be restricted during periods of heavy demand.

(c) Guest rooms, cottages, banquet space and/or meeting space may be made complimentary or a discount may be offered when it is determined by the Director of State Parks or Lodge Manager that such action is in tandem with the marketing program and likely to result in improved financial condition for the Lodge System.

(d) Special rates for groups will be established in conjunction with the establishment of individual rates. Group rates or any promotional discount afforded them will apply only when a Group Reservation Agreement is fully executed and will be limited to the provisions and terms stated therein.

### **725:30-29-7. One-time sales**

(a) In addition to normal rental rates, a fee of ten percent (10%) of gross sales will be charged when Lodge facilities are used for the sale of any product or commodity to the general public.

(b) This fee may be negotiated if the activity is in connection with group business as described in OAC 725:30-29-3 or in a manner that is considered acceptable in the hospitality industry.

### **725:30-29-8. Setting price and fees for commodities and services provided by lodges**

(a) The Executive Director and the Director of State Parks shall periodically approve and appropriately publish a schedule of rates for all regularly offered items such as those on restaurant and banquet menus. In addition, fees will be established for any common service rendered by the state lodges such as,

but not limited to, baggage handling and set-up and clean-up charges.

(b) Such rates and fees will be based on the following considerations:

- (1) The amount determined that will result in improved financial condition for the Division of State Parks, and
- (2) The prices, fees, or other charges for similar commodities and services then prevailing in the State of Oklahoma.

**725:30-29-9. Application of prices, charges and fees for commodities and services provided by lodges**

Everyone purchasing or using commodities and services shall be charged the same rates except when discounted as outlined in OAC 725:30-29-10 and 725:30-29-11 and in accordance with 74 O.S., Section 2211, or when specifically directed by legislative action.

**725:30-29-10. Specials**

The Lodge Manager or Food and Beverage Manager may set temporary prices for items not on the restaurant or banquet menus. This provision is intended to allow the use of perishables in a timely manner and to accommodate unanticipated needs of individuals and/or groups.

**725:30-29-11. Promotional discounts**

Commodities and services may be made complimentary or a discount offered when it is determined by the Director of State Parks that such promotion is in tandem with the marketing program and is likely to result in improved financial condition for the Parks System.

**725:30-29-12. Individual credit at state lodges**

- (a) No credit will be extended to an individual guest except by use of a valid credit card accepted by the Lodge.
- (b) Exceptions may be made only with the specific approval of the Executive Director or the Director of Administrative Services.

**725:30-29-13. Group credit at state lodges**

- (a) All requests for group credit will include amount of credit requested, billing information, bank, and other credit references.
- (b) Any request shall require approval of the Executive Director or Director of Administrative Services.
- (c) A list of active accounts will be maintained. Any account that has not been satisfactorily used within one year shall be dropped. A new request and approval will be required to reinstate.
- (d) Any time a group (or individual) that is extended credit does not make full payment within 90 days or within terms arranged, they will be deleted from approved list and no further credit will be approved without approval of the Executive Director.

**725:30-29-14. Confidentiality of guest records**

- (a) Records containing details of individual customer's stay at a state lodge are considered confidential.
- (b) Release of records will be made only to law enforcement agencies that can demonstrate a legal requirement for access.

**725:30-29-15. Guidelines on smoking in state lodges**

- (a) Guidelines regarding smoking at State Lodges will be established in accordance with the Smoking in Public Places Act [63:1-1521 et seq.].
- (b) Areas will be designated "smoking" and "no smoking" and appropriately posted as such.
- (c) Lodges will attempt to provide "no smoking" sleeping accommodations to guests upon request.

[OAR Docket #06-830; filed 5-4-06]

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

[OAR Docket #06-831]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Oklahoma Film Enhancement Rebate Program

725:35-1-1. Purpose [AMENDED]

725:35-1-2. Definitions [AMENDED]

725:35-1-3. Program requirements and qualifications [AMENDED]

725:35-1-5. Procedures for submission and review of rebate claims [AMENDED]

**AUTHORITY:**

Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.

**DATES:**

**Comment period:**

January 17, 2006 - February 22, 2006

**Public hearing:**

February 22, 2006

**Adoption:**

February 27, 2006

**Submitted to Governor:**

February 28, 2006

**Submitted to House:**

February 28, 2006

**Submitted to Senate:**

February 28, 2006

**Gubernatorial approval:**

April 6, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2006.

**Final adoption:**

April 26, 2006

**Effective:**

June 11, 2006

**SUPERSEDED EMERGENCY ACTION:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Section 725:35-1-1 has been amended to conform with the statutes governing the Oklahoma Film and Music Office.

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Section 725:35-1-2 has been amended to create more specific definitions for the components of the Oklahoma Film Enhancement Rebate Program.

Section 725:35-1-3 has been amended to conform to the statutes governing the Oklahoma Film Enhancement Rebate Program.

Section 725:35-1-5 has been amended to provide more detailed instructions for a submission of a rebate claim under this program.

## CONTACT PERSON:

Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2006:**

## SUBCHAPTER 1. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

### 725:35-1-1. Purpose

The purpose of the Oklahoma Film Enhancement Rebate Program (Program) is to create a new incentive program to attract film and television production to the state. In accordance with 68 O.S. § 3624, this Program shall be administered by the Oklahoma Tax Commission and the ~~Oklahoma Film Office~~ ~~(OFO)~~ Office of the Oklahoma Film and Music Commission (OFMO), which is created within the Oklahoma Tourism and Recreation Department pursuant to 74 O.S. § 5026.

### 725:35-1-2. Definitions

(a) "Expenditure" or "production cost" ~~is defined in 68 O.S. § 3623~~ includes, but is not limited to:

- (1) wages or salaries of persons who are residents of Oklahoma and who have earned income from working on a film in Oklahoma, including payments to personal services corporations for the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code.
- (2) the cost of construction and operations, wardrobe, accessories and related services.
- (3) the cost of photography, sound synchronization, lighting and related services.
- (4) the cost of editing and related services.
- (5) the cost of rental facilities and equipment, and
- (6) other direct costs of producing a film.

(b) "Film" ~~means is defined in 68 O.S. § 3623~~

- (1) a professional single media, multimedia program or feature,
- (2) which is not child pornography as defined in Title 21, Section 1024.1(A) of the Oklahoma Statutes or obscene material as defined in Title 21, Section 1024.1(B)(1) of the Oklahoma Statutes. (3) Qualifying films include, but are not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations,

networks, cable television stations or other means or licensed for home viewing markets.

(c) "Production company" is defined in 68 O.S. § 3623 means a person or entity who produces film for exhibition in theaters, on television or elsewhere.

~~(d) "Direct costs" are any items or services necessary and essential to the production of a film.~~

~~(ed) "Application" refers to the Application of Eligibility for Rebate Programs.~~

~~(fe) "Director" refers to the Director of the OFO Oklahoma Film and Music Office.~~

~~(gf) "Rebate" is defined as a certain percentage (defined in 68 O.S. § 3624) of production costs incurred in Oklahoma directly attributable to the production of a film in this state if the OFMO determines that the proposed project has a reasonable chance of economic success. long form narrative film or television production that may be paid to the production company responsible for the production.~~

~~(hg) "Principal photography" is defined by the filming of major or significant components of a movie which involve lead actors.~~

~~(ih) "Production board" is a scheduling device that breaks every scene by location, by day and night, and by interior or exterior.~~

~~(ji) "Rebate claim" is defined as the documentation of production costs incurred in Oklahoma and submitted in compliance with the requirement of this Program.~~

### 725:35-1-3. Program requirements and qualification

(a) In order to be eligible for a rebate payment, production companies must contact the Director and agree in writing to the following the production company responsible for a film must:

- (1) To file an Oklahoma income tax return for the year that activity and expenditures occurred. Submit documentation to the OFMO of the amount of wages paid for employment in Oklahoma to residents of Oklahoma directly related to the production;
- (2) File an Oklahoma income tax return;
- (3) Complete the OFMO Expenditure Form;

~~(24) To provide the following screen credit, "Filmed in Oklahoma under the Auspices of the Oklahoma Film Enhancement Rebate Program".~~

~~(35) To provide the following prior to the beginning of principal photography:~~

- (A) Application of eligibility for rebate programs;
- (B) Name of completion bond company, a copy of the bond, and a copy of the contract between the production company and the principal actors. Copy of the proposed budget,
- (C) Copy of the script and the inclusion of the OFO OFMO on the project's revisions distribution list; and,
- (D) Copy of the production board or equivalent documentation.

~~(46) To provide evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end distribution agreement within one hundred eighty (180) days of completion of principal photography.~~

(7) Provide the name of the completion guarantor, a copy of the bond guaranteeing the completion date, and a copy of the contract between the production company and the principal actors or equivalent proof of completion to ensure a mechanism for the compensation of local vendors.

(8) Provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars (\$1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.

(b) After a production company meets all requirements, the Director will issue a formal letter of acknowledgement of qualification.

(e) Production companies cannot use this Program in addition to other Oklahoma rebate programs the sales tax rebate provided in Title 68, Section 1357 of the Oklahoma Statutes.

(d) Production companies shall provide an affidavit as required by law.

(d) The minimum budget for the film shall be Two Million Dollars (\$2,000,000.00) of which not less than One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) shall be expended in Oklahoma.

**725:35-1-5. Procedures for submission and review of rebate claims**

(a) Submission. Production companies must submit the following to the Director within forty five (45) days after the completion of filming in Oklahoma to have submitted a valid rebate claim. To qualify for the rebate program, the production company must provide the following to the OFMO prior to the beginning of principal photography:

(1) An amended application that includes any updates of changes from the original eligibility review. Application of eligibility for rebate programs;

(2) A final detailed cost report that shows all costs incurred by production cost category. Copy of the proposed budget;

(3) The amount of wages paid for employment in this state by residents of this state directly relating to the production of the film. Copy of the script and the inclusion of the OFMO on the project's revisions distribution list;

(4) Photocopies of each receipt and payroll records for which a rebate is requested. Copy of the production board or equivalent documentation;

(5) Provide the name of the completion guarantor, a copy of the bond guaranteeing the completion date, and a copy of the contract between the production company and the principal actors or equivalent proof of completion to ensure a mechanism for the compensation of local vendors; and

(6) Provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars (\$1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.

(b) Review and approval of rebate claims.

(1) The Film Rebate Committee will be comprised of volunteers with expertise in the film industry, accounting or other related areas, enlisted by the Director. This committee shall review applications for rebates and make recommendations to the Director.

(2) The Director shall approve or disapprove each completed rebate claim within sixty (60) days of submission of the rebate claim. The Oklahoma Tax Commission shall issue payment for all approved rebate claims, providing funds are available.

(3) Rebate claims shall be paid in the order in which the rebate claims are approved by the Director.

(4) If an approved rebate claim is not paid in whole or in part, the unpaid rebate claim or unpaid portion may be paid in the following fiscal year as allowed in 68 O.S. § 3624.D (F), providing funds are available.

(5) Only one rebate claim shall be processed per film. Once the production company has been paid for that rebate claim, no amendments for that rebate claim are allowable.

(6) Rebate claims that are disapproved by the Director may be corrected and resubmitted to the Director for reconsideration within ten (10) business days after the date of disapproval. Only one resubmission per rebate claim is allowed. After a production company meets all requirements, the Director will issue a formal letter of acknowledgement of qualification.

(c) At the completion of principal photography, the production company must provide the following information before the claim can be reviewed by the Film Rebate Committee:

(1) Submit verifiable documentation to the OFMO of the amount of wages paid for employment in Oklahoma to residents of Oklahoma directly related to the production;

(2) File an Oklahoma income tax return;

(3) Complete the OFMO expenditure form;

(4) Provide the following screen credit, "Filmed in Oklahoma under the Auspices of the Oklahoma Film Enhancement Rebate Program"; and

(5) To provide evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end of principal photography.

(d) Review and approval of rebate claims.

(1) The Film Rebate Committee will be comprised of volunteers with expertise in the film industry, accounting or other related areas, enlisted by the Director. This committee shall review applications for rebates and make recommendations to the Director.

(2) The Director shall approve or disapprove each completed rebate claim within sixty (60) days of submission of the rebate claim. The Oklahoma Tax Commission shall issue payment for all approved rebate claims, providing funds are available.

(3) Rebate claims shall be paid in the order in which the rebate claims are approved by the Director.

(4) If an approved rebate claim is not paid in whole or in part, the unpaid rebate claim or unpaid portion may be paid in the following fiscal year as allowed in 68 O.S. § 3624.D (F), providing funds are available.

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(5) Only one rebate claim shall be processed per film. Once the production company has been paid for that rebate claim, no amendments for that rebate claim are allowable.

(6) Rebate claims that are disapproved by the Director may be corrected and resubmitted to the Director for re-consideration within ten (10) business days after the date of disapproval. Only one resubmission per rebate claim is allowed.

[OAR Docket #06-831; filed 5-4-06]

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

[OAR Docket #06-843]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Licensure of Veterinarians

775:10-3-12. Fees [AMENDED]

Subchapter 5. Rules of Professional Conduct

775:10-5-30. Unprofessional conduct [AMENDED]

Subchapter 7. Certification of Veterinary Technicians

775:10-7-9.1. Duties performed without direct supervision [NEW]

Subchapter 10. Complementary and Alternative Therapy

775:10-10-10. Requirements prior to providing animal massage services [NEW]

### AUTHORITY:

59 O.S. Supp.2005, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

### DATES:

#### Comment period:

January 18, 2006 through February 18, 2006

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March 3, 2006

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Failure of the Legislature to disapprove the rules resulted in approval on May 3, 2006

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July 1, 2006

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

The proposed revisions to chapter 10, includes addition of fees for animal massage, modification to the duties for a Registered Veterinary Technician and addition of rules for Animal Massage Therapy.

#### CONTACT PERSON:

Cathy Kirkpatrick, Executive Director, 201 N.E 38<sup>th</sup> Terr. Suite 1, Oklahoma City, OK 73105, 405-524-9006

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

### SUBCHAPTER 3. LICENSURE OF VETERINARIANS

#### 775:10-3-12. Fees

##### (a) Fee Schedule.

(1) **Examination.** The following fees shall be assessed for licensure and examination of veterinarians:

(A) North American Veterinary Licensing Examination - At Cost + \$185.00

(B) Oklahoma State Examination - \$150.00

(2) **Licensure.** The following fees shall be assessed for licensure of veterinarians:

(A) Annual renewal (prior to June 30) - \$175.00

(B) Annual renewal Faculty License (prior to June 30) - \$175.00

(C) Reactivation fee (between July 1 and August 29) - \$275.00

(D) Reinstatement fee (after August 30) - \$625.00

(E) Licensure by Endorsement - \$625.00

(F) Faculty License - \$125.00

(3) **Duplication or modification of license.** A fee of \$50.00 shall be assessed for duplication or modification of a veterinary license.

(4) **Supervised Doctor of Veterinary Medicine.** The following fees shall be assessed for certification as a supervised doctor of veterinary medicine:

(A) Original Certificate - \$125.00

(B) Extension - \$100.00

(C) Transfer - \$50.00

(5) **Miscellaneous fees.** The following miscellaneous fees shall be assessed by the Board.

(A) Certification of scores - \$40.00

(B) Verification of license - \$20.00

(C) Duplication of proof of renewal of license - \$10.00

(D) Certification of public records (per page) - \$1.00

(E) Duplication of public records (per page) - \$.25

(F) Transcript of public records recorded (per page) - At Cost

(G) Issuance of subpoena - \$.25

(H) Returned check processing fee - \$35.00

(I) Probation fees:

(i) \$50.00/month, unless otherwise modified by the Board or the Secretary/Treasurer

(ii) Investigation/Prosecution ~~actual~~ at cost ~~incurred~~ (Non-payment of investigation, prosecution or probation costs or fees within 30 days of billing may be grounds for imposition of additional sanctions by the Board).

- (J) Declaratory ruling - \$300.00 plus court costs.
- (6) **Registered Veterinary technician fees.** The following registered veterinary technician fees shall be assessed by the Board:
  - (A) National Veterinary Technician Examination - ~~At~~ cost
  - (B) State Examination - \$60.00
  - (C) Application Processing Fee - \$50.00
  - (D) Certificate - \$20.00
  - (E) Annual Renewal - \$45.00

- (7) **Animal Euthanasia technician fees.** The following animal euthanasia technician fees shall be assessed by the Board:
  - (A) Training and Practical Examination - At cost
  - (B) Oklahoma State Bureau of Investigation criminal history search - At cost
  - (C) State Written Examination - \$60.00
  - (D) Application Processing Fee - \$50.00
  - (E) Certificate - \$20.00
  - (F) Annual Renewal - \$40.00
  - (G) Reactivation fee - \$25.00

(b) **Submission of fees.** All fees are non-refundable.

**SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT**

**775:10-5-30. Unprofessional conduct**

The following acts and/or omissions shall be considered unprofessional conduct and shall constitute grounds for disciplinary action by the Board. They shall include, but not be limited to:

- (1) failing to meet the minimum standards for veterinary clinics as set forth by Chapter 20 herein and for the practice of veterinary medicine as set forth by Chapter 25.
- (2) engaging in conduct likely to deceive, defraud or harm the public or a demonstration of willful or careless disregard for the health, welfare or safety of a patient. For the purposes of this provision, acts of fraud herein shall include, but not be limited to:
  - (A) claiming to have performed or charging for an act or treatment that was, in fact, not performed or given;
  - (B) providing professional services to more than one party in any transaction where such parties have conflicting interests, without providing full, written disclosure of the dual representation and consent of the interested parties;
  - (C) claiming certification or recognition as a specialist which is untrue. Specialization shall be limited to those areas of specialization accepted by the American Veterinary Medical Association.
  - (D) practicing veterinary medicine under a false or assumed name or impersonating another practitioner;
  - (E) using a corporate or assumed name which is deceptive or misleading to the public;

- (F) making a false, fraudulent or misleading statement of professional superiority in the practice of veterinary medicine;
  - (G) using any form of advertisement which is false, deceptive or misleading;
  - (H) performing surgery to conceal genetic or congenital defects, in any species, with the knowledge the surgery is performed to perpetrate a fraud;
  - (I) fraudulently issuing or using:
    - (i) certificate of veterinary inspection;
    - (ii) test chart;
    - (iii) vaccination report;
    - (iv) any other official report for the prevention of the dissemination of animal disease, the transportation of diseased animals or the sale of edible products of animal origin for human consumption;
  - (J) fraud or misrepresentation in applying for, procuring or renewing a veterinary license or certificate;
  - (K) the use of any false, fraudulent or deceptive statement in any document connected with the practice of veterinary medicine and surgery;
- (3) practice under an expired, revoked or suspended Oklahoma veterinary license;
  - (4) promoting, aiding, abetting or allowing the practice of veterinary medicine by any unlicensed person, except as specifically authorized by the Veterinary Practice Act or rules of the Board. For the purposes of this provision, aiding the unlicensed practice of veterinary medicine shall also include, but shall not be limited to:
    - (A) allowing an unlicensed person to issue an animal health certificates with the veterinarian's signature affixed to the certificate, or to inoculate or treat animals unless the inoculation or treatment was performed under the direct supervision of the licensed veterinarian;
    - (B) allowing the issuance by any person in the employ of the veterinarian of a certificate of veterinary inspection of an animal unless the veterinarian performs the inspection and appropriate tests as required.
  - (5) performing any aspect of veterinary medicine outside a valid veterinarian, client, and patient relationship, except as specifically authorized by rules of the Board;
  - (6) violating any state or federal statute, rule or regulation regarding the prescription, dispensation or administration of veterinary prescription drugs or controlled dangerous substances. For the purposes of this provision, such violations shall include, but shall not be limited to:
    - (A) prescribing, providing, obtaining, ordering, administering, dispensing, giving or delivering any veterinary prescription drug or controlled dangerous substance to or for an animal solely for training, show or racing purposes and not for a medically sound reason;
    - (B) failing to provide appropriate labels on veterinary prescription drugs or controlled dangerous substances;

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- (C) prescribing or dispensing, delivering, or ordering any veterinary prescription drug or controlled dangerous substance without first having established a veterinarian/client/patient relationship and determining that such prescription drug is therapeutically indicated for the health or well being of the animal;
- (D) prescribing, providing, ordering, administering, possessing, dispensing, giving or delivering any veterinary prescription drugs or controlled dangerous substance under the following circumstances:
- (i) when the drugs are not necessary or required for the medical care of animals; or
  - (ii) when the use or possession of the drugs would promote addiction thereto.
- (E) prescribing, providing, obtaining, ordering, administering, dispensing, giving or delivering any controlled dangerous substance for the veterinarian's personal use.
- (7) failing or refusing to cooperate in an investigation by the Board where no privilege for such exists. For the purposes of this provision, such failure to cooperate shall include, but shall not be limited to:
- (A) failing or refusing to allow the Board or its investigator the ability to inspect a veterinary facility at reasonable hours, pursuant to an investigation by or on behalf of the Board and permitted by the Act or rules of the Board, or in accordance with other applicable State and/or Federal Statutes and regulations;
  - (B) failing or refusing to respond to reasonable inquiry from the Board or its investigator in the course of an investigation;
- (8) failing to report to the proper authorities cruel or inhumane treatment to animals by any person, when the veterinarian has direct knowledge of the cruel or inhumane treatment;
- (9) practicing any form of medicine on humans, except that a veterinarian may render first aid or emergency care, without expectation of compensation, in an emergency or disaster situation;
- (10) any disciplinary action taken against the licensee by any other licensing jurisdiction, professional veterinary association, veterinary specialty board, or government or regulatory agency, where the basis for such disciplinary action would be a basis for action by the Board.
- (11) failing to report to the Board within 30 days any disciplinary action taken against the licensee by any other licensing jurisdiction, professional veterinary association, veterinary specialty board, or government or regulatory agency, where the basis for such disciplinary action would be a basis for action by the Board;
- (12) except as appropriate in the course of a valid veterinarian, patient, client relationship, allowing any unlicensed person, as defined by 59 O.S. 698.2,(13) to control the professional judgment of the veterinarian;
- (13) failing to post or display, in a public area of the veterinarian's practice, the veterinarian's original license to practice veterinary medicine and current year's renewal certificate;

- (14) failing to practice veterinary medicine with reasonable skill and safety. For the purpose of this provision, reasonable skill and safety shall refer to a level of care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the profession in good standing in the community;
- (15) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's practice of veterinary medicine and surgery;
- (16) improper preparation, recording, management and/or maintenance of veterinary records.
- (17) no person, as defined by O.S., Sec. 698.2 (19) shall control, exploit, or intervene between the patient, client and the veterinarian. A veterinarian shall not allow a non-licensed person or entity to interfere with or intervene in the veterinarian's practice of veterinary medicine. Each veterinarian shall be responsible for the veterinarian's own actions and shall be directly responsible to the client for the care and treatment of the patient.
- (18) failure to confirm an individual is duly registered as a veterinary technician with the Board prior to allowing that person to perform specific RVT services without direct supervision directly to a patient in the State of Oklahoma.
- (19) making a referral for animal massage therapy without first confirming an animal massage provider is certified and has liability insurance coverage.

### SUBCHAPTER 7. CERTIFICATION OF VETERINARY TECHNICIANS

#### 775:10-7-9.1. Duties Performed Without Direct Supervision

(a) The duties of a Registered Veterinary Technician shall be performed pursuant to the direction and under the general supervision of a licensed veterinarian. Where appropriate, depending upon the services provided, such general supervision shall not be construed to require the physical presence of the supervising veterinarian at the time and place where such services are performed.

(b) A Registered Veterinary Technician may perform the following procedures listed below as directed by or on the order of a licensed veterinarian without the continuing physical presence of the licensed veterinarian, but the RVT must comply with the general record keeping requirements as set forth in the Oklahoma Veterinary Practice Act:

- (1) Euthanasia of animals
- (2) Thoracocentesis;
- (3) Abdominocentesis;
- (4) Ocular Tonometry;and
- (5) Animal Massage Therapy

### SUBCHAPTER 10. COMPLEMENTARY AND ALTERNATIVE THERAPY

**775:10-10-10. Requirements prior to providing animal massage services**

- (a) No person shall provide animal massage services to any patient until certified in animal massage therapy, acquire liability insurance coverage and a written referral for such services is received from an Oklahoma licensed veterinarian.
- (b) A copy of the written referral must be kept by the referring veterinarian on file for review or audit by the Board or its representative for three (3) years post term.
- (c) The referring veterinarian shall confirm the animal massage provider has written proof of liability insurance coverage for providing animal massage services from an insurance company duly licensed to conduct business in the State of Oklahoma with the Oklahoma Insurance Commission prior to making any referral for massage therapy upon an animal.

[OAR Docket #06-843; filed 5-5-06]

**TITLE 775. BOARD OF VETERINARY  
MEDICAL EXAMINERS  
CHAPTER 25. RECORDKEEPING AND  
SUPERVISION REQUIREMENTS**

[OAR Docket #06-844]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

775:25-1-3. Dispensing and Labeling Requirements [AMENDED]

**AUTHORITY:**

59 O.S. Supp.2005, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

**DATES:**

**Comment period:**

January 18, 2006 through February 18, 2006

**Public hearing:**

March 3, 2006

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April 20, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 3, 2006

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May 3, 2006

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July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed revision is necessary to add language that a written statement in the order for veterinary prescription drugs confirms a valid veterinarian-client-patient relationship exists.

**CONTACT PERSON:**

Cathy Kirkpatrick, Executive Director, 201 N.E 38<sup>th</sup> Terr. Suite 1, Oklahoma City, OK 73105, 405-524-9006

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

**775:25-1-3. Dispensing and Labeling Requirements**

(a) All controlled dangerous substances and veterinary prescription drugs lawfully possessed and to be dispensed for use by a companion animal shall be dispensed only on the order of a licensed veterinarian who has an existing veterinary-client-patient relationship as defined by the Act and the rules of the Board. The veterinarian shall ensure that labels will be affixed to any unlabeled container containing any medication dispensed and to each factory labeled container that contains veterinary prescription drugs for companion animals. The label shall be affixed to the immediate container and shall include the following information:

- (1) the name and address of the dispensing veterinarian, and the veterinarian's telephone number if the drug is a controlled dangerous substance;
- (2) the date of delivery or dispensing;
- (3) the name of the patient, the client's name, and the client's address if the drug is a controlled dangerous substance;
- (4) the established name or active ingredient of the drug, strength, and quantity of the drug dispensed;
- (5) directions for use specified by the practitioner including dosage, frequency, route of administration, and duration of therapy; and
- (6) any cautionary statements required by law, including the words "For Veterinary Use Only", and/or any withdrawal periods associated with the drug. If the size of the immediate container is insufficient to be labeled, the small container shall be enclosed within another container large enough to be labeled.

(b) "Companion animal" shall mean those animals considered to be a pet, and may include horses (for the purposes of this chapter only), birds and exotics, but shall exclude poultry and horses intended for food purposes.

(c) All controlled dangerous substances and veterinary prescription drugs to be dispensed or prescribed for use in food or for administration to a food or commercial animal for medical purposes, may be dispensed only on order of a licensed veterinarian with an existing veterinary-client-patient relationship as defined by the Act and the rules of the Board. The veterinarian shall ensure that labels will be affixed to each factory labeled container, unlabeled container, or multiple unit/dose container or box containing any medication dispensed or prescribed that contains any controlled dangerous substance or veterinary prescription drugs for food or commercial animals.

(d) All controlled dangerous substances and veterinary prescription drugs shipped directly from a wholesale or retail distributor to the client, to be dispensed or prescribed for use in food or for administration to a food or commercial animal for medical purposes, may be dispensed only on the written order of a licensed veterinarian with an existing veterinary-client-patient relationship as defined by the Act and the rules of the

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Board. The veterinarian and the wholesale/retail distributor shall ensure that labels will be affixed to each factory labeled container, unlabeled container, or multiple unit/dose container or box containing any medication dispensed or prescribed that contains any controlled dangerous substance or veterinary prescription drugs for food or commercial animals. The veterinarian shall maintain the original written order on file in the veterinarian's office. A copy of the written order shall be on file with the distributor and a second copy shall be maintained on the premises of the patient-client.

(e) The label and the written order if applicable with respect to paragraphs (c) and (d) shall include the following information:

- (1) the name and address of the veterinarian and the veterinarian's telephone number if the drug is a controlled dangerous substance;
- (2) the date of delivery or dispensing;
- (3) the name of the patient or herd identification, the client's name, and the client's address if the drug is a controlled substance;
- (4) the established name or active ingredient of the drug, or if formulated from more than one ingredient, the established name of each ingredient, as well as the strength and quantity of the drug or drugs dispensed;
- (5) directions for use specified by the practitioner, including the following:

- (A) the class or species of the animal or animals receiving the drug or some other identification of the animals; and
- (B) the dosage, the frequency and route of administration, and duration of therapy; and
- (C) any cautionary statements required by law, including "For Veterinary Use Only" or whether there are withdrawal periods associated with the drug.

(f) the written order if applicable with respect to paragraph (c) and (d), shall include a written statement from the veterinarian confirming that a valid VCPR exists as defined by the Oklahoma Veterinary Practice Act in addition to the information in paragraph (e) above.

[OAR Docket #06-844; filed 5-5-06]

## TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS CHAPTER 26. WHOLESALER/DISTRIBUTOR OF VETERINARY PRESCRIPTION DRUGS

[OAR Docket #06-845]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Chapter 26. Wholesaler/Distributor of Veterinary Prescription Drugs  
[NEW]

**AUTHORITY:**  
59 O.S. Supp.2005, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

**DATES:**

**Comment period:**  
January 18, 2006 through February 18, 2006

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July 1, 2006

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**ANALYSIS:**  
The proposed addition of Chapter 26 provides the requirements for wholesaler/distributors to engage in distribution of veterinary prescription drugs in Oklahoma.

**CONTACT PERSON:**  
Cathy Kirkpatrick, Executive Director, 201 N.E 38<sup>th</sup> Terr. Suite 1, Oklahoma City, OK 73105, 405-524-9006

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:**

**775:26-1-1. Distribution of veterinary prescription labeled drugs**

(a) This chapter sets forth the rules for compliance with those sections of the Oklahoma Pharmacy Act (Pharmacy Act), 59 O.S. Suppl. 2005 §353.1, et seq., which relate to veterinary prescription labeled drugs.

(b) In accordance with § 353.13 G of the Pharmacy Act, "veterinary prescription labeled drugs", defined as "veterinary prescription drugs" in the Oklahoma Veterinary Practice Act (Act), may be supplied by a "wholesaler or distributor", as those terms are defined in the Pharmacy Act, and shipped directly to a client located in the State of Oklahoma pursuant to a written order of an Oklahoma licensed veterinarian, but only after a valid veterinarian-client-patient relationship (VCPR), as defined in the Act, has been established and referenced in such written order.

(c) No wholesaler or distributor shall sell, dispense or supply a veterinary prescription drug to an owner or their authorized agent in the State of Oklahoma without first obtaining a written order for such drug from an Oklahoma licensed veterinarian with a valid VCPR in place. Certification by a pharmacist prior to dispensing veterinary prescription drugs by a wholesaler or distributor under these rules or under the Pharmacy Act shall not be required. No person shall acquire or use

any veterinary prescription drug other than in accordance with the label affixed to the drug container and/or outside of a valid VCPR.

(d) Any wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall comply with the dispensing and labeling requirements set forth in Chapter 25 of the Oklahoma Veterinary Administrative Rules found in Title 775 of the Oklahoma Administrative Code.

(e) Any wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall maintain accurate written records containing information relating to the sale and/or distribution of such drugs, with sufficient detail to specifically identify the drug, the veterinarian ordering the drug, the date of distribution, the quantity of the drug, and the client receiving the drug. Such records shall be maintained by the wholesaler or distributor for a period

of five years from the date of distribution of the drug and shall include, but not be limited to, the written order received from the veterinarian, a copy of the drug invoice and the bill of lading or other evidence of shipment. The records of a wholesaler or distributor selling, supplying or dispensing veterinary prescription drugs for use in the State of Oklahoma shall be available for inspection upon request by the Oklahoma State Board of Veterinary Medical Examiners or their designated representatives, during reasonable business hours.

(f) A violation of the provisions of the Pharmacy Act pertaining to veterinary prescription labeled drugs, by a person or entity, including an owner, a veterinarian and/or a wholesaler or distributor, shall constitute a violation of the Act.

*[OAR Docket #06-845; filed 5-5-06]*

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